Employer Handbook

State of Michigan
Unemployment Insurance Agency
Department of Licensing and Regulatory Affairs

January 2013

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RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
UNEMPLOYMENT INSURANCE AGENCY
STEVE ARWOOD
DIRECTOR

STEVE ARWOOD
LARA ACTING DIRECTOR

January 2013

Dear *Employer Handbook* Subscriber:

The *Employer Handbook* is produced by the Unemployment Insurance Agency (UIA), one of the agencies within the Michigan Department of Licensing and Regulatory Affairs.

The UIA carries out the provisions of the *Michigan Employment Security Act* which is Act No. 1 of the Public Acts of 1936, Extra Session, as amended. The *Act* is codified in the *Michigan Compiled Laws* beginning at Section 421.1. The *Employer Handbook* itself does not have the force or effect of law or rule. It is intended to explain, in a straight-forward, user-friendly way, the statutory law and case law related to the payment of unemployment benefits in Michigan and the taxing of employer payrolls to fund those benefits. The UIA listens to the questions employers ask about the law and tries to incorporate the answers to new questions each time the *Employer Handbook* is updated. This edition of the *Handbook* information about the substantial amendments made to the *Act* in 2011 and 2012.

The UIA strives to make the *Employer Handbook* a useful tool for employers, and for that reason the UIA welcomes your comments and suggestions for improving it. Please direct your comments to the Office of Employer Ombudsman, Unemployment Insurance Agency, Cadillac Place, 3024 W. Grand Blvd., Suite 11-450, Detroit, Michigan 48202. Or, you may e-mail the Office of Employer Ombudsman at OEO@Michigan.gov, or call them, toll-free, at 1-855-4UIAOEO (1-855-484-2636).

The *Employer Handbook* is also available on-line in PDF format at no cost at the UIA's website. You can also find forms, factsheets, and other updated information about the UIA online at www.michigan.gov/uia. And while you're there, check out the extensive listings of webcasts UIA has created. They feature UIA employees who work every day with employers, hear questions from employers, and know how to answer those questions.

Sincerely,

Steve Arwood
Director

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State of Michigan
Department of Licensing And Regulatory Affairs
Unemployment Insurance Agency (UIA)

WAYS TO CONTACT UIA

VISIT OUR WEBSITE

www.michigan.gov/uia

USE THE CLAIMANT PORTAL (CLAIM WEB ACCOUNT MANAGER)

You can sign up for a web account with UIA. This will allow you to choose or change your benefit payment method, use MARVIN Online, look at your benefit payment history, submit your claim question or problem for response by a customer service representative, and access other services. Go to the website address above and click on "UIA Online Services for Unemployed Workers."

CALL US

Call **1-866-500-0017**, Monday – Friday, 8:00 a.m. to 4:30 p.m. Eastern Time (ET), and choose option 3 to speak to a customer service representative. If you need a Spanish-speaking representative, wait until you hear this option in Spanish (option 4). For all other languages, press option 3 and the representative will connect you to a translator for assistance. If you are hearing impaired, **TTY** service is available at **1-866-366-0004.**

FAX US

FAX your responses to Agency forms or correspondence to the FAX number on the form. Protests or any other correspondence, should be faxed to **1-517-636-0427**. Appeals should be faxed to **1-616-356-0739**. **Please include your name, Social Security number, signature, and date on all correspondence.** Make a copy for yourself. Print and keep confirmation showing your FAX was received.

WRITE US

Mail your responses to Agency forms or correspondence to the address on the form. Protests, appeals or any other correspondence, should be mailed to the Unemployment Insurance Agency at one of the addresses below. **Please Include your name, Social Security Number, signature, and date on all correspondence**. Make a copy for yourself.

Protests: Unemployment Insurance Agency
PO Box 169
Grand Rapids, MI 49501-0169

Appeals only: Unemployment Insurance Agency
PO Box 124
Grand Rapids, MI 49501-0124

MARVIN TOLL-FREE LINE: 1-866-638-3993

The UIA automated telephone system you call every other week to claim (certify/report for) unemployment benefit payments. Instead of calling MARVIN, you may use MARVIN Online at www.michigan.gov/uia and click on "UIA Online Services for Unemployed Workers" or "Certify With MARVIN Online."

FRAUD HOTLINE:

Report suspected unemployment insurance fraud at www.michigan.gov/uia and click on "Report Fraud" or call the toll-free Fraud Hotline at **1-855-842-7463 (UI-CRIME)**. The line is available 24 hours a day.

State of Michigan
Department of Licensing And Regulatory Affairs
Unemployment Insurance Agency (UIA)

LARA
LICENSING AND REGULATORY AFFAIRS
CUSTOMER DRIVEN. BUSINESS MINDED.

PROBLEM RESOLUTION OFFICES
Open for walk-in customers.

METRO DETROIT	**Detroit** — 3024 W. Grand Blvd., Cadillac Place, Suite L-385 Detroit, MI 48202 Monday through Friday, 8:00 a.m. until 4:00 p.m. **Mt. Clemens** — Macomb County Department of Human Services (DHS), 21885 Dunham Rd., Suite 7, Clinton Township, MI 48036 Monday through Friday, 8:00 a.m. until 4:00 p.m.
TRI-CITIES	**Saginaw** — 614 Johnson St., (across from Bus Terminal) Saginaw, MI 48607 Monday through Friday, 8:00 a.m. until 4:00 p.m.
WEST MICHIGAN	**Benton Harbor** — 401 8th St., Benton Harbor, MI 49022 Monday through Friday, 8:00 a.m. until 5:00 p.m. **Grand Rapids** — 3391 Plainfield, NE., Grand Rapids, MI 49525 Monday through Friday, 8:00 a.m. until 4:00 p.m. **Kalamazoo** — 1601 S. Burdick St., Kalamazoo, MI 49007 Monday through Friday, 8:00 a.m. until 5:00 p.m. **Muskegon** — Muskegon County DHS, 2700 Baker St., Muskegon Heights, MI 49444 Monday through Friday, 8:00 a.m. until 5:00 p.m.
MID-MICHIGAN	**Lansing** — 5015 S. Cedar at Jolly Rd. (in the Jolly-Cedar Plaza) Lansing, MI 48910 Monday through Friday, 8:00 a.m. until 4:00 p.m.
NORTHERN MICHIGAN	**Alpena** — 315 W. Chisholm, Alpena, MI 49707 Monday, Tuesday, Wednesday and Friday, 8:00 a.m. until 5:00 p.m. Thursday, 9:00 a.m. until 5:00 p.m. **Gaylord** — 400 W. Main St., Suite 102 (west of South Michigan Ave.) Gaylord, MI 49735 Monday through Friday, 8:00 a.m. until 4:00 p.m. **Traverse City** — 1209 S. Garfield Ave., Suite C, Traverse City, MI 49686 Monday through Friday, 8:00 a.m. until 5:00 p.m.
UPPER PENINSULA	**Houghton** — 902 Razorback Dr., Suite 6, Houghton, MI 49931 Monday thorugh Friday, 8:00 until 4:30 p.m. **Marquette** — 2833 U.S. 41 West (across from Westwood Mall) Marquette, MI 49855 Monday through Friday, 8:00 a.m. until 4:00 p.m. **Ontonagon** - 429 River St., Ontonagon, MI 49953 Wednesday, 9:00 a.m. until 3:00 p,m, **Sault Ste. Marie** — 1118 E. Easterday Ave., Sault Ste. Marie, MI 49783 Monday through Friday, 8:00 a.m. until 5:00 p.m.

You can also receive assistance from the Office of Employer Ombudsman (OEO) by calling 1-855-4-UIAOEO (855-484-2636), or in Detroit area at 313-456-2300. You can email OEO at OEO@michigan.gov

LARA is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

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Purpose of this chapter

The purpose of this chapter is to explain when an **employing unit** becomes **liable** under the Michigan Employment Security Act to pay unemployment taxes in Michigan. Before a business is determined by the Unemployment Insurance Agency (UIA) to be **liable**, the UIA refers to the business as an **employing unit.** The UIA uses the word **employer** to refer only to a **liable** employer.

The chapter also explains what services performed by workers are excluded from coverage for unemployment benefits and from taxation to the employer. Finally, we explain how an employing unit properly notifies the UIA of their existence in business so that the UIA can make an official Determination as to whether it is a liable employer.

This chapter has been prepared as part of a general guide to unemployment taxes and benefits in the State of Michigan. It does not have the force or effect of law or regulation. It is written to assist in understanding the Michigan Employment Security Act which is the unemployment compensation law in Michigan.

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Contributing and Reimbursing Employers

Contributing employers

All employing units that are determined to be employers and therefore liable under the Michigan Employment Security Act, are responsible for paying state unemployment taxes to the Unemployment Insurance Agency (UIA). Most employers are contributing employers and the taxes they pay the UIA are called contributions.

A contributing employer files a tax report with the UIA at the end of each calendar quarter, and pays a state unemployment tax on the first $9,500.00 of wages paid to each worker performing covered services in a calendar year. The amount of the tax is determined by the employer's state unemployment tax rate. The rate is discussed in much more detail in the chapter of this Handbook entitled "Employers' Guide to Unemployment Insurance Taxes."

All for-profit employers are, by law, contributing employers. A non-profit organization is a contributing employer, but may elect, with approval by the UIA, to become a reimbursing employer. Proof of Section 501(c)(3) status from the Internal Revenue Service is required. Also, if the non-profit employer has payroll of $100,000 annually, a surety bond is required.

Reimbursing employers

A reimbursing employer is a liable employer that pays to the UIA, dollar-for-dollar, the amount the UIA paid in benefits in that calendar quarter (including the state portion of Extended Benefits) to its former workers who receive unemployment benefits based on wages paid to the worker by the reimbursing employer.

A reimbursing employer does not pay regular quarterly taxes to the UIA. Most reimbursing employers receive a bill from the UIA after each calendar quarter in which unemployment benefits were paid to the employer's former employees.

A governmental entity (such as a city, county, township, and school district) is, by law, a reimbursing employer and is considered reimbursing from the beginning of its liability as an employer but may elect, with the permission of the UIA, to become a contributing employer. A governmental entity makes tax payments to the UIA annually. As mentioned earlier, a non-profit organization is, by law, a contributing employer but may elect, with permission of the UIA, to become a reimbursing employer.

Election of non-profit organization to be reimbursing

A non-profit organization may become a reimbursing employer by filing with the UIA a request to be reimbursing, rather than contributing, within 30 days of being determined to be an employer liable for the payment of Michigan unemployment taxes. A governmental entity previously electing to be contributing may return to reimbursing status by filing a request not less than 30 days before the end of a calendar year prior to the effective year of the change.

Once reimbursing status is granted, it must be retained by the organization for at least 2 calendar years.

The law permits non-profit employers that elect to be reimbursing employers to form a group account for the purpose of sharing the cost of benefits paid to the former employees of members of the group. The UIA must be notified that a reimbursing employer wishes to join a group. Membership in the group can then be effective in the quarter the request was received, or the following quarter, if requested membership in a group is for not less than 2 calendar years.

A non-profit organization or governmental entity that has been a reimbursing employer for at least 2 calendar years may elect to become a contributing employer. However, the UIA must be notified of that choice **before December 2nd**, for the following calendar year in which the organization wishes to become a contributing employer. The employer must continue to reimburse the Agency for benefit charges incurred while the employer was a reimbursing employer. Therefore reimbursement could be required for the first 2 calendar years after the employer becomes a contributing employer.

A non-profit organization that chooses to be reimbursing and that pays $100,000.00 or more per year in wages, must file a surety bond, irrevocable letter of credit, or other security approved by the UIA before the organization can be allowed to become a reimbursing employer. The security must be in an amount equal to 4.0% of the employer's annual wage payments.

The security can be posted by a third party guarantor (one who will guarantee payment).The security may also be required of a reimbursing employer that becomes delinquent in paying its reimbursing payments for two or more calendar quarters, even if the charges are under protest. Furthermore, the UIA may revoke the reimbursing status of any delinquent reimbursing employer. For more information, please call the Reimbursing Unit at (313) 456-2080.

Indian Tribes and Tribal Units as Employers

All Federally recognized Indian Tribes are reimbursing under the same terms and conditions as other reimbursing employers unless contributing status is elected. Indian Tribes and Tribal Units are billed annually for benefits charges. Indian Tribes and Tribal Units with reimbursing status are subject to the same security requirements as other non-profit employers if their annual gross pay equals or exceeds $100,000.00.

An Indian Tribe or Tribal Unit wishing to convert from a reimbursing to a contributing employer must reimburse the Agency for benefit charges incurred while it was a reimbursing employer. Also, an Indian Tribe or Tribal Unit wishing to convert from contributing to reimbursing status must pay its negative reserve and any delinquent unemployment taxes before converting.

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When does an employing unit become a liable employer?

An employing unit becomes **liable** when any one of the following occurs:

Employing Unit Pays $1,000 in a Year

The employing unit pays $1,000.00 or more in wages for covered employment (see information about covered employment in this booklet) in a **calendar year** (January 1 through December 31).

Employing Unit Has Employees in 20 Weeks in a Year

The employing unit has at least one employee in covered employment in at least 20 different **calendar weeks** (that is, Sunday through Saturday weeks) in a calendar year. The weeks do not have to be consecutive and it is not necessary that the same employee be employed in each of the 20 weeks. Some individuals performing services for an employing unit may be considered by the employing unit to be "independent contractors" rather than employees, but if those individuals file claims for unemployment benefits and are determined to be employees, the employing unit could be determined to be an employer, and liable for back unemployment taxes.

Employing unit acquires existing business

In general, if an employing unit acquires an existing business that was already determined by the UIA to be a liable employer, then the employing unit becomes a liable employer. Specifically, if an employing unit acquires the organization (employees/payroll/personnel), or trade (customers/accounts), **or** business (products/services), **or** 75% or more of the assets of another organization,trade, or business which at the time of the acquisition was a liable employer, then the acquiring employing unit becomes an employer liable for the payment of unemployment benefits in Michigan. An employing unit can "acquire" another business by a sale, or through such means as lease, bankruptcy, merger, or reorganization.

In addition, an employing unit can become a liable employer by becoming a transferee of business assets by any means otherwise than in the ordinary course of trade from an employer, if there is substantially common ownership, management, or control of the transferor and transferee at the time of the transfer.

In these situations, the new owner or employing unit is known as the successor and this process of acquiring an existing organization, trade, or business is known as successorship. If you acquire any part of the Michigan assets, organization, trade, or business of another employer by purchase, rental, lease, inheritance, merger, foreclosure, gift, or any other form of transfer, you must complete UIA Schedule B, *Successorship Questionnaire*, along with Form 518, *Registration for Michigan Taxes*. All items on both of these forms must be answered accurately and completely.

Under Section 22b of the *Michigan Employment Security Act*, there is, in general, a transfer of a business even if only employees (payroll) of the prior business are transferred to a new or another business entity. This is true even if only some of the employees of the business are transferred to the new or other business entity.

SUTA Dumping

"SUTA" refers to the "State Unemployment Tax Act" (more commonly known in Michigan as the "Michigan Employment Security Act").

"SUTA Dumping" means transferring a trade or business, or a part of a trade or business, solely or primarily for the purpose of reducing the contribution rate or reimbursement payments, required under the law.

SUTA Dumping occurs when the transfer of a trade or business results in the abandonment ("dumping") of the employer's history of unemployment benefit charges (referred to as the employer's unemployment insurance "experience.") The unemployment insurance system is an "experience rated" system, meaning that state tax rates are based on an employer's "experience" of unemployment benefit charges. When this experience is abandoned, the employer's tax rate drops and no longer adequately recoups charges to the Unemployment Trust Fund. In the process, the employer also leaves behind accrued charges in the old accounts that are not picked up by the new accounts.

There are many ways that a business can engage in SUTA Dumping. The three most common ways that are used to manipulate the tax rate are:

Vertical method - Create a "new" employer that is assigned a "new" employer tax rate, and then transfer payroll to the new employer.

Horizontal method - Transfer payroll to a subsidiary with lower UI tax.

Acquired rate method - Find another employer with a low UI tax rate and arrange to transfer payroll to that employer.

Section 22b of the Michigan Employment Security Act prohibits a person from:

- transferring the person's trade or business or a portion of the trade or business to another employer for the sole or primary purpose of reducing the contribution rate or reimbursement payments in lieu of contributions, or
- acquiring a trade or business or a part of a trade or business for the sole or primary purpose of obtaining a lower contribution rate than would otherwise apply under the act.

The law also requires the transfer and consolidation of the unemployment history and the unemployment tax rate of a trade or business to prevent or remedy transfers of trade or business that violate the new provisions of the law described above.

The law also imposes civil and criminal penalties on both an employer who engages in SUTA Dumping, and on a business advisor who counsels an employer to engage in the practice.

It provides that the unemployment tax of an employer who engages in SUTA Dumping will increase to the maximum possible rate for the year the dumping occurs and for the next 3 years as well.

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Michigan Department of Treasury
518 (Rev. 01-12)

Type or print in blue or black ink.

Registration for Michigan Taxes

Check the reason for this application. If more than one applies, see instructions.

- ☐ Started a New Business
- ☐ Reinstated an Existing Account(s)
- ☐ Hired Employee / Hired Michigan Resident
- ☐ Incorporated / Purchased an Existing Business
- ☐ Acquired/Transferred All/Part of a Business
- ☐ Added a New Location(s)
- ☐ PEO: Client Level Reporting
- ☐ Other (explain) _____

▸ 1. Federal Employer Identification Number, if known ☐☐ – ☐☐☐☐☐☐☐

▸ 2. Company Name or Owner's Full Name (include, if applicable, Corp, Inc, PC, LC, LLC, LLP, etc.). Required.

▸ 3. Business Name, Assumed Name or DBA (as registered with the county)

Legal Address (Required)	▸ 4. Address for all legal contacts (street and number - no PO boxes)		Business Telephone
	City	State	ZIP Code
Mailing Address	▸ 5. Address, if different from Box 4, where all tax forms will be sent, unless otherwise instructed		**If this address is for an accountant or other representative, attach Form 151, Power of Attorney.**
	City	State	ZIP Code
Physical Address	▸ 6. Address of the actual Michigan location of the business, if different from above (street and number--no PO boxes). See instructions.		
	City	State	ZIP Code

▸ 7. Enter the Business Ownership Type code from Page 4 (Required) ..... ▸ 7. ☐☐
If your business is a limited partnership, you must name all general partners beginning on line 28.

▸ 8. If you are a Michigan entity **and** line 7 is 35-39, 40, OR 41, enter your Michigan Licensing and Regulatory Affairs (LARA) Corporate ID Number ..... ▸ 8. ☐☐☐☐☐☐

☐ Check this box if you have applied for and not yet received your ID number.

Date of Incorporation _____ State of Incorporation _____

▸ 9. Enter Business Code (NAICS) that best describes your business (see instructions) ..... ▸ 9. ☐☐☐☐☐☐

10. Define your business activity	11. What products, if any, do you sell (sold to final consumer)?

Check the tax(es) below for which you are registering. At least one box (12-16) must be checked.	**Date that liability will begin** for each box checked at left. Month / Day / Year	**Estimated monthly payment for each tax** Required if box at left is checked.
▸ 12. ☐ Sales Tax	▸ 12a. ☐☐ ☐☐ ☐☐	▸ 12b. ☐ Up to $65 ☐ Up to $300 ☐ Over $300
▸ 13. ☐ Use Tax	▸ 13a. ☐☐ ☐☐ ☐☐	▸ 13b. ☐ Up to $65 ☐ Up to $300 ☐ Over $300
▸ 14. ☐ Employer and Retirement Withholding (See line 23.)	▸ 14a. ☐☐ ☐☐ ☐☐	▸ 14b. ☐ Up to $65 ☐ Up to $300 ☐ Over $300
▸ 15. ☐ Annual Gross Receipts over $350,000 (CIT)	▸ 15a. ☐☐ ☐☐ ☐☐	**Corporate Income Tax is required only if annual gross receipts in Michigan exceed $350,000 with the exception of insurance companies and financial institutions.**
▸ 16. ☐ Flow-Through Withholding	▸ 16a. ☐☐ ☐☐ ☐☐	

Check the box if these other taxes also apply:

▸ 17. ☐ Unemployment Insurance Tax. Attach UIA Schedule A and UIA Schedule B. Corporations, LLCs, LLPs: Enclose a copy of your Articles of Incorporation or Organization. **You must complete all items on this form accurately and completely. Failure to do so may subject you to the penalties provided under the Michigan Employment Security (MES) Act.**

▸ 18. ☐ Motor Fuel/IFTA Tax. Complete line 26. Treasury will review your registration and send any necessary tax application forms.

▸ 19. ☐ Tobacco Tax. Complete line 27. Treasury will review your registration and send any necessary tax application forms.

▸ 20. Enter the number of business locations you will operate in Michigan (Required) ..... ▸ 20. _____
If more than 1, attach a list of names and addresses.

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▸ **21.** Enter the month, numerically, that you close your tax books (for example, enter 08 for August) ..... ▸ **21.** [ ][ ]

▸ **22. Seasonal Only:** (Your business is not open continuously for the entire year)

a. Enter the month, numerically, this seasonal business opens ..... ▸ **22a.** [ ][ ]

b. Enter the month, numerically, this seasonal business closes ..... ▸ **22b.** [ ][ ]

Note: If you are registering to sell at only one or two events in Michigan per year, do not submit this registration form. Instead, file a *Concessionaire's Sales Tax Return and Payment* (Form 2271). This form can be obtained on Treasury's Web site at **www.michigan.gov/taxes, or by calling 1-517-636-6925.**

▸ **23.** ☐ Check this box if you use a payroll service that produces your payroll checks and sends income tax withholding payments to the State and Federal Governments. Attach a *Payroll Service Provider Combined Power of Attorney Authorization and Corporate Officer Liability (COL) Certificate for Business* (Form 3683). This form can be obtained on Treasury's Web site at **www.michigan.gov/taxes, or by calling 1-517-636-6925.**

Enter the name of your payroll service provider: _____

▸ **24.** If you are incorporating an existing business, or if you purchased an existing business, list previous business names, addresses, and FEINs, if known.

Previous Business Name and Address	FEIN
Previous Business Name and Address	FEIN

25. If you purchased an existing business, what assets did you acquire? Check all that apply.

☐ Land ☐ Building ☐ Furniture and Fixtures ☐ Equipment ☐ Inventory ☐ Accounts Payable ☐ Goodwill ☐ None

26. **Motor Fuel/IFTA Tax: (If you answer Yes to any of the questions below, see Web site www.michigan.gov/taxes)**

		Yes	No
a. Will you operate a terminal or refinery?	26a.	☐	☐
b. Do you own a diesel-powered vehicle used for transport across Michigan's borders with three or more axles or two axles and a gross vehicle weight over 26,000 lbs?	26b.	☐	☐
c. Will you transport fuel across Michigan's borders?	26c.	☐	☐

27. **Tobacco Tax: (if you answer Yes to any of the questions below, see Web site www.michigan.gov/taxes)**

a. Will you sell tobacco products to someone who will offer them for sale?	27a.	☐	☐
b. Will you operate a tobacco products vending machine?	27b.	☐	☐
(1) If yes, do you supply tobacco products for the machine?	27b1.	☐	☐

(2) If you do not supply the tobacco products, name the supplier _____

Complete all the information for each owner or partner. For limited partnership you must list all general partners. For limited liability companies you must list all members. For corporations you must list all officers, but do not include shareholders who are not officers. Attach a separate list if necessary.

I certify that the information provided on this form is true, correct and complete to the best of my knowledge and belief.

▸ 28. Name (Last, First, Middle, Jr/Sr/III)		Title	Date of Birth	Phone Number
Driver License / MI Identification No.	Social Security Number	Signature		
▸ 29. Name (Last, First, Middle, Jr/Sr/III)		Title	Date of Birth	Phone Number
Driver License / MI Identification No.	Social Security Number	Signature		
▸ 30. Name (Last, First, Middle, Jr/Sr/III)		Title	Date of Birth	Phone Number
Driver License / MI Identification No.	Social Security Number	Signature		
▸ 31. Name (Last, First, Middle, Jr/Sr/III)		Title	Date of Birth	Phone Number
Driver License / MI Identification No.	Social Security Number	Signature		

Questions regarding this form should be directed to Treasury at 517-636-6925. Submit this form six weeks before you intend to start your business.

MAIL TO: Michigan Department of Treasury
P.O. Box 30778
Lansing, MI 48909-8278

FAX TO: 517-636-4520

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Michigan Unemployment Insurance Agency
518 Schedule A (Rev. 8/05)

UIA Schedule A - Liability Questionnaire

Issued under authority of the Michigan Employment Security Act of 1936, as amended, MCL 421.1 et seq.
Filing is mandatory for all employers. **You must complete all items on this form accurately and completely. Failure to do so may subject you to the penalties provided under the MES Act.**

UIA Account Number, if already assigned

Federal Employer Identification No. (required)

An employing unit becomes liable to pay Michigan unemployment taxes when the employing unit meets any of the following criteria:

- Pays $1,000 or more in gross wages for covered employment in a calendar year.
- Employs one or more employees in 20 different weeks within a calendar year.
- Acquires all or part of an existing Michigan business.
- Pays at least $1,000 in cash, not including room and board, for domestic service within a calendar quarter.
- Pays at least $20,000 in cash, not including room and board, for agricultural service within a calendar quarter, ***OR*** employs at least 10 agricultural workers in each of 20 different weeks in the current or preceding calendar year.
- Elects coverage under the terms of the Michigan Employment Security (MES) Act.
- Is subject to federal unemployment tax.

When any one of the above criteria is met, you must submit Form 518, *Registration for Michigan Taxes,* and UIA Schedule A - *Liability Questionnaire* and UIA Schedule B - *Successorship Questionnaire.* You must also begin quarterly filing of Form UIA 1020, *Employer's Quarterly Tax Report,* Form UIA 1020-R, *Reimbursing Employer's Quarterly Payroll Report* and Form UIA 1017, *Wage Detail Report.* Unemployment taxes are due and payable beginning with the first calendar quarter in which you had payroll. Due dates for tax and wage reports are April 25, July 25, October 25 and January 25.

Providing inaccurate or incomplete information in this Registration, or UIA Schedules A or B, will be evidence of intentional misrepresentation and may subject you to the civil and/or criminal penalties provided in Sections 54 and 54b of the *Michigan Employment Security (MES) Act.*

On what date did/will you first employ anyone in Michigan? ..... Month Day Year

Complete only **one** of the seven items below that best describes your business.

1. EMPLOYERS OTHER THAN DOMESTIC OR AGRICULTURAL

A. If you have had a gross payroll of $1,000 or more within a calendar year, enter the date it was reached or will be reached. ..... Month Day Year

B. If you have had 20 or more calendar weeks in which one or more persons performed services for you within a calendar year, enter the date the 20th week was reached or will be reached. The weeks do not have to be consecutive nor the persons the same. ..... Month Day Year

2. AGRICULTURAL EMPLOYERS

A. If you have had a total cash payroll of $20,000 or more for agricultural services performed within a calendar quarter in either the current or preceding calendar year, not including room and board, enter the date the $20,000 was reached or will be reached. ..... Month Day Year

B. If you have had at least 10 agricultural workers in each of 20 different weeks in the current or preceding calendar year, enter the date the 20th week was reached or will be reached. The weeks do not have to be consecutive nor the persons the same. ..... Month Day Year

3. DOMESTIC/HOUSEHOLD EMPLOYERS

A. If you have had a cash payroll of $1,000 or more for domestic services within a calendar quarter in either the current or preceding calendar year, not including room and board, enter the date the $1,000 was reached or will be reached. ..... Month Day Year

4. NONPROFIT EMPLOYERS

Nonprofit organizations finance their unemployment liability by either (1) paying unemployment taxes on the taxable wages of their employees (contributing) or (2) making a specific prior election to reimburse the UIA for any unemployment benefits paid to their former employees (reimbursing). A nonprofit organization that does not elect to be reimbursing will be, by default, contributing. To elect reimbursing status, see paragraphs 4A-4D.

A. Nonprofit employers electing reimbursing status must provide the UIA with a copy of the documentation from the Internal Revenue Service (IRS) granting 501(c)(3) status.

☐ Check this box if you elect to be a reimbursing employer. Attach a copy of your IRS 501(c)(3) documentation. Failure to check this box will result in the establishment of your liability as a contributing employer.

Continued on page 2

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4. NONPROFIT EMPLOYERS (continued)

B. If you are a nonprofit employer electing reimbursing status, enter the amount (or estimate) of your gross annual payroll ..... $

C. **Bonding Requirements.** Section 13a of the *Michigan Employment Security (MES) Act* requires that **nonprofit** employers electing reimbursing status on or after December 21, 1989, and that have, or expect to have, a gross payroll of more than $100,000 during any calendar year must notify the UIA of that fact immediately and must provide a surety bond, irrevocable letter of credit, or other banking device approved by the UIA, in an amount to be determined by the UIA to secure the employer's obligations under the MES Act. If you exceed $100,000 in gross payroll in a later year, you are obligated to notify the UIA, and provide the bond at that time.

D. If your organization is funded more than 50 percent by a grant, list the source and duration of the grant.

Source	Start Date	End Date

5. GOVERNMENTAL AGENCIES, INDIAN TRIBES AND TRIBAL UNITS

Governmental entities generally reimburse unemployment insurance benefits paid to former employees on a dollar-for-dollar basis unless they elect to make quarterly "contribution" payments.

A. If you are a governmental agency, or Indian tribe or tribal unit, identify the type (i.e., city, township, commission, authority, tribe, etc.) .....

B. Enter your fiscal year beginning date ..... Month ☐☐ Day ☐☐

Under the MES Act, a governmental agency or Indian tribe finances its unemployment liability by (1) reimbursing the UIA for any unemployment benefits paid to their former employees (reimbursing) or (2) electing to pay unemployment taxes on the taxable wages of its employees (contributing).

C. ☐ Check this box if you elect to be a contributing employer. Failure to check this box will result in the establishment of your liability as a reimbursing employer. Indian tribes and tribal units are subject to the same bonding requirements as nonprofit employers (see Line 4C, above).

6. FEDERAL UNEMPLOYMENT TAX ACT (FUTA) SUBJECTIVITY. Select this option ONLY if you are NOT liable for UIA taxes under any of the other employer types (1-5 above).

If you are already subject to FUTA, enter the state, other than Michigan, where you became liable..... State ☐☐

Note: "Subject to FUTA" refers to filing Form 940 with the IRS. If you are required to file Form 940 (FUTA) with the IRS in other states, you are required to file and pay state unemployment taxes in Michigan.

7. ELECTIVE COVERAGE. For employers who would not otherwise be liable for unemployment taxes, such as churches.

☐ Check this box if you wish to elect coverage under the MES Act. Approval is subject to UIA review; some qualifiers apply. Your election, if granted, will apply to all your employees.

Give your reason for electing coverage in the space provided below. If you are an individual owner or partnership electing to cover family members, specify their relationship to the owner or partners. You may not elect coverage for your parents or spouse, nor for your child under the age of 18. Individual owners and partners cannot elect coverage for themselves. You may not elect coverage for domestic employment below the statutory requirements stated above. Election of coverage remains in effect for a minimum of two calendar years.

Print Name of Owner/Officer			Signature of Owner/Officer
Title	Telephone Number	Date	
Print Name of Owner/Officer			Signature of Owner/Officer
Title	Telephone Number	Date	

Attach this schedule to Form 518, *Registration for Michigan Taxes* and mail it to the Michigan Department of Treasury.

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Michigan Unemployment Insurance Agency
518 Schedule B (Rev. 11-07)

UIA Schedule B - Successorship Questionnaire

Issued under authority of the *Michigan Employment Security Act* of 1936, as amended, MCL 421.1 et seq. Filing is mandatory for employers.

You must complete all items on this form accurately and completely. Failure to do so may subject you to the penalties provided under the *Michigan Employment Security (MES) Act*. Attach additional sheets if necessary.

Successorship Reporting Requirement. If you acquired any part of the Michigan assets, trade or business of another employer, as defined in Part 3 of this form, by purchase, rental, lease, inheritance, merger, foreclosure, bankruptcy, gift or any other form of transfer, you must provide the following information. If you made multiple acquisitions, you must file a separate UIA Schedule B for each acquisition (photocopies of this form are acceptable). **If you made no acquisitions, you are still required to complete this schedule.** If subsequent to completing this registration form, you transfer the assets (by sale or transfer), organization (payroll/employees), trade (customers/accounts), or business (products/services), in whole or in part, to a new or previously existing business in Michigan, it is **mandatory** that you notify this Agency **immediately** by completing an additional Schedule B.

UIA Account Number (if already assigned) ☐☐☐☐☐☐☐ Federal Employer Identification No. (required) ☐☐ ☐☐☐☐☐☐☐

PART I: QUESTIONS ABOUT PRIOR OR CURRENT BUSINESS FORMATIONS, ACQUISITIONS OR MERGERS

For each of the following five business formation, acquisition or merger types, the employer must indicate the pertinent business name, address and UIA Account Number in the space provided.

1. In the past 6 years, you formed, acquired or merged with a business by any means. If not applicable, check box ☐

Business Name and Address	UIA Account Number

a. If you formed a new business, what did you acquire from the previously existing business? (check all that apply)
☐ Land ☐ Buildings ☐ Furniture/Fixtures ☐ Equipment ☐ Inventory ☐ Accounts Receivable ☐ Goodwill
☐ Employees ☐ Trade ☐ Customer Accounts ☐ None

b. If you purchased, acquired or merged with an existing business by any means (including lease), what assets did you acquire? (check all that apply)
☐ Land ☐ Buildings ☐ Furniture/Fixtures ☐ Equipment ☐ Inventory ☐ Accounts Receivable ☐ Goodwill
☐ Employees ☐ Trade ☐ Customer Accounts ☐ None

c. What was the business activity of the previous business?

_____

2. At the current time, you are forming, or acquiring, a business by any means. If not applicable, check box ☐

Business Name and Address	UIA Account Number

a. If you formed a new business, what did you acquire from a previously existing business? (check all that apply)
☐ Land ☐ Buildings ☐ Furniture/Fixtures ☐ Equipment ☐ Inventory ☐ Accounts Receivable ☐ Goodwill
☐ Employees ☐ Trade ☐ Customer Accounts ☐ None

b. If you are purchasing or acquiring an existing business by any means (including by lease), what assets are you acquiring? (check all that apply)
☐ Land ☐ Buildings ☐ Furniture/Fixtures ☐ Equipment ☐ Inventory ☐ Accounts Receivable ☐ Goodwill
☐ Employees ☐ Trade ☐ Customer Accounts ☐ None

c. Will any owner or owners of the previous business continue to operate or manage the business being registered by this form?
☐ Yes ☐ No If yes, provide name, title and business address below.

_____

d. What was the business activity of the previous business?

_____

e. What will be the business activity, if any, of the previous business after the new business being registered is formed?

_____

f. What will be the business activity of the new business being registered by this form?

_____

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PART I: QUESTIONS ABOUT PRIOR OR CURRENT BUSINESS FORMATIONS, ACQUISITIONS OR MERGERS (continued)

3. **At the current time, you are incorporating an existing business entity.** If not applicable, check box ☐

Business Name and Address	UIA Account Number

a. What was the business activity of the business entity you are incorporating?

b. What will be the business activity of the new business being registered by this form?

4. **At the current time, you are merging, by any means, with one or more business entities.** If not applicable, check box ☐

Business Name and Address	UIA Account Number

a. If you are purchasing or acquiring an existing business by merger, what are you acquiring? (check all that apply)
☐ Land ☐ Buildings ☐ Furniture/Fixtures ☐ Equipment ☐ Inventory ☐ Accounts Receivable ☐ Goodwill
☐ Employees ☐ Trade ☐ Customer Accounts ☐ None

b. If you are forming a new business, what are you acquiring from a previously existing business? (check all that apply)
☐ Land ☐ Buildings ☐ Furniture/Fixtures ☐ Equipment ☐ Inventory ☐ Accounts Receivable ☐ Goodwill
☐ Employees ☐ Trade ☐ Customer Accounts ☐ None

c. Will any owner or owners of the merging business continue to operate or manage the business being registered by this form?
☐ Yes ☐ No If yes, provide name, title and business address below.

d. What was the business activity of the merging business?

e. What will be the business activity of the continuing business being registered by this form?

5. **You are intending to form a business at a future time, by any means.** If not applicable, check box ☐

☐ Yes ☐ No

If yes, please explain:

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PART II: FORMER OWNER INFORMATION

Former Owner's Name	Former Owner's UIA Account Number or FEIN, if known.
Corporate Name or DBA	Area Code & Telephone Number
Current Street Address (not a P.O. Box)	
City, State, ZIP	

PART III: ACQUISITION INFORMATION

1. Did you acquire all, part, or none of the **assets** of any former **business?** ☐ All ☐ Part What Percent? % Date Acquired ☐ None
2. Did you acquire all, part, or none of the **organization** (employees/payroll/personnel) of any former business?
   a. If all or part, indicate the percent and date acquired. ☐ All ☐ Part What Percent? % Date Acquired ☐ None
   b. Did you acquire all or part of the employees/payroll/personnel of any former business by leasing any of those employee/payroll/personnel? ☐ Yes ☐ No (If yes, provide a copy of your lease agreement)
3. Did you acquire all, part, or none of the **trade** (customers/accounts/clients) of any former business? ☐ All ☐ Part What Percent? % Date Acquired ☐ None
4. Did you acquire all, part, or none of the former owner's Michigan **business** (products/services) of any former business? ☐ All ☐ Part What Percent? % Date Acquired ☐ None
5. Was the Michigan business described in 1-4 above being operated at the time of acquisition? If no, enter the date it ceased operation. ☐ Yes ☐ No Month Day Year
6. Are you conducting/operating the Michigan business you acquired? ☐ Yes ☐ No
7. Is your Michigan business substantially owned or controlled in any way by the same interests that owned or controlled the organization, business or assets of a former business? ☐ Yes ☐ No
8. Did you hold any secured interest in any of the Michigan assets acquired? ☐ Yes ☐ No If yes, enter balance owed $
9. Enter the reasonable value of the Michigan organization, trade, business or assets acquired? $

Providing inaccurate or incomplete information in this Registration, or UIA Schedules A or B, will be evidence of intentional misrepresentation and may subject you to the civil and/or criminal penalties in Sections 54 and 54b of the *Michigan Employment Securities (MES) Act.*

Print Name of Owner/Officer			Signature of Owner/Officer/Authorized Agent
Title	Telephone Number	Date	
Print Name of Owner/Officer			Signature of Owner/Officer/Authorized Agent
Title	Telephone Number	Date	

Attach this schedule to Form 518, *Registration for Michigan Taxes* and mail it to the Michigan Department of Treasury.

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UIA 1772
Rev. 8/12

Rick Snyder
GOVERNOR

State of Michigan
Department of Licensing and Regulatory Affairs
Unemployment Insurance Agency
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www.michigan.gov/uia • (855) 484-2636 • (313) 456-2300

Authorized By
MCL 421.1 et seq.

Steve Arwood
DIRECTOR

Discontinuance or Transfer of Payroll or Assets in Whole or Part

Information shown on this report is used to determine termination of liability under Section 24 of the *Michigan Employment Security (MES) Act*. Completion of this report is required even though you may not be currently employing any workers. Failure to provide this information may result in a determination being made based on information available to the Agency. Penalties may be imposed under Section 54(a) or 54(b) of the *MES Act* for an intentional failure to comply with State law.

Employee Leasing companies must complete a separate Form UIA 1772 for each client entity terminating its contract.

PART 1: EMPLOYER INFORMATION

1. Name and Address used prior to discontinuance or transfer of payroll or assets in whole or part.
a) Name: _____ UIA Employer Account Number (EAN): _____
b) Business Address: _____
c) Telephone: (___)_____ Federal Employer ID (FEIN): _____

2. **Current name and address <u>used since</u> discontinuance or transfer of payroll or assets in whole or part.**
a. Name: _____
b. Business Address: _____
c. Telephone: (_____)_____

3. **Provide the following information concerning the owner(s), partners, corporate officers, LLC member(s), etc., of the organization and the person(s) who safeguard the company's books and records. If necessary, please attach additional pages to provide information on all owners.**

a. Name: _____ SSN: _____ Birth Date: _____
Address: _____
Title: _____ Telephone: (___)_____ Record Holder: ☐ Yes ☐ No

b. Name: _____ SSN: _____ Birth Date: _____
Address: _____
Title: _____ Telephone: (___)_____ Record Holder: ☐ Yes ☐ No

c. Name: _____ SSN: _____ Birth Date: _____
Address: _____
Title: _____ Telephone: (___)_____ Record Holder: ☐ Yes ☐ No

d. Name: _____ SSN: _____ Birth Date: _____
Address: _____
Title: _____ Telephone: (___)_____ Record Holder: ☐ Yes ☐ No

e. Name: _____ SSN: _____ Birth Date: _____
Address: _____
Title: _____ Telephone: (___)_____ Record Holder: ☐ Yes ☐ No

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UIA 1772

(Rev. 8-12)

4. **Reason(s) for discontinuance or transfer of payroll or assets in whole or part (check one or more).**

☐	Sale	☐	Reorganization	☐	New Partnership
☐	Lease	☐	Bankruptcy	☐	Incorporation
☐	Foreclosure	☐	Dissolution/ Discontinuance	☐	No Employees
☐	Merger	☐	Death	☐	Employee Leasing Company or Professional Employer Organization (PEO) (attach copy of agreement)

☐ Client Entity terminated its contract with an employee leasing company or PEO.

☐ Other (explain):_____

5. **Provide the following information:**

a. Date of discontinuance of payroll in whole or part: _____

b. Date of last payroll : _____

6. **Provide the following information:**

a. Number of business locations in Michigan: _____

b. Number of business locations in Michigan that have been discontinued: _____

c. Did you discontinue all employment in Michigan? ☐ Yes ☐ No
If not, how many employees were retained? _____

d. Have you continued or resumed business in Michigan? ☐ Yes ☐ No

If you answered yes, please complete the section below if the information differs from what was provided in question 1.

_____ LEGAL NAME OF BUSINESS

_____ ADDRESS

_____ NATURE OF BUSINESS

_____ DATE(S) RESUMED BUSINES

7. **Employer Leasing Company (ELC) or Professional Employer Organization (PEO) must provide applicable information.**

a. Was the client entity's business discontinued? ☐Yes ☐No
Business name and FEIN of client entity: _____

b. Business/mailing address of client entity: _____

c. Number of employees leased to client entity immediately before the discontinuance or transfer:_____

d. Gross payroll of client entity immediately before the discontinuance or transfer: _____

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Complete Part II and part III only if your business was sold or transferred.

PART II: Please provide the name(s) of the person(s)who acquired the Michigan assets, Michigan organization, Michigan trade, or Michigan business. ("Acquired" refers not only to assets purchased, but also assets acquired by rental, lease, use, inheritance, merger, mortgage, foreclosure, gift, or other transfer. If more than one individual or organization is involved, answer all parts of this question for each purchaser, using separate sheets. If preferred, additional forms will be supplied upon request.)

New Owner's Name	New Owner's UIA Account Number or FEIN, if known.
New Corporate Name or DBA	Area Code & Telephone Number
Current Street Address (not a P.O. Box)	
City, State, ZIP Code	

PART III: ACQUISITION INFORMATION: Please complete this section carefully. It might be necessary to consult your accountant, attorney, or financial advisor for a complete valuation of your entire business to accurately determine the percentage of transfer for each category below.

1. Did the above acquire all, part, or none of the **assets** of any former **business?** ☐ All ☐ Part What Percent? % Date Acquired ☐ None

2. Did the above acquire all, part, or none of the **organization** (employees/payroll/personnel) of any former business?
   a. If all or part, indicate the percent and date acquired. ☐ All ☐ Part What Percent? % Date Acquired ☐ None
   b. Did the above acquire all or part of the employees/payroll/personnel of any former business by leasing any of those employee/payroll/personnel? ☐ Yes ☐ No (If yes, please provide a copy of your lease agreement)

3. Did the above acquire all, part, or none of the **trade** (customers/accounts/clients) of any former business? ☐ All ☐ Part What Percent? % Date Acquired ☐ None

4. Did the above acquire all, part, or none of the former owner's Michigan **business** (products/services) of any former business? ☐ All ☐ Part What Percent? % Date Acquired ☐ None

5. Was your Michigan business described in 1-4 above being operated at the time of acquisition? If no, enter the date it ceased operation. ☐ Yes ☐ No Month Day Year

6. Is the above conducting/operating the Michigan business acquired from you? ☐ Yes ☐ No

7. Is the above substantially owned, merged, or controlled in any way by the same interests who owned or controlled the organization, business or assets of your business? ☐ Yes ☐ No

8. Did the above hold any secured interest in any of the Michigan assets acquired from you? ☐ Yes ☐ No If yes, enter balance owed $

9. Please enter the reasonable value of the Michigan organization, trade, business or assets sold or transferred?

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Upon discontinuance, disposition or transfer of all of your Michigan payroll and/or assets, taxes become immediately due and payable, and your final Quarterly Tax Report must be filed within 15 days.

TERMINATION OF COVERAGE WHEN COMPLETE TRANSFER OF MICHIGAN BUSINESS IS INVOLVED. If you disposed of your Michigan business and the Agency finds that a total transfer of your experience account is required, your coverage will be terminated as of the transfer date. HOWEVER, should you have persons in your employ subsequent to the date on which your Michigan payroll and/or assets were transferred, you are required to notify this Agency immediately because you may be liable for taxes on your payroll regardless of the number of individuals in your employ.

DISCONTINUANCE OR PARTIAL TRANSFER OF MICHIGAN BUSINESS DOES NOT TERMINATE YOUR COVERAGE. Even though you may have disposed of a part, or all of your Michigan business in separate transactions, or discontinued all Michigan operations, you are required to continue to report and pay taxes on any wages paid to Michigan workers whom you may employ until such time as your coverage is legally terminated.

As prescribed in RuleR 421.115 of the *Michigan Administrative Code*, all documents, agreement or records describing the transactions indicated in Part 1 Item 4, Part II, and Part III above, should be kept available for examination by this Agency for six years.

CERTIFICATION

I certify that the information contained in this report is accurate and complete to the best of my knowledge and belief. I understand that if I fail to provide accurate and complete information concerning the discontinuance of a business or the transfer of payroll or assets of a business, I may be subject to penalties of up to four times the amount of resulting unpaid unemployment taxes and imprisonment for up to five years.

Date: _____ Name: _____

_____ _____

(Phone Number w/Area Code of Person Signing this Report) (Title)

Directions for Submitting Form:

You may submit this Form through your MiWAM account at www.michigan.gov/uia or you may send a completed UIA Form 1772 via fax to: (313) 456-2130 or email to: EmployerLiability@michigan.gov. If you are mailing this Form, please send it to the following:

UNEMPLOYMENT INSURANCE AGENCY
Tax Office
P.O. Box 8068
Royal Oak, Michigan 48068-8068

QUESTIONS: If you have any questions, please contact the Office of Employer Ombudsman (OEO) at 1-855-4UIAOEO (855-484-2636), 313-456-2300, or by e-mail at OEO@michigan.gov

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It provides that when an employer converts from being a contributing employer to being a reimbursing employer it must pay the negative reserve balance it leaves behind, along with any delinquent taxes. When a reimbursing employer becomes a contributing employer, it must continue to make reimbursement payments for benefit charges incurred while it was reimbursing.

To avoid SUTA Dumping, make sure to do the following:

- If you transfer part or all of your organization (employees/payroll/personnel), or trade (customers/accounts), or business (products/services), or 75% or more of your assets to another business entity by any means, such as through a sale, lease, bankruptcy, merger, or reorganization, file Form UIA 1772, *Discontinuance or Transfer of Payroll or Assets in Whole or Part*. (This Form need only be completed by the employer transferring the business out to another business entity.)
- If you acquire any part of the Michigan assets, organization, trade, or business of another employer by purchase, rental, lease, inheritance, merger, foreclosure, gift, or any other form of transfer, **you must complete both** UIA Schedule A, *Liability Questionnaire*, and UIA Schedule B, *Successorship Questionnaire*, along with Form 518, *Registration for Michigan Taxes*. All questions on all of these Forms must be answered accurately and completely.

Finally, a Professional Employer Organization (PEO) may file a single quarterly wage report and contribution report and pay contributions of its client entities, with each client entity listed and reported separately by its own UIA employer identification number. Beginning in 2014, though, this "Client level reporting" will become mandatory for all PEOs. PEOs will also be required to notify the UIA within 30 days of any entity becoming a client employer or ceasing to be a client employer.

For more detailed information about SUTA Dumping, see Factsheet No. 114 in Part I of this Handbook, or check the UIA's website at www.michigan.gov/uia.

Employing unit pays $1,000 in cash in a calendar quarter for domestic (household) service

The employer pays at least $1,000.00 in cash (that is, the cash value of benefits such as room and board would not be included in the $1,000.00), in any calendar quarter in the current or previous calendar year, for domestic service.

Domestic service would include home healthcare and nursing care, housekeeper, dayworker, babysitter, nanny, gardener, driver, valet, butler, cook, and other similar service.

An employer that is liable **only** on this basis is responsible for paying unemployment taxes **only** on wages paid for domestic employment.

An employer liable under the law solely on the basis of employing domestic workers may pay unemployment taxes annually, although the employer must still file quarterly wage and tax reports.

Employing unit pays $20,000 in cash in a calendar quarter for agricultural service, or employs at least 10 agricultural workers in 20 different weeks in a year

The employer paid at least $20,000, in cash, in any calendar quarter in the current or previous calendar year, for agricultural service; or employed at least 10 individuals in agricultural service in each of 20 different calendar weeks in the current or previous calendar year. The weeks need not be consecutive.

In reaching the $20,000 amount, or the 20 weeks of work, all services performed in agriculture, even services performed by family members or by minor high school students or others whose services are excluded from coverage for unemployment benefits, must be included.

If an agricultural employer that originally met the $20,000 or 20-week test no longer meets that test after a period of 2 consecutive calendar years, the employer should so inform the Agency so that its liability can be terminated.

Even if an agricultural employer does not meet the test to be a liable employer, the employer can still elect to be liable. The election would apply to all the employer's employees.

Agricultural service, in general, includes service on a farm such as cultivating the soil, or raising or harvesting plants or animals.

An employer that is liable only on this basis is responsible for paying unemployment taxes only on wages paid for agricultural employment.

A worker who is furnished to a farmer by a crew leader will be considered an employee of the crew leader, not of the farmer, if the crew leader:

- is registered under the Farm Labor Contractor Registration Act, **or** the members of the crew operate mechanized equipment provided by the crew leader, and
- actually pays the workers, and
- is not, him- or herself, an employee of the farmer.

Employing Unit Elects Coverage

An employer can elect to become liable under the Michigan Employment Security Act. Once that choice is made by the employer, and approved by the UIA, the employer remains liable for at least 2 calendar years.

The election must include coverage of the services of all its workers. The Agency will not approve an employer's request to elect coverage of services that include services performed by relatives of the employer. The Agency also will not permit the election of coverage for elected or appointed officials.

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How a liable employer registers with the UIA for a formal determination of liability

If an employing unit appears to satisfy any of the tests for becoming a liable employer, the business should request Form UIA 518, *Michigan Business Taxes Registration Booklet* from the Agency. This booklet contains business registration forms required both by the UIA and the Michigan Department of Treasury.

After you have completed the form, including Schedule A, and Schedule B, if there is a business transfer, mail them to the Michigan Department of Treasury (not to the UIA) at the following address:

Registration Section
Michigan Department of Treasury
Lansing, MI 48922

The Department of Treasury will forward all forms pertaining to the UIA, to the UIA. It is important that you complete each of these forms whenever you form a new business, or transfer some or all of the assets or payroll (employees) between businesses.

You can also register on-line at: www.michigan.gov/business.

How the UIA formally notifies you whether you are a liable employer

After you have completed your Registration Report, and the UIA has received it from the Department of Treasury, the UIA will determine whether your business is, in fact, a liable employer under the Michigan Employment Security Act. The UIA will issue a *Notice of Determination of Employer Status*, Form UIA 1183, and, if you are determined liable, a UIA employer account number.

As with any Determination issued by the UIA, you may protest in writing and request a Redetermination. The protest must be **received** by the UIA within **30 calendar days** from the date the Determination was mailed to you. A Redetermination can be appealed, similarly, to a Administrative Law Judge (hearing officer) for a formal hearing. Again, the appeal for an Administrative Law Hearing must be **received** by the UIA within **30 calendar days** of the date the Redetermination was mailed. The protest can also be filed on-line.

If a protest or appeal is received late, but within 1 year of the original Determination in dispute, the Agency can issue a Redetermination or Reconsideration if good cause is shown for why it is late. If good cause is not shown, the UIA must issue a Denial of the protest or appeal. The Denial is, itself, a Determination and can be appealed directly to an Administrative Law Judge. If the original, disputed determination is over 1 year old, the Agency cannot reconsider it.

After the UIA has received your appeal to an Administrative Law Judge, the case will be scheduled for Hearing, and you will receive Form UIA 1801, *Notice Of Hearing,* about 10 days before the scheduled date of the Hearing. The Notice tells you when and where the Hearing will be held.

An Administrative Law Judge decision, likewise, can be appealed. It must be in writing, within 30 days, to the Michigan Compensation Appellate Commission. From a Commission decision, an appeal can be pursued through the courts.

More information about what happens at an Administrative Law Hearing and about how to prepare for the Hearing is available in the booklet, *A Guide to Unemployment Insurance Appeals Hearings*. Also, the UIA has produced a 20-minute videotape about Administrative Law Hearings. It is available on-line as a webcast. Click on "Webcasts" on the UIA's home page: www.michigan.gov/uia.

You may bring an attorney or other agent with you to the Hearing, if you wish. Also, you can request the assistance of an Advocate (who is not a UIA employee) to discuss the appeal and to attend the hearing and represent you before the Administrative Law Judge and/or the Michigan Compensation Appellate Commission. This is a free service available to unemployed workers and employers, on request. However, a request for an Advocate must be made within certain time frames.

For more information about the Advocacy Program, call **1-800-638-3994**, menu item 2.

Effective date of liability

For New Employers:

Once an employing unit has been determined by the UIA to be a liable employer, the employer is liable for the payment of state unemployment taxes to the UIA on all employment performed during that entire calendar year (since January 1 of that year). For example, an employer that became liable by having at least one employee in covered employment in at least 20 different weeks in a calendar year, would be liable for the payment of taxes on wages paid from January 1 of that year, even if the 20th week did not occur until December.

For Successor Employers:

If an employing unit became a liable employer because it acquired another company that was already determined by the UIA to be a liable employer (see explanation of successorship in this chapter), the new employer (called the successor employer) would be a liable employer and would have to pay unemployment taxes on wages paid from the date of the transfer.

The successor is generally responsible for taxes and interest owed by the previous employer, but both parties remain responsible until the debt is paid. Also, if the previous employer failed to file any quarterly tax reports, the successor will be taxed at a higher tax rate (see the chapter, *Employers' Guide to Unemployment Insurance Taxes*).

For Employers that Elect Coverage:

An employing unit that elects to become a liable employer and whose election is approved by the UIA, becomes liable at the beginning of the calendar quarter its application to become liable is received by the UIA.

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Termination of liability

Once an employer is determined to be liable, the employer continues to be liable until any one of the following occurs:

- The employer's company is acquired by another person or company. This is known as successorship and is discussed elsewhere in this chapter. The termination occurs on the date of the successorship. The successor is generally responsible for taxes and interest owed by the previous employer, but both parties remain responsible until the debt is paid.
- The employer makes a written request for termination of its liability, and the Agency grants the request. The Agency can only grant the request if the employer did not meet, in the current and preceding calendar year, any of the tests to be a liable employer described in this chapter under *When Does An Employing Unit Become a Liable Employer?* The termination will be effective the last day of the calendar quarter in which the written request was received.
- The employer makes a written request to discontinue its elective liability. The termination will be effective the last day of the calendar quarter in which the request for termination was made, if the employer has been liable for at least 2 calendar years.
- The Agency, on its own, terminates the employer's liability because the employer ceased to exist during the preceding calendar year; or because it did not meet, in the current and preceding calendar year, any of the tests to be a liable employer described in this chapter beginning under *When Does An Employing Unit Become a Liable Employer?* After an employer has been inactive (meaning without payroll) for 12 consecutive calendar quarters, their UIA account will be terminated. The termination will be effective the following January 1st.

If an employer whose liability is terminated files a written protest within 30 days of the date of mailing of the *Determination of Termination of Liability*, the liability may be reinstated.

Inactivation of employer's account

An employing unit that meets any of the tests to be a liable employer, but is expecting to have no payroll during one or more calendar quarters, may request that it be placed on **inactive** status during that period. When the employer begins payroll again after having been in inactive status for 7 consecutive calendar quarters or less, the account is resumed, and the employer's previous history of tax payments and benefit charges is restored in order to determine a current tax rate.

However, if there is no payroll in the next 12 consecutive calendar quarters after the account is made inactive, the employer's liability is automatically **terminated** as of the next January 1, after the 12th quarter of inactivity.

Reinstatement of terminated account

If an employer's account has been terminated less than one year, and the employer resumes paying payroll after 12 or more consecutive quarters of no payroll, the employer's account is **reinstated**. (An employer's account is also reinstated when the employer's account is **inactive and terminated** because of 12 or more consecutive quarters of no payroll **and** the employer begins paying payroll within 1 year from the date of termination.) When an employer is reinstated, its history of tax payments and benefit charges is restored, but the tax rate is set at the rate for the first year of liability.

Seasonal Employment

The law allows Michigan employers to apply for seasonal designation if they regularly operate during not more than 26 weeks within any 52-week period and meet certain other criteria described below. Section 27(o) and Administrative Rule 421.15 give the authority to make this designation and establish seasonal status to the UIA. This seasonal designation denies unemployment benefits between seasons, to some seasonal workers (the construction industry is specifically exempt by law) if the employer has given those workers a reasonable assurance of returning to work the next season. **The employer must still file Form UIA 1020, *Employer's Quarterly Tax Report,* Form UIA 1017, *Wage Detail Report* and pay unemployment taxes on wages paid to seasonal workers.**

An employer wishing to take advantage of this law must apply to the UIA on Form UIA 1155, *Application for Designation as Seasonal Employer.* The employer must post (for the employees to see) the application at the time the application is made. The application must be received by the UIA not less than 20 days before the expected beginning date of the season. The UIA will review the employer's application and will issue a Determination. If the seasonal designation is granted, the employer will receive Form UIA 1156, *Notice to Workers of Employer's Designation* as Seasonal. Form UIA 1156 will specify the beginning and ending dates of the normal seasonal work period. This too, must be posted for the employees to see.

If the seasonal designation is granted, the employer must give written notice to each employee, at the time of hire, that they are seasonal and that benefits may be denied during the period between seasons. At the end of the season, the employer must give the employee "reasonable assurance" that work will be available in the next season. Reasonable assurance is not a guarantee of employment. It is an employer's "good faith" statement of intent that work will be available for the seasonal worker for the next season. The work should be comparable to the previous work in skills required and location, and in rate of pay and benefits.

If the worker was offered reasonable assurance of returning to work the next season, but then the work does not materialize, the unemployed worker can collect unemployment benefits during the new season. Also, if the employer never makes work available in the new season and the worker applied for unemployment benefits and certified for benefits during the period between seasons, the worker can collect retroactive benefits for the period between seasons.

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Localization of Employment

Most of the state unemployment compensation laws contain similar tests for determining in which state an employee's entire services are covered, or localized, if he/she performs services in more than one state for the same employer. In the MES Act, these tests are covered in Sections 42(2). The application of any of these tests must result in the reporting of the employee's total earnings to one state or that test does not apply.

Tests for localization of employment

These tests refer to the employee and not to the employer and are applied in the order listed below:

1. **Majority of Services**
   An employee's services are "localized" in the state in which the majority of his/her services are performed, if the service performed in other states is only incidental or temporary in nature.
2. **Base of Operation**
   If Test No. 1 does not apply, an employee's services are "localized" in the state in which the base of operations is located, if he/she performed some service in that state.
3. **Place of Direction and Control**
   If Tests No. 1 and 2 do not apply, an employee's services are "localized" in the state from which the employee receives direction and if some of his/her services are performed in that state.
4. **Residence of Employee**
   If Tests No. 1, 2, and 3 do not apply, an employee's services are "localized" in the state in which he/she resides, if some service is performed in that state.
5. **Services not "localized" in any State**
   If Tests No. 1, 2, 3, and 4 do not apply, the employer may either:

a. Elect to file, with any state in which the employee performed some service, to cover the employee's entire services in that state, or
b. Report a proportionate share of the employee's earnings in each state in which the employee performs services.

If there are any questions concerning localization of employment, please call UIA Team Support Unit at (313) 456-2180.

Coverage of services

Even if an employing unit is determined by the UIA to be a liable employer, that employer is only responsible for paying unemployment taxes on wages paid to workers performing services in **covered employment**.

In general, the service performed by a worker is considered to be covered employment under Michigan law and therefore taxed for unemployment benefits by the UIA if the service was performed entirely, or mostly, within Michigan; or was directed or controlled from Michigan; or the individual's residence was in Michigan; or unemployment taxes are not collected on the service by any other state.

Even if the services are not required to be taxed under Michigan law, an employer may elect, with the approval of the UIA, to pay taxes in Michigan on those services if they are not taxed under another state's unemployment compensation law. The employer may later cancel the election by submitting a request to the UIA by January 30.

If a worker's services are in covered employment, state unemployment taxes will be due on the first $9,500.00 of wages paid to the worker on those services in a calendar year.

However, in some cases, even though a Michigan worker cannot receive unemployment benefits in Michigan, those services are still subject to taxation under the Federal Unemployment Tax Act (FUTA). Because FUTA taxes those services, Michigan employers are required to pay Michigan unemployment taxes on those services (again, even though the worker cannot draw unemployment benefits).

If the employer did not pay Michigan unemployment taxes, the employer would have to pay the full federal tax (usually 6.0%) without the usual credit (usually 5.4%) for paying the state tax on the same employee.

Taxability of services of individuals who are not entitled to unemployment benefits

Workers who are denied benefits and whose services are not taxed for unemployment benefits:

Certain workers are not entitled to unemployment benefits because the law specifically excludes their services from coverage. These workers are:

- Agricultural workers if the farmer pays less than $20,000, in cash, in a calendar quarter for agricultural labor, and employs fewer than 10 employees in each of 20 different weeks in a calendar year;
- Non-immigrant alien workers admitted to the United States to perform agricultural labor (generally on an H-2A visa). However, workers admitted to perform non-agricultural work in specialty occupations, or in occupations requiring exceptional merit or ability such as researchers or fashion models (usually on an H-1B visa), **could** be entitled to unemployment benefits as they may seek other work consistent with their immigration status. See Chart on pages 22-26;
- Domestic workers (dayworkers, babysitters, nannies, drivers, cooks, etc.) if the home owner pays less than $1,000, in cash, in a calendar quarter for domestic service;
- Railroad workers (although these workers may be entitled to unemployment benefits under the federal Railroad Retirement Act);
- Students working 30 hours or less per week, for the school they are attending;
- The spouse of a student, working for the school under a financial assistance program, with the understanding that the services are excluded;

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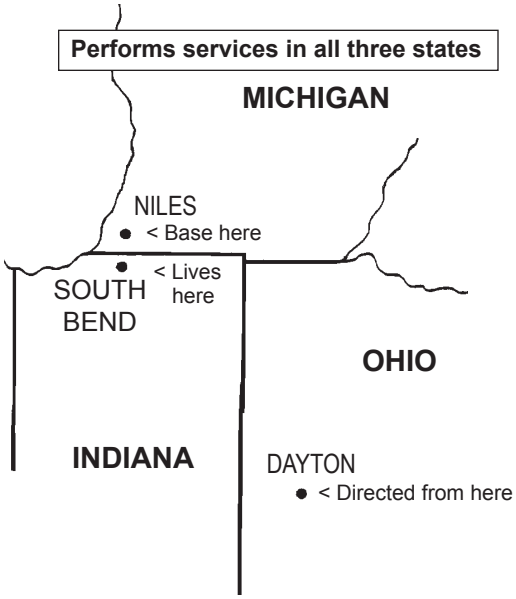
Tests for Localization of Employment

TEST 1

Michigan Employment

This is Michigan employment since most of the services are performed in Michigan and the services in Indiana are of a temporary nature or consist of isolated transactions.

TEST 2



Michigan Employment

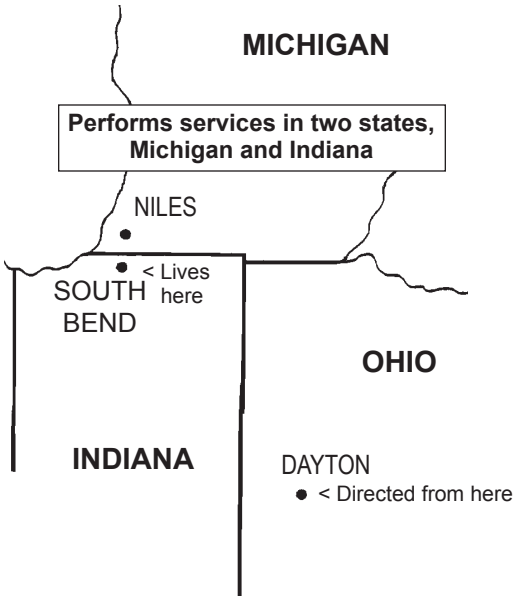
This is Michigan employment since the services are performed in more than one state and some of the services are performed in Michigan where the base of operations is located.

TEST 3

Ohio Employment

This is Ohio employment since the services are performed in more than one state, the employee does not have a base of operations and some services are performed in Ohio, the state from which direction and control are exercised.

TEST 4



Indiana Employment

This is Indiana employment since the services are performed in more than one state, the employee does not have a base of operations, no services are performed in Ohio, the state from which direction and control are exercised but some services are performed in Indiana where the employee lives.

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- A full-time, co-operative education student, under age 22, who is working for a for-profit employer;
- High school students under age 18, working for a for-profit employer, and working fewer hours than non-student workers, or during vacation period, or as part of a co-op program;*
- College student working for a for-profit employer as part of a co-op program;
- Member of the Michigan Youth Corps;
- Newspaper delivery person under age 18;
- Worker in sheltered employment with a non-profit or governmental employer, receiving rehabilitation. This exclusion would apply, for example, to employees and participants in a Community Rehabilitation Program (CRP);
- Worker with a non-profit or governmental employer, if the worker is receiving work-relief or work-training through a program assisted by state or federal grants. An example would be service performed for a non-profit employer or governmental entity under the Senior Community Service Employment Program (SCSEP);
- Service by an Americorps participant if performed for a guaranteed stipend opportunity and if the participant received the full stipend;
- Service by a hospital patient, for the hospital;
- Service by a prison inmate, working for the prison;
- Service for a church, or for an organization operated primarily for religious purposes;
- Elected officials;
- Legislators;
- Judges;
- Government employees in major, nontenured policy-making or advisory positions;
- Military employees of the National Guard;
- Temporary service for government in case of a fire, flood, storm, or similar disaster. This exclusion of services applies, for example, to volunteer firefighters;
- Member of a band or orchestra as part of a for-profit organization, if the work is other than the worker's principal occupation;
- Licensed real estate agents compensated substantially on the basis of sales rather than hours worked, and who work under a written contract providing that they will not be treated as employees for federal income tax purposes;
- Direct sellers of consumer products or services, sold other than in a permanent retail establishment, if earnings are on the basis of sales made rather than hours worked, and the work is performed under written contract;
- Insurance agents or solicitors who are compensated **solely** on a commission basis;
- Service for a worker's child or spouse (unless the business is a corporation); and
- Service by a child under age 18 for the child's parent or parents (unless the business is a corporation).

*Even though services of these high school students are excluded from coverage, you must still pay the full federal unemployment tax on their services. The full federal tax must be paid even if you pay the state unemployment tax on these services.

Workers who are not entitled to unemployment benefits because they are not employees, and whose services are not taxed:

- Sole proprietors (self-employed persons);
- Members of partnerships;
- Directors of corporations who perform no duties (but corporate officers might be employees); and
- Independent contractors [who meet the requirements of the **economic reality** test in the case of *McKissic v Bodine*, 42 Mich App 203 (1972)]. For services performed in 2013, the I.R.S. 20-factor test will replace the economic reality test.

Generally, an independent contractor is one who performs a specialized service that is not an integral part of the business (service central to the overall function of the business).

For example, a mechanic is central to the business of an auto repair garage, so if a mechanic regularly worked for a garage, they would likely be considered an employee of the garage, rather than an independent contractor. However, some mechanics may freelance, and be considered independent contractors.

Usually, the independent contractor makes him- or herself available to the employer community at large, and does not limit him- or herself to performing services for a single company. He or she usually brings his or her own "tools" to do the job. An independent contractor generally is not under the direction or control of the company.

For services performed in 2013, the UIA will stop using the "Economic Reality Test" and will begin using the 20-factor IRS test to determine if a worker is an employee as opposed to an independent contractor.

Employees who are denied benefits, totally or partly, but whose services are still fully taxed:

Finally, some workers are denied unemployment benefits at least part of the year, but unemployment taxes must still be paid on their services.

- Sales representatives of investment companies, if they are not independent contractors**
- Insurance agents or solicitors who are compensated principally but not wholly on a commission basis

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- Aliens, if they are not legally present in the United States, or if they are legally present but are not legally entitled to work. Certain categories of visas allow aliens to work in the United States with respect to holder of F-1, H-1, H-2, J-1, TH or Q1. See the Chart on pages 22-26 of this chapter.
- Employees of school districts and community college districts (benefits denied during periods between academic years or terms, and during holiday recess periods, if the worker has reasonable assurance of work following the holiday or period between terms).
- Employees of contractors providing services to educational institutions.
- Seasonal workers (except construction workers) for employers who have been determined by the UIA as seasonal employers, if the worker has reasonable assurance of re-employment
- School crossing guards between school terms, if they have reasonable assurance of re-employment.

***Even though these services are excluded under Section 43 of the Michigan Employment Security (MES) Act, they are covered under Section 3306(c)(14) of the Federal Unemployment Tax Act (FUTA). Section 42(6) of the MES Act provides that services excluded under the Michigan law but covered under FUTA must be taxed under the Michigan law, even though benefits are not payable on the basis of those services.*

Wages that are taxable; Wages that are not taxable

As mentioned earlier, unemployment taxes must be paid to the UIA by employers, based on wages paid to workers performing services in covered employment. The first $9,500.00 in wages paid each such worker, in each calendar year, are taxable. However, not every payment made to a worker is subject to unemployment taxes.

For information about which kinds of special payments made by an employer are taxable to the employer for unemployment insurance tax purposes, and which are not taxable, see Section B of this *Handbook*, concerning completion of Form UIA 1020, *Employer's Quarterly Tax Report.*

Conclusion

We at the UIA hope that the information provided in this chapter is clear and assists employers in understanding, and complying with, the requirements of the Michigan Employment Security Act.

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ELIGIBILITY OF VISA HOLDER FOR UNEMPLOYMENT BENEFITS

Visa Type	Purpose	Work Authorization	Benefits Payable	Taxation Under MES Act	Availability Issues
F-1 (Academic Student)	Non-immigrant pursuing academic studies and/or language training programs in U.S.[1]	F-1 holder permitted to work on school premises or off-campus if official relationship between educational institution and off-campus employer[2]	No, services not covered; see Sec. 43(l)(i)[3]	No, not covered employment	None
F-1, CPT (Curricular Practical Training)	F-1 holder obtains work experiences that are required part or integral component of program of study	F-1 holder eligible for CPT authorization for work experience that is requirement or integral component of student's program of study or for which academic credit is granted (e.g., internships, co-ops, student teaching)	No, services not covered if integral part of academic program; see Secs. 43(q)(ii), 43(m)[4]	No, not covered employment	None
F-1, OPT (Optional Practical Training)	Allows F-1 holder to work off-campus and apply academic training in practical work experience before or after completing academic program	F-1 holder's basic visa expanded with OPT to include a 12-month work authorization to obtain practical experience in field of study anywhere in U.S. before or after completion of academic program[5]	No, services not covered if part of academic program of study; see Secs. 43(q)(ii), 43(m)	No, not covered employment	None
H-1B (Specialty Occupations and Fashion Models)	Foreign worker seeking to perform services in 1) specialty occupation; 2) DOD cooperative research and development project; or 3) fashion modeling	H-1B visa is employer-specific and authorizes holder to work only in position specified in petition[6]	Yes, if lawfully present in U.S. to perform services during base period <u>and</u> when claiming benefits[7]	Yes	Claimant not authorized to work in U.S. when claiming benefits is not "available" under Sec 28(1)(c)[8]
H-2A (Temporary Agricultural Workers)	U.S. agricultural employers who anticipate a shortage of domestic workers may bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature, where not sufficient domestic workers able, willing, qualified, and available, and where the hiring of aliens will not adversely affect the wages and working conditions of similarly employed U.S. workers.	H-2A visa allows a foreign national entry into the U.S. for temporary or seasonal agricultural work; certification is valid for up to 364 days	No, agricultural service performed by alien under INA excluded from definition of "employment;" see Sec 43(a)[9]	No, not covered employment	None
H-2B (Temporary Non-Agricultural Workers)	Allows U.S. employers to temporarily employ foreign workers to meet <u>temporary need</u> when U.S. workers not available	H-2B certification is issued to employer, not foreign worker, for specific job opportunity and time period; certification is not transferable[10]	Yes, if lawfully present in U.S. to perform services during base period <u>and</u> when claiming benefits	Yes	Claimant not authorized to work in U.S. when claiming benefits is not "available" under Sec 28(1)(c)[11]

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J-1 (Exchange Visitor)	Allows non-immigrant exchange visitors to participate in programs of cultural exchange[12]	Some J-1 holders enter U.S. to work while others do not; employment, if authorized, is under the terms of exchange program they are participating in and for a specific employer[13]	Yes, if lawfully present in U.S. to perform services during base period and when claiming benefits and if services not otherwise excluded from "employment;" see Sec 27(k)(1)	Yes, if services not otherwise excluded from coverage	Claimant not authorized to work in U.S. when claiming benefits is not "available" under Sec 28(1)(c)
J-1 (Au pair)	"Au pair" is a class of Exchange Visitors, between the ages of 18 and 26, who come to the U.S. on a J-1 visa for not more than one year. Usually students, they participate in this U.S. State Department program for the educational and cultural experiences it provides them. Au pairs stay with host families and are provided a private bedroom, meals, time off, paid vacation, educational funds, and a cash stipend tied to the minimum wage. According to the USDOL, the stipend constitutes "wages" because an employer-employee relationship exists between the au pair and his host family.	Under exchange program an au pair is not allowed to work more than 10 hours a day and not more than 45 hours per week. They are expected to perform child-care functions. They are also required to enroll for not less than 6 semester hours of classes at a post-secondary educational institution.	If services treated as domestic service may not be covered under Secs. 421.43(e) and 41(6); see also Sec 27(k)(1)	Yes, if services not otherwise excluded from coverage	Claimant not authorized to work in U.S. when claiming benefits is not "available" under Sec 28(1)(c); J-1 visa limited to one year
TN (NAFTA Professional)	The nonimmigrant NAFTA Professional (TN) visa allows citizens of Canada and Mexico, as NAFTA professionals, to work in the U.S. in a prearranged business activity for a U.S. or foreign employer. Permanent residents, including Canadian permanent residents, are not able to apply to work as a NAFTA professional.	Applicant for TN Visa must have an employment letter or contract from the employer in U.S. indicating that the position requires the employment of a person in a professional capacity. Part-time employment is permitted, but self-employment is not permitted. Once TN status is granted, it is good for three years but only for the specific employer for which it was originally requested. Extensions of work authorization may be granted.	Yes, if lawfully present in U.S. to perform services during base period and when claiming benefits and if services not otherwise excluded from "employment"; see Sec. 27(k)(1)	Yes, if services not otherwise excluded from coverage	If claimant remains in Michigan after being laid off from TN employer, he is unavailable for work (due to layoff) as no longer authorized to work in U.S.; however, if claimant moves back to Canada, he arguably would be available for and seeking work in Canada and therefore not ineligible on that basis.

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[1] F-1 students are granted permission to remain in the United States until the completion date noted on the Form I-20, plus 60 days, provided they remain enrolled full-time and meet all other terms and conditions of their F-1 status. F-1 students are generally permitted to work on the premises of the school that issued their currently valid I-20 (or work off-campus if there is an official educational relationship between the educational institution and the off-campus employer), while attending that school and maintaining their F-1 status. This work can be part-time, limited to 20 hours per week when school is in session, or full-time during holiday and vacation periods.

[2] Work on-campus is a benefit of F-1 status and no additional authorization is necessary.Except for on-campus employment of 20 hours a week or less, as described above, F-1 students are generally not permitted to work in the United States without prior authorization from Citizenship and Immigration Services (USCIS). There are various programs available for F-1 students to seek off-campus employment after the first academic year. F-1 students may engage in two types of off-campus employment, after they have been studying for one academic year: The USCIS may grant work authorization for Curricular Practical Training (CPT) and Optional Practical Training (OPT).

[3] Services performed on campus by foreign students with a simple F-1 visa and therefore limited to 20 hours a week, would not be covered employment under Section 43(l)(i), which excludes from the definition of "employment" service performed in the employ of a school, college, or university by a person who is primarily a student at the school, college, or university. A person is considered to be "primarily a student" if the individual is enrolled in an institution, is pursuing a course of study for academic credit, and while enrolled normally works 30 hours or less per week for the institution. A foreign student with an F-1 visa would therefore not be entitled to benefits and his or her employer would not be taxed under the MES Act on his or her services.

[4] Services provided by the holder of an F-1 visa with CPT work authorization are not covered under Section 43(q)(ii) of the MES Act when the services are performed for an employing unit that is not a governmental organization or a nonprofit organization and the services are performed as a formal and accredited part of the student's regular curriculum.

Section 43(m) also provides another exclusion from the definition of "employment" that may be pertinent in this regard:

> (m) Service performed by an individual less than 22 years of age who is enrolled, at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at the institution, which program combines academic instruction with work experience, *if the service is an integral part of the program* and the institution has certified that fact to the employer. This subdivision does not apply to service performed in a program established for or on behalf of an employer or group of employers. (Emphasis added.)

[5] In contrast to CPT, OPT provides F-1 students an opportunity to work off-campus and apply knowledge obtained in an academic program to a practical work experience that is directly related to their field of study. Under this program, a student's basic F-1 visa may be expanded to include a 12-month work authorization so that he or she can get practical experience in the student's field of study, either before or after completing an academic program. The employment opportunity must be directly related to a student's major field of study, may be either fulltime or part-time, and may take place anywhere in the United States. Any period of OPT used before completion of studies or graduation is deducted from the total 12-month period available. Students may become eligible for a second 12-month OPT work authorization when they progress to a higher educational level, but simply beginning a new degree program does not, in and of itself, result in a new work authorization. Authorization to engage in OPT is automatically terminated when the student begins study at another educational level or transfers to another school, so another application for work authorization would be required in these instances.
In April 2008, the U.S. Department of Homeland Security released an interim final rule extending the period of OPT from 12 to 29 months for qualified F-1 non-immigrant students. The extension is available to F-1 students with a degree in science, technology, engineering, or mathematics (STEM) who are employed by businesses enrolled in the E-Verify program. This new interim final rule provides a permanent solution (at least for STEM students) to the H-1B "cap-gap", when an academic foreign student's F-1 status and work authorization expire during the current fiscal year before the student can start approved H-1B employment during the next fiscal year beginning on October 1.

Students with F-1 OPT may not accrue more than an aggregate of 90 days of unemployment during their initial period of post-completion OPT. Students granted an additional 17 months of OPT may not accrue more than an aggregate of 120 days of unemployment. If they do, they are considered out of status.

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[6] The H-1B visa is employer-specific, which means that a USCIS-approved petition submitted by the employer authorizes the individual to work only in the position specified in the petition. An individual who has an H-1B visa approval from one employer is not automatically eligible to work for another employer. An H-1B worker, however, may work for more than one employer at the same time, but each employer must have filed a separate H-1B visa petition.

The initial period of stay under an H-1B visa may be approved for a maximum of three years. An extension may be obtained up to an additional three years, for a total maximum period of stay of six years. The six-year limit, which includes time spent on the H-1B visa with another employer, is strictly enforced, although some exceptions do apply under sections 104(c) and 106(a) of the American Competitiveness in the Twenty-First Century Act (AC21). Further, it may be possible to begin another six-year period as an H-1B visa holder after the individual has spent at least one year outside the United States

[7] Services provided by the holder of an H-1B non-immigrant visa as an employee of the specific employer who sponsored the individual are covered employment, provided the individual was lawfully present in the United States for the purpose of performing the services. The H-1B visa holder may only work for the petitioning U.S. employer and only in the H-1B activities described in the petition. Such employment is not excluded from the definition of "employment" in the MES Act and the services are subject to taxation under the MES Act.

[8] While the services provided by a worker with an H-1B visa are covered employment (subject to the conditions outlined above), the worker's eligibility for unemployment benefits is problematical should he or she become unemployed during the duration of the visa term or after it has terminated because, in either event, the worker is out of status and no longer lawfully present in the United States to perform the specific services for the specific petitioning employer indicated in the worker's visa as required by Section 27(k)(1) of the MES Act. An H1-B worker who is laid off at the end of his or her authorized period of stay must depart the United States within 10 days. This grace period does not apply to workers who are laid off before their HI-B visa expires.

Availability for work while claiming benefits is a separate issue from the alien's status while working during the base period. For example, an alien may have been authorized to work at the time services were performed, but not authorized to work when he or she files a claim for benefits. Or an alien's work authorization may expire while he or she is in active claim status. In these cases, the alien's base period wages could be used to establish a claim, but the alien would not be eligible for benefits because he or she is not available for work. Current, valid authorization to work is necessary for an alien to be considered "available for work."

A worker who is no longer authorized to work in the United States is not able and available to perform suitable full-time work of a character which the individual is qualified to perform by past experience or training, as required by Section 28(1)(c) of the MES Act. As a consequence, the worker would be ineligible for unemployment benefits.

[9] Sec 43(a) provides that agricultural service performed by an individual who is an alien admitted to the U.S. to perform that service according to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act is excluded from definition of term "employment." The INA provisions cited cover agricultural employers seeking to hire temporary agricultural workers under H-2A visas. The H-2A program allows U.S. employers to bring foreign nationals to the United States to fill temporary agricultural jobs for which U.S. workers are not available. The work to be performed must be "of a temporary (or seasonal) nature," meaning employment that is performed at certain seasons of the year, usually in relation to the production and/or harvesting of a crop, or for a limited time period of less than one year when an employer can show that the need for the foreign workers(s) is truly temporary.

Nationals from Mexico are eligible to participate in the H-2A program.

[10] Generally, USCIS may grant H-2B classification for the period of time authorized on the temporary labor certification (usually authorized for no longer than one year). H-2B classification may be extended for qualifying employment in increments of up to one year. The maximum period of stay in H-2B classification is three years. An individual who has held H-2B non-immigrant status for a total of three years is required to depart and remain outside the United States for an uninterrupted period of three months before seeking readmission as an H-2B non-immigrant. Services provided by an employee under an H-2B classification for the specific employer who has been certified by USCIS are covered employment, provided the individual was lawfully present in the United States for the purpose of performing the services. The H-2B visa holder may only work for the certified employer, for the specific job opportunity, and for a specific employment period.

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unemployed the worker is out of status and no longer lawfully present in the United States to perform the services for the specific certified employer, as required by Section 27(k)(1) of the MES Act, and must depart the United States.Availability for work while claiming benefits is a separate issue from the alien's status while working during the base period. For example, an alien may have been authorized to work at the time services were performed, but not authorized to work when he or she files a claim for benefits. Or an alien's work authorization may expire while he or she is in active claim status. In these cases, the alien's base period wages could be used to establish a claim, but the alien would not be eligible for benefits because he or she is not available for work. Current, valid authorization to work is necessary for an alien to be considered "available for work."

A worker who is no longer authorized to work in the United States is not able and available to perform suitable full-time work of a character which the individual is qualified to perform by past experience or training, as required by Section 28(1)(c) of the MES Act. As a consequence, the worker would be ineligible for unemployment benefits.

[12] A J-1 visa is a non-immigrant visa issued by the United States to exchange visitors participating in programs that promote cultural exchange. These programs are designed for business and industrial trainees, scholars, students, international visitors, teachers, research assistants, and those on cultural missions who intend to participate in an approved program for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, receiving training, or to receive graduate medical education or training. The Department of State designates public and private entities to act as exchange sponsors.

[13] Some J-1 non-immigrant visa holders enter the United States specifically to work while others do not. Employment is authorized for J-1 non-immigrants only under the terms of the particular exchange program they are participating in. Consequently, a J-1 holder may not work for another employer without special authorization. The J-1 classification is one of the few non-immigrant classifications that allow an individual, in certain instances, to obtain permission to work in the United States without an employer having first filed a petition on the individual's behalf.

J-1 visa holders may remain in the United States until the end of their exchange program and then must leave the United States within 30 days. The minimum and maximum duration of stay are determined by the specific J-1 category under which the exchange visitor is admitted to the United States.

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1-B

Purpose of this chapter

In this chapter, we explain the requirements of a liable employer to maintain certain payroll records, and to file certain reports on a regular basis with the Unemployment Insurance Agency (UIA).

We also describe the various interest, penalty, and damage assessments we are required or permitted to make when an employer fails to submit reports, or fails to pay taxes due the UIA.

Finally, we describe the various administrative and criminal penalties as they apply to employers who act fraudulently in connection with a claim for benefits, or in connection with the payment of unemployment taxes.

This chapter has been prepared as part of a general guide to unemployment taxes and benefits in the State of Michigan. It does not have the force or effect of law or regulation. It is written to assist in understanding the Michigan Employment Security Act which is the unemployment compensation law in Michigan.

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Responsibility for Records and Reports

Responsibility of an employer to maintain payroll records

Occasionally, it is necessary for the UIA to audit the books and records of an employing unit to determine whether it is liable, or to audit the books and records of liable employers. Every employing unit which has workers is required to keep the following payroll information as to each worker, and for each work location**.** These records must be kept for at least 6 years after the calendar year in which the wages were paid:

- Name
- Social Security number
- Total wages paid the worker in each calendar quarter, and a breakdown of earnings by calendar week
- Total taxable wages paid in each calendar quarter
- Separate reporting of cash payments, bonuses, gifts, and payments in a form other than cash (such as room and board), and any other special payments
- Payments for reimbursement of business expenses
- Place of employment, or base of operations, or place from which worker's service is controlled.
- Periods of employment
- Calendar days worked
- Weeks of less than full-time work
- Time lost other than for lack of work

Responsibility of an employer to file reports – Information about filing online

When an employing unit first employs enough workers or pays enough in wages to become **liable**, and throughout the time the employing unit remains a liable employer, certain reports are required of the employing unit. A description of each report is given below.

Employer's Registration Report — Form UIA 518

When an employing unit meets the legal requirements to be a liable employer, the employer must file a Form 518, *Registration for Michigan Business Taxes*. **UIA Schedules A and B of this form must also be filed**. Included on Schedule B must be information about a transfer of assets and/or a transfer of payroll but the Schedule must always be completed and submitted. Questions that are "not applicable" must be answered that way. This report is described in detail in the Form 518 Booklet.

Employer's Quarterly Tax Report – Form UIA 1020 Replaced by Form UIA 1028

Each calendar quarter, the UIA mails every **contributing** employer an Form UIA 1028, *Employer's Quarterly Wage/Tax Report*, which replaces former Forms UIA 1017, 1019, 1020, 1021, 1020-R and 1021-R. This Form is mailed about 30 days before the completed Form is due back to the UIA. However, if you do not receive Form UIA 1028, it is your responsibility to request a copy of it and file it on time. You can obtain a copy of the form on our website (www.michigan.gov/uia), by fax by calling the UIA's Office of Employer Ombudsman at **1-855-484-2636** (4-UIA0E0), or by calling Tax Team Support at **(313) 456-2180.**

The originally mailed Form includes the following preprinted information:

- Employer's name
- Employer's mailing address on file with the UIA.
- Employer's UIA account number
- Employer's Federal Employer Identification number (FEIN)
- Maximum taxable yearly wages per employee (currently $9,500)
- Employer's current state unemployment tax rate.
- Any balance of unemployment taxes owing to the UIA, or any credit.

Line-by-line instructions are printed on the back of Form UIA 1028. An address *Change Form*, Form UIA 1025, is found on the return envelope.

You should always complete and return the original Form UIA 1028, not a photocopy. However, a computer facsimile approved by the UIA is acceptable. Be sure to keep a copy for your records. Before using a facsimile Form UIA 1028, it must be submitted to the UIA Tax Office for approval.

Reimbursing Employer's Quarterly Payroll Report—Form UIA 1020-R and UIA 1021-R Replaced by Form UIA 1028

The Report has been replaced by Form UIA 1028, *Employer's Quarterly Wage/Tax Report*. The Form meets the reporting requirements for reimbursing employers, as mandated by the federal Bureau of Labor Statistics. Employers with multiple worksites should continue to file Form BLS 3020, *Multiple Worksite Report*. You may direct any questions about Form BLS 3020 to Michigan's Department of Technology, Management and Budget, Bureau of Labor Market Information and Statistical Initiatives, Quarterly Census of Employment and Wages Section, at 313-456-3071.

Form UIA 1028 is due the 25th day of the month following the end of each calendar quarter. There is a penalty of $50.00 for each report received after the due date, and an additonal $250.00 penalty if a report is filed past the end of the due date for the following quarter. The Form must be filed even if an employer has no payroll in the calendar quarter.

Form UIA 1028 is also mailed to each reimbursing employer before the end of each calendar quarter, or it may be downloaded from the Agency's website at www.michigan.gov/uia. For questions about completing the Form, you may call the UIA Tax Office, Reimbursing Unit, at 313-456-2080.

Form UIA 1028 replaces both Form UIA 1020-R and Form UIA 1017 *Quarterly Wage Detail Report* and the amendments for those reports.

The completed Form UIA 1028 is due for each calendar quarter, even if you had no covered workers, paid no wages during the quarter, and no taxes are due for the quarter. There are penalties assessed for failing to file a quarterly tax report, or filing the quarterly tax report late. However, if an employer pays the taxes after the due date shown above, but before the first business day of the following month, no interest will accrue during that period.

If you are a newly liable employer, you must file Form UIA 1028 beginning with the first quarter in which you had employees. If you

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are acquiring all, or part, of an existing Michigan business (that is, you are a successor employer as described in the chapter of this Handbook entitled *Liability of Employers and Coverage of Employees*, you become responsible for filing Form UIA 1028 as of the date of the transfer of the business.

Due Dates:

To be filed on time, the completed Forms UIA 1028 must be **received** at a UIA office on or before the 25th day of the month following the end of the calendar quarter. The due dates are:

First Quarter – April 25
Second Quarter – July 25
Third Quarter – October 25
Fourth Quarter – January 25

Form UIA 1028 can be filed on-line as part of the state's Michigan Business One Stop website. An employer can also access all UIA online services through the Michigan Web Account Manager (MiWAM) at www.michigan.gov/uia. Register or log-in to your MiWAM account and follow the prompts.

- File Form UIA 1028, *Employer's Quarterly Wage/Tax Report*, (see pages 10-11).
- Submit an Employer Filed Claims File (to file for unemployment benefits on behalf of unemployed workers)
- Make a tax payment electronically
- Change your address and/or telephone number
- Submit a Power of Attorney authorization
- Request Form 940-C, *Supplemental Certification*
- View Form UIA 1770, *Summary of Benefit Charges and Credits,* for the 2nd quarter of 2005 forward
- View your tax rates for the current and previous 6 calendar years

If you need assistance in using the UIA's MiWAM, please contact the UIA's Tax System Support Unit at **313-456-2188**.

Correction of Errors

If you later discover you made an error in completing Form UIA 1028, you should correct the error as soon as possible by filing an amended Form UIA 1028. Requests for debit adjustments can be made to your account if they are received by the UIA within 6 years of the due date of the original Form UIA 1028. Requests for credit adjustments submitted on Form UIA 1028 can be made to your account if they are received by the UIA within 3 years from the date of payment of the tax reported on the Form UIA 1028. If a refund is due based on the adjustment, a request for refund must be submitted on a separate sheet of paper. Form UIA 1028 includes sections for the original and corrected figures. Use a separate Form UIA 1028 for each calendar quarter.

Interest and Penalties

In addition to filing a Form UIA 1028 marked as "amended", you should pay any resulting additional taxes as soon as possible, as interest of 1.0% per month, computed on a daily basis, is charged on all late tax payments.

Taxes received after the due date but before the first business day of the calendar month beginning after the due date shall not accrue interest. Taxes received after the last day of the calendar month containing the due date shall accrue interest beginning the day after the due date.

If a Form UIA 1028 is not received by the due date, the employer will be assessed a penalty of $50.00 and an additional $250 penalty is charged for each subsequent quarter the report is late.

Also, since one factor in computing an employer's tax rate is the amount of taxes the employer paid the previous years, failure of an employer to make a tax payment could increase their tax rate for the following year. Calculation of the tax rate is discussed more fully in the chapter: *Employer's Guide to Unemployment Insurance Taxes*.

Effect of Non-Filing

If Form UIA 1028 is not received for any of the 4 calendar quarters used in computing that year's rate, the UIA has no basis to compute the tax rate for the next calendar year. The law provides that the maximum possible tax rate must be assigned when all quarterly Forms UIA 1028 are missing.

The UIA notifies employers during the year that a Form UIA 1028 is missing, and the next year's annual Rate Determination Form UIA 1771 will indicate, that the rate is a "Code 2" rate, meaning that it was assigned a 3% penalty for one or more missing Forms UIA 1028. [If an employer is assigned the maximum rate, the employer may obtain a calculated rate, which may be lower, by submitting the missing report(s) within 30 days of the mailing of the Rate Determination.] In addition, the UIA will estimate your tax liability, assess a negligence penalty, and use the estimated payroll to calculate future tax rates.

Employer Filed Claim (EFC)

As required by Administrative Rule 210(1), if 1,000 or more of an employer's workers filed new and/or additional claims for unemployment benefits in each of the previous 3 calendar years, the employer must file claims on behalf of their workers who become unemployed.

In addition to the employers required to participate in the EFC Program, other employers may wish to participate voluntarily to assist their laid-off workers.

When an employer participates in the EFC program workers idled by a mass layoff will not have to apply for benefits individually. Claims filed by the employer can begin to be processed immediately by the Agency, simplifying the delivery of benefits to eligible workers in need of temporary income, and both employers and the Agency will have less paperwork to deal with. Fraudulent claims can also be reduced using this process.

Under the EFC Program, an employer submits claims on behalf of all laid off workers, using a popular internet technology known as "File Transfer Protocol" or FTP.

For assistance in getting started on filing claims on behalf of your employees, whether you are required to do so under the provisions of the administrative rule, or because you would like to do so, call the Agency's "Employer Filed Claim" office, toll-free, at: **1-866-845-0077**. Information is also available on the State's "Michigan Business One Stop" website at: **www.michigan.gov/business.**

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UIA 1028
(Rev. xx-12)

Rick Snyder
GOVERNOR

State of Michigan
Department of Licensing and Regulatory Affairs
Unemployment Insurance Agency
3024 W Grand Blvd, Suite 11-500, Detroit, MI 48202
www.michigan.gov/uia

Authorized by
MCL 421.1 et seq.

Steve Arwood
DIRECTOR

Employer's Quarterly Wage/Tax Report

Employer Name & Address:

Mail To:

Unemployment Insurance Agency
Tax Office
PO Box 33598
Detroit, MI 48232-5598

YOU MUST FILE THIS REPORT EVEN IF YOU ARE UNABLE TO PAY OR HAVE NO PAYROLL FOR THE QUARTER.
For details about completing this report see the instructions page.

SECTION 1

Employer Type: Contributing ☐ (Complete Sections 1, 2, 3 & 4) Reimbursing ☐ (Complete Sections 1, 2 & 4)

This Report is this Quarter's: Original ☐
Amended ☐ If Amended, select one of the following reasons: Not liable ☐
Miscalculated wages ☐ Used wrong taxable wage limit ☐
Other ☐ _____

UIA Employer Account No: ___ *pre-populated* _____

FEIN: ___ *pre-populated* _____

Quarter Ending Date (mm/dd/yyyy): ___ *pre-populated* _____

Provide the number of all full-time employees plus part-time employees who worked during or received pay for the pay period that includes the 12th of the month:

1st Month	2nd Month	3rd Month

SECTION 2

Family Owned Enter "F"	Enter "X"	Social Security No.	Employee Last Name	Employee First Name	Gross Wages Paid This Quarter	
			pre-populated	*pre-populated*		

If more lines are needed to enter employee information, continue to Section 2 on back of form. When finished entering employees, continue to Section 3 for Contributing Employers or Section 4 for Reimbursing Employers.

For UIA Use Only. Do Not Write Below Line.

(Barcode) 999912064561 23
9 9 9 9 1 2 0 6 4 5 6 1 2 3

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SECTION 2 (continued)

Family Owned Enter "F"	Dateline "S"	Social Security No.	Employee Last Name	Employee First Name	Gross Wages Paid This Quarter	

If you have more than 25 employees and/or out of state wages, use MIWAM to file on-line.

SECTION 3

Total Gross Wages paid this quarter:	
Excess Wages:	
Taxable Wages:	
Calculated Tax Rate (ABC +CBC + NBC):	x *pre-populated%*
Tax Due(Calculated Tax Rate x Taxable Wages) *rounded to nearest $*:	
Obligation Assessment (OA) and other Rate Factors	x *pre-populated%*
Tax Due(OA & other Rate Factors x Taxable Wages) *not rounded to nearest $*:	
Total Tax Due(Rounded Tax Due + Non-Rounded Tax Due):	
Prior Balance:	*pre-populated*
Amount Enclosed:	

Is this the Final Report for this business? YES ☐ NO ☐

If YES, Last Date of Payroll (mm/dd/yyyyy): _____

(Prepare and submit form UIA 1772)

Taxable Wage Limit *pre-populated*

DUE DATE: *pre-populated*

SECTION 4

YOUR CERTIFICATION: I certify that I have examined this report and that to the best of my knowledge and belief it is correct and complete.

Signature Title Date Contact Phone Number

For questions, call the Office of Employer Ombudsman (OEO) at 1-855-4UIAOEO(855-484-2636). Outside of Michigan, please call 1-313-456-2300. Questions may also be emailed to OEO@michigan.gov.

MAKE A COPY OF THIS REPORT FOR YOUR RECORDS.

LARA is an Equal Opportunity Employer/Program.

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Special Payments

The following chart shows the various special payments employers sometimes make to workers while they are employed, or when they become separated from the job.

Some of these payments may, under some circumstances, be used for:

- calculating the claimant's weekly unemployment benefit amount.
- reducing the claimant's weekly unemployment benefit entitlement.
- determining wages that are taxable to the employer for state unemployment insurance taxes.

Calculating the claimant's weekly benefit amount -The claimant's weekly benefit amount is calculated by taking 4.1% of the worker's high quarter wages. The UIA looks to the calendar quarter in which the wages were **actually paid** to the worker, not the quarter in which they were earned by the worker.

Reducing the claimant's weekly benefit amount - The claimant's weekly benefit amount is reduced using a formula that considers the amount the unemployed worker **earned** in a week when the unemployed worker was also receiving unemployment benefits. In the case of this earnings offset, what is important is what the unemployed worker **earned** in the week, not what they were actually paid in the week.

Determining wages that are taxable to the employer for state unemployment tax purposes - An employer is taxed, for state unemployment tax purposes, on the amount **actually paid** to a worker, in wages, in a calendar quarter. For example, if a worker performed services the last week of March (in the first calendar quarter, but was not **actually paid** for those services until the first week of April (in the second calendar quarter), the employer would count those wages, for tax purposes, in the second calendar quarter, because that is when they were **actually paid** to the worker. The only exception to this is a back pay award which will be counted as wages paid in the calendar quarter to which the back pay is allocated by the employer or legal authority.

The chart can be helpful to you in accurately completing Section 2 of Form UIA 1028. More detailed descriptions of each of the special payments follows the chart. Be sure also to read the footnotes because they give exceptions to the information in the chart. The areas of the chart where the answer is "NO" are shaded to further distinguish them from the areas where the answer is "YES."

Note that the first column, entitled "Must Employer Report the Payment for Tax Purposes on Form UIA 1028?" shows the kinds of payments that must be included in gross wages, and are taxed if they fall within the first $9,500 of wages paid to a worker in a calendar year.

The second column, entitled "Must Employer Report the Payment for Wage Detail Purposes on Form UIA 1028?" shows the kinds of payments that, whether or not taxed, must still be reported for wage detail purposes because they are used in determining a claimant's unemployment benefit amount.

The third column, entitled "Is Payment Used as Income to Reduce Weekly Benefits?" shows whether the particular payment is used to offset the worker's weekly benefit payment for the weeks in which those payments are made or to which they are allocated.

The employer should provide information on the *Monetary Determination*, Form UIA 1575E, under "Employer Notification of Possible Disqualification or Ineligibility for Benefits," to tell the UIA about the assignment of this special payment to a designated period, as such assignment of the payment will reduce unemployment benefits otherwise payable for that week.

If the vacation pay does not vest within 14 days of the vacation, then it cannot be used to calculate to claimant's weekly benefit amount, or for benefit reduction purposes, and will not be taxable to the employer for unemployment compensation purposes.

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Type of Payment	Must Employer Report the Payment for Tax Purposes on Form UIA 1028?	Must Employer Report the Payment for Wage Detail Purposes on Form UIA 1028?	Is Payment Used as Income to Reduce Weekly Benefit?
Adoption Assistance Benefits	YES	YES	YES
Awards and Prizes	YES[1]	YES[1]	YES[1]
Back Pay Award	YES	YES	YES
Bonuses	YES	YES	YES
Cafeteria Plans	YES[2]	YES[2]	YES[2]
COBRA Assistance Payments	YES	NO	YES
Commissions	YES[3]	YES[3]	YES[3]
Consultant Fees	YES	YES	YES
Cost-of-Living Payment	YES	YES	YES
Deceased Employee's Wages	YES[4]	YES[4]	YES
Deferred Compensation/ 401(k) Plans – employee's contributions from wages	YES	YES	NO[5]
Deferred Compensation/ 401(k) Plans contributions for retirement purposes	NO	NO	NO[5]
Dependent Care Assistance Benefits	YES	YES	YES
Dismissal Allowance	YES	YES	YES
Educational Assistance Payments	NO[6]	NO[6]	NO[6]
Fringe Benefits	NO[7]	NO[7]	NO[7]
Guaranteed Wage Payments	YES	YES	YES
Health Savings Accounts (see Medical Savings Accounts	NO[8]	NO[8]	NO[8]
Holiday Pay	YES[9]	YES[9]	YES[9]
Insurance Payout	NO	NO	NO
Insurance Premium Payout	NO	NO	NO
Jury Duty Pay, Payment by Employer in excess of	YES[10]	YES[10]	YES[10]
Longevity Pay	YES	YES	YES
Medical Savings Accounts (Contributions by Employer to)	NO[8]	NO[8]	NO[8]

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Type of Payment	Must Employer Report the Payment for Tax Purposes on Form UC 1028?	Must Employer Report the Payment for Wage Detail Purposes on Form UC 1028?	Is Payment Used as Income to Reduce Weekly Benefit?
Moving Expenses	NO[11]	NO[11]	NO[11]
On-Call Pay	YES	YES	YES
Payment in Lieu of Notice	YES	YES	YES
Pension/Retirement Annuity	NO	NO	NO
Profit-Sharing Payment	NO	NO	NO
Reimbursement of Expenses	NO	NO	NO
Room and Board	YES[12]	YES[12]	YES[12]
Separation Pay	YES	YES	YES
Severance Pay	YES	YES	YES
Short Work-Week Benefits	YES	YES	YES
Sick Pay – Paid on account of sickness under a plan, or more than 6 months after employment ends	NO[13]	NO	NO
Sick Pay – Paid to liquidate sick leave balance	YES[13]	YES	YES
Stipend	NO	NO	NO
Stock Options	YES	YES	YES
Subchapter S Distributions	YES[14]	YES[14]	YES[14]
Supplemental Unemployment Benefits (SUB Pay)	NO	NO	NO
Termination Pay	YES	YES	YES
Tips	YES	YES	YES
Transportation Fringe Qualified	YES	YES	YES
Travel Expenses	NO[15]	NO[15]	NO[15]
Vacation Pay	YES[16]	YES[16]	YES[16]
Wage Continuation Pay	YES	YES	YES
Worker's Disability Compensation/Differential Payments	NO	NO	NO
All Other Compensation for Personal Services	YES	YES	YES

[1] Awards and Prizes will be taxable to the employer and will be used to calculate the claimant's weekly benefit amount if the prize is furnished by the employer and the employer benefited from the services of the employee for which the prize or award was given.

[2] If an employee has the option to accept the cash equivalent of the benefits otherwise available, then the cash equivalent is taxable to the employer, and must be used for credit week and average weekly wage purposes. If the employee cannot receive cash as an option, then none of the cafeteria plan is taxable, and none can be used to calculate the claimant's weekly benefit amount.

[3] Commissions paid to insurance agents and solicitors who are compensated solely by commission are not wages and cannot be used to calculate the claimant's weekly benefit amount because those commissioned workers are excluded by law from coverage for unemployment benefits. Commissions paid to insurance agents and solicitors who are compensated solely by commission are not taxable to the employer. However, commissions paid to sales representatives of investment companies, who are primarily but not solely compensated by commission, are taxable to the employer but cannot be used to calculate the claimant's weekly benefit amount.

[4] The law provides that any amount payable to a worker for services performed by the worker, but which has not been actually received by the worker within 21 days after the end of the pay -period in which the amount was earned, will be considered to have been paid on the 21st day after the end of that pay period.

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[5] A payout of deferred compensation will not reduce unemployment benefits because such payments are similar to the withdrawal of funds from a savings account. A payout from a 401 (k) plan may reduce unemployment benefits because a 401(k) plan is a retirement plan, and retirement benefits can reduce entitlement to unemployment benefits.

[6] Educational Assistance Payments by an employer are not taxed if they are made solely for the benefit of the worker. Such payments are also not used to calculate the claimant's weekly benefit amount, or for benefit reduction purposes. However, the cash value of books retained by the worker is taxable to the employer, as is the cash value of courses involving sports or hobbies. Graduate or professional courses are taxable to the employer to the extent they are partially for the benefit of the worker. To the extent these payments are taxable to the employer they are also used to calculate the claimant's weekly benefit amount, and for benefit reduction purposes.

[7] Fringe Benefits include such items as group health insurance, group life insurance (term or whole life), group dental insurance, group vision insurance, and group legal services. Neither the payment by the employer of a premium to fund such benefits, nor the receipt of the benefit itself, constitutes a wage taxable to the employer, and is not used to calculate the claimant's weekly benefit amount.

[8] If an employee accepts a cash payment (cash option) in lieu of receiving an employer contribution to a medical savings account, it is taxable, it will be included in the calculation of the claimant's weekly benefit amount, and it will reduce the claimant's benefit in the week received.

[9] Holiday pay is taxable to the employer, and countable to calculate the claimant's weekly benefit amount, if it vests within 14 days of the end of the holiday.

[10] Jury Duty Pay is the amount paid by an employer when a worker serves on jury duty and then turns over the jury duty check to the employer. The Jury Duty Pay, therefore, is the difference between the worker's regular paycheck and the amount the worker received for serving on the jury.

[11] Section 44(5)(h) of the Michigan Employment Security Act excludes from wages an amount paid to, or on behalf of, an employee as moving expenses if it is expected that a corresponding deduction is allowable under section 217 of the Internal Revenue Code. Generally, such a deduction is allowable under the Internal Revenue Code if the new principal workplace is more than 50 miles farther from the worker's residence than the former workplace, and the worker was full-time in 39 weeks of the last 12 months, or 78 weeks of the last 24 months.

[12] Room and Board and other non-cash payments made to an employee are taxable to the employer and includable as wages to calculate the claimant's weekly benefit amount. However, the cash value of lodging provided as a condition of employment, and the cash value of meals provided solely for the benefit and convenience of the employer, are not taxable, and are not used to calculate the claimant's weekly benefit amount, or for benefit reduction purposes.

[13] Sick pay is only taxable to the employer, and used to calculate the claimant's weekly benefit amount, if it is paid for a reason other than sickness (such as upon retirement in liquidation of the worker's sick leave balance), or if it is paid on account of sickness within the first 6 months after the end of the last month the unemployed worker worked for the employer. However, if the employer is the State of Michigan, sick pay is also useable to calculate the claimant's weekly benefit amount if the payment if made on account of sickness.

[14] Ordinary income, as shown on line 1 of Schedule K, is not wages for UI purposes. Distribution of property as shown on line 20 of Schedule K is wages only to the extent it is a payment to a shareholder-employee in lieu of reasonable compensation for services. To the extent this amount is wages, it is taxable to the employer for UI purposes, and is used to calculate the claimant's weekly benefit amount, and for benefit reduction purposes.

[15] To the extent the travel payment is a reimbursement to the employee of the employee's actual travel expenses, it is not taxable to the employer, whether or not the employee's actual expenses are supported by receipts. It would also not be used to calculate the claimant's weekly benefit amount, or to reduce the worker's unemployment benefits in the week for which the payment was made. However, if the travel payment is a blanket "allowance" paid by the employer, without regard to actual expenses incurred by the employee, the entire amount of the travel allowance is taxable to the employer, and would be used to calculate the claimant's weekly benefit amount, and to reduce unemployment benefits in the week for which the payment was made.

[16] Vacation pay is taxable to the employer, and countable to calculate the claimant's weekly benefit amount, if it vests within 14 days of the end of the vacation.

Adoption Assistance Payment

Some employers provide a payment to their workers to assist them in the process of adoption of children. The first $5,000 of this payment is not considered income to the worker for federal income tax purposes. However, this payment is regarded as a wage under the Federal Unemployment Tax Act and the employer is taxed for the full amount of the payment. The employer is also taxed on the full amount for Michigan unemployment taxes. As a wage payment, it is also used to calculate the unemployed worker's weekly benefit amount, and is considered income to the worker that must be used to reduce a worker's unemployment benefit in the week for which the payment is made.

Awards and Prizes

Employers sometimes give awards or prizes to workers whose work performance is exceptional. If the employer supplies the award or prize, and the employer benefited from the service performed for which the award or prize was given, then the employer must pay unemployment taxes on the cash value of the award or prize (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year) and the award or prize will be wages in the quarter in which it is paid, and used to calculate an unemployed worker's benefits. The amount will also be used to reduce the worker's unemployment benefit entitlement, if it is paid while the worker is collecting unemployment benefits.

Back Pay Award

Usually as a result of negotiations, or settlement of a grievance or of a lawsuit, an employer may have to pay an employee back pay. The back pay will normally be used to calculate the unemployed worker's weekly benefit amount as of the quarter to which an employer or legal authority allocated the back pay, and will be considered as wages for reducing unemployment benefits, for the period to which the payment is allocated.

If the award is allocated to a prior period, the unemployed worker's earnings may have to be recalculated, and a change in benefit entitlement may result. Also, benefits previously paid for that period may have to be repaid and the employer's account credited.

Sometimes, all or part of the back pay award is designated as **damages**. Damages will not be used to calculate the unemployed worker's weekly benefit amount, and will not be used to reduce a worker's weekly unemployment benefits.

Bonus

If an employer makes a payment to an unemployed worker in addition to the normal wage payment (often to reflect excellent performance), the payment is a bonus. This is true whether the payment is in cash, or is in a form other than cash, such as a car or a trip.

The amount of the bonus payment or its reasonable cash value will be taxable to the employer (up to the first $9,500 of each worker's annual wage), and will be wages in the quarter paid, and used to calculate the unemployed worker's weekly benefit amount. It will be counted either in the week to which the employer allocates the payment, or the week in which the unemployed worker receives it, if it cannot be allocated.

The payment of a bonus will also be considered in reducing benefits otherwise payable in that week.

Cafeteria Plan Payment

A cafeteria plan is an option some employers provide which allows workers to choose health insurance or other unpaid benefit coverage from among a group of benefits, or may have the option to choose cash as an alternative to the benefits.

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If the employee has the option to choose cash in lieu of various benefits under the plan, then the amount the unemployed worker could have received as cash is taxable to the employer for purposes of state unemployment taxes (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year). Also included as wages taxable to the employer is the amount diverted from an employee's wages and placed in the employee's cafeteria plan. These cash amounts in lieu of benefits, and diverted wages, are also used to calculate the worker's weekly benefit amount, and are used to reduce any unemployment benefits being paid the unemployed worker. Employer contributions are not considered wages.

If the unemployed worker has no option to receive cash under the plan, then none of the cafeteria plan is taxable to the employer, and none is useable to calculate the unemployed worker's weekly benefit amount, or benefit reduction purposes.

COBRA Assistance Payments

This payment is treated like severance pay as it is a payment at time of separation.

Commissions

A commission is a payment to an employee based on the performance of service. Commissions usually represent an agreed upon percentage of the sales made by the employee.

Commissions are, in general, taxable to the employer for unemployment insurance purposes (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year) and are considered to calculate the claimant's weekly benefit amount. However, due to a specific provision of the law, commissions paid to insurance agents or solicitors who are paid solely by commission are not taxable to the employer and are not used to calculate the claimant's weekly benefit amount.

Commissions are also, in general, used to reduce a worker's entitlement to unemployment benefits in the week for which the payment is made.

Consultant fees

An employee, often one who has recently retired and who has years of valuable experience, may be hired or rehired by the employer to act as a Consultant. The payment to such an employee is called a consultant fee or consulting fee.

Consulting services may be provided by an individual acting as an **independent contractor** rather than an employee. For more information about the factors used to determine whether a worker is an employee or an independent contractor, see the portion of this Handbook on *Liability of Employers and Coverage of Employees.*

If the worker is, in fact, an employee, the consultant fee would be counted as wages in taxing the employer (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year), and to calculate the claimant's weekly benefit amount. The fee would also be used to reduce the worker's entitlement to unemployment benefits for the week for which the payment is made.

If the worker is found to be an independent contractor, the fee would not be used for taxing the employer, or to calculate the claimant's weekly benefit amount, but the individual's net earnings (income after deduction for business expenses) could be used to reduce the individual's weekly unemployment benefits.

Cost-of-Living Payment

If a contract provides for a **retroactive** adjustment in the hourly wage, based on the cost of living index, then the employer will be taxed for unemployment insurance purposes on this additional payment to the employee (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year). The cost-of-living payment, even though retroactive, will be considered wages in the quarter when paid, for benefit qualifying purposes, but could retroactively reduce benefits previously paid.

Deceased Employee's Wages

If an employee dies before receiving wages for work performed prior to the employee's death, those wages will be taxable to the employer (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year). The payment can also be used to calculate the claimant's weekly benefit amount, and to reduce unemployment benefits otherwise due the estate of the deceased employee.

It should be noted that if the payment is not actually paid to the deceased before the death, then the payment will be considered paid on the 21st day after the end of the pay period in which the payment was due.

Deferred Compensation/401(k) Plans

Some employers have plans under which employees may decide not to receive a portion of their wages when earned, but to have those wages set aside in a special fund available usually at the time of retirement.

Although not subject to current income taxes, payments credited to an unemployed worker based on services performed by the unemployed worker are taxable to the employer for unemployment compensation tax purposes (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year) and are included to calculate the claimant's weekly benefit amount at the time they are paid.

If, in addition to diverting some of a worker's earnings into the deferred compensation/401(k) plan, an employer adds an additional contribution to the employee's account, that additional contribution would not be taxable for unemployment compensation purposes because it would constitute a contribution to a retirement plan, rather than a payment of a wage. The additional contribution by the employer would also not be used to calculate the claimant's weekly benefit amount.

When the deferred compensation payments are later made to the unemployed worker, they would not be earnings for the weeks the payments are received. Therefore, the payment of deferred compensation will not be taxable to the employer at the time they are paid out of the plan and will also not be useable at that time to calculate the claimant's weekly benefit amount.

Although not every deferred compensation plan is a retirement plan, a 401(k) plan is a retirement plan. Any payments made to a unemployed worker from a 401(k) plan would be used to reduce unemployment benefits using the formula applicable to the payment of any retirement benefit. A payment to an unemployed worker from

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a deferred compensation plan that is not a retirement plan, however, would not be used to reduce unemployment benefits.

Dependent Care Assistance Payment

This is a payment made by some employers into an account on behalf of employees who have dependents. The first $5,000 of this payment is not considered income to the worker for federal income tax purposes. However, the full amount paid by an employer on behalf of an employee under a dependent care assistance plan is considered a wage for Michigan unemployment tax purposes, and the employer is taxed on such payments. As a wage payment, it is used to calculate the claimant's weekly benefit amount in the quarter paid, and is considered income to the worker that must be used to reduce a worker's unemployment benefit in the week for which the payment is made.

A payout of Dependent Care Assistance from the account is not taxable to the employer, nor counted to calculate the claimant's weekly benefit amount, nor used to reduce unemployment benefits, at the time of the payout.

Dismissal Allowance
(See Severance Pay)

Educational Assistance

Employers sometimes pay for classes taken by a worker to improve the worker's ability to perform his or her job and therefore is for the benefit of the employer and is taxable for UI tax purposes. Payments for such things as books, other fees, and supplies (not later retained by the employee) are not taxable to the employer for unemployment compensation purposes and cannot be used to calculate the claimant's weekly benefit amount. These payments would also not reduce a worker's unemployment benefits in the week they are paid.

Payments made by an employer for classes that are not work-related, such as classes related to sports, games, or hobbies of the worker, would be taxable to the employer (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year) and would be counted to calculate the claimant's weekly benefit amount in the quarter paid. These payments would also be used to reduce a worker's unemployment benefits in the week they are paid.

Fringe Benefits

Premium payments made by an employer on behalf of an employee for group health insurance, group life insurance (term or whole life), group vision insurance, group dental insurance, group legal services, or other similar benefits would not be wages taxable to the employer and would not be useable to calculate the claimant's weekly benefit amount, or to reduce unemployment benefits. These payments are not made on account of any specific service performed by the worker, but rather are paid on the basis of the employment relationship, itself.

Also, such payments would not be taxable to the employer, or be useable to calculate the claimant's weekly benefit amount, or for benefit reduction purposes at the time the payments of such benefits are made to or on behalf of the employee.

Guaranteed Wage Payments

This is similar to the Short Work Week payment made by some employers. It is a payment made to a worker even if no work is performed by the worker.

The payment of such benefits will be taxable to the employer for unemployment compensation purposes (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year), and will be used to calculate the claimant's weekly benefit amount in the quarter paid, and for benefit reduction purposes.

Health Savings Accounts
(See Medical Savings Accounts)

Holiday Pay

A payment for a holiday will be taxable to the employer (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year) and will be used to calculate the claimant's weekly benefit amount if it is paid, or vests, within 14 days of the holiday. The payment vests when the employee gains the absolute right to the holiday payment.

It will be counted to calculate the claimant's weekly benefit amount in the quarter it is paid, unless the employer assigns the holiday pay to a different quarter. However, the employer cannot assign the holiday pay to a different period other than the week it was paid if there is an employment contract that prevents the assignment, or that assigns the pay to a specific period.

If the holiday pay can be assigned by the employer, the employer can assign these accrued holiday payments to any period, regardless of when the payment was actually made, if the unemployed worker has not yet actually taken the holiday time off. An employer can even assign accrued holiday pay to a period following a worker's layoff, or following a worker's discharge or quit. Generally, the reason an employer would assign the holiday pay to a different period than when actually paid is to reduce unemployment benefits in a week, rather than the calculation of benefit rate.

When holiday pay is allocated to a week, it gives the unemployed worker offsetting earnings in a week when an unemployed worker is unemployed and might otherwise be entitled to unemployment benefits. The holiday pay will then be used to calculate the claimant's weekly benefit amount and also the employer's taxable payroll (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year). Unemployment benefits otherwise payable for these weeks will be reduced.

There is no special procedure for notifying an unemployed worker about assignment of holiday pay, as there is in the case of vacation pay. However, the employer must be sure, in Item 6, on Form UIA 1555, to tell the UIA about the assignment of this payment to a designated period, as the payment will reduce unemployment benefits otherwise payable for that week. The amount of the reduction is discussed under "Reduction in a Claimant's Weekly Benefit Payment" in the portion of this Handbook entitled *Employer's Guide to the Payment of Unemployment Benefits*.

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If the holiday pay **does not vest** within 14 days of the holiday, it cannot be used to calculate the claimant's weekly benefit amount, will not be taxable to the employer, and cannot reduce a claimant's unemployment benefits. For example, some employers have a policy that says that to be paid holiday pay for Christmas, the worker must be at work the third week after Christmas. If that date is more than 14 days after Christmas, the worker has not acquired an absolute right to the payment within 14 days of Christmas.

Insurance Payout; Insurance Premium Payments

Neither the payout of insurance to a worker, nor the payment by an employer of an insurance premium on behalf of the worker, is wages for purposes of unemployment taxes or for benefit qualifying purposes, nor remuneration for reducing benefit payments.

Jury Duty Pay, Payment by Employer in Excess of

Some employers have a practice of paying a worker their full, regular wage when the worker is absent from work serving on jury duty. The employer then requires the worker to turn over the jury duty pay to the employer. The effect of this arrangement is that the employer pays the worker the difference between the jury duty pay and the worker's regular pay.

The employer will be taxed, for unemployment benefit purposes (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year) on the difference between the jury duty pay and the worker's regular pay. That amount will also be used to calculate the claimant's weekly benefit amount, and will reduce unemployment benefits for the week for which the payment is made.

Longevity Pay

Some employers make a special payment to employees on the basis of the employee's length of service, with more senior employees receiving larger longevity checks. Usually, this type of payment is described in an employment contract. Longevity pay is taxable to the employer (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year). It is also counted as wages to calculate the claimant's weekly benefit amount, and to reduce a worker's entitlement to unemployment benefits for the week for which the payment is made.

Medical Savings Account or Health Savings Account Payment

Some employers make payments (contributions) into a trust fund on behalf of workers for the specific purpose of providing workers with funds to cover medical costs not otherwise covered under the employee's health insurance. Such a payment is <u>not taxable</u> to the employer as a wage at the time it is paid into the trust fund, unless the employee <u>accepts a cash payment (cash option) in lieu of receiving an employer contribution to a medical savings account</u>. Also, an employer contribution to a medical savings account is not included to calculate the claimant's weekly benefit amount, and would not be used to reduce to the worker's unemployment benefits in the week for which the payment is made, <u>unless the employee accepts a cash payment (cash option) in lieu of receiving an employer contribution to a medical savings account</u>.

Moving Expenses

The law specifically excludes from wages taxable to the employer amounts paid as moving expenses if those moving expenses are deductible under Section 217 of the Internal Revenue Code. Those moving expenses would also not be countable to calculate the claimant's weekly benefit amount, and would not be used to reduce the worker's unemployment benefits. Generally, such a deduction is allowable under the Internal Revenue Code if the new principal workplace is more than 50 miles farther from the worker's residence than the former workplace, and the worker was full-time in 39 weeks of the last 12 months, or 78 weeks of the last 24 months.

On-Call Pay

Sometimes an employee receives a payment not for the performance of a specific service, but for standing ready to perform a specific service if it should be needed by the employer. Remaining on-call to the employer is, itself, a service, and the payment of on-call pay is a payment for a service of the employee.

On-call pay is taxable to the employer (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year) and counted to calculate the claimant's weekly benefit amount. It is also used to reduce a claimant's entitlement to unemployment benefits for the week for which the payment is made.

Payment in Lieu of Notice

Sometimes an employer has a written agreement or policy, or even an unwritten practice, of giving employees a certain period of notice before laying them off. If an employer with such a pre-existing policy or practice lays off workers without giving them the usual notice, but gives them a payment equal to what the employees would have earned if they had gotten the notice and continued working from the date of the notice to the effective date of the layoff, then the employer has given a payment in lieu of notice.

An employer can assign this payment to a particular week. It will then be taxable to the employer for that week for unemployment tax purposes (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year). It will also be used to calculate the claimant's weekly benefit amount, and to reduce the claimant's unemployment benefits for that week.

If the payment in lieu of notice is not assigned by the employer to any particular week, it will be used for employer tax, benefit amount calculation, and benefit reduction purposes in the week in which it is paid.

Pension/Retirement Annuity

The law provides that a payment made by an employer into either a retirement fund, or into a fund to purchase a retirement annuity for the worker, will not be taxable to the employer for unemployment insurance purposes, and will not be used to calculate the claimant's weekly benefit amount, or for benefit reduction purposes.

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In addition, any payment made to a worker at the time of retirement out of such a retirement fund or out of an annuity purchased by the employer on behalf of the worker for retirement purposes, will not be taxable to the employer, or counted to calculate the claimant's weekly benefit amount. However, the amount of a retirement benefit can be used to reduce a worker's unemployment benefit, not on the basis of being earnings, but on the basis of being a retirement benefit which, under the law, is deductible under certain circumstances from unemployment benefits.

There are various types of pension plans or annuities. There is the traditional "defined benefit" company pension plan that pays a specified benefit to a retiree. There is the newer "defined contribution" company pension plan that specifies the amount of the employer's contribution during the claimant's period of employment and that turns over the entire accumulated amount in the employee's pension account when the employee retires. There is the deferred compensation pension plan commonly referred to as a "401(k)" plan, and there is the type of plan available under IRS Code Section 403(b) to employees of schools and non-profit organizations under which the employer purchases an annuity for the employees. There is also a Keogh plan under which a self-employed employer provides retirement benefits for his or her employees. In each of these cases, if the worker receives the retirement benefit from a base period employer while the worker is collecting unemployment benefits, the unemployment benefits are subject to reduction.

Profit-Sharing Payment

Under a profit-sharing plan, employees receive payment not on the basis of any particular job requirement, but rather as a percentage of profits made by the company. This payment will not be taxable to the employer for unemployment insurance purposes, and will not be used to calculate the claimant's weekly benefit amount, or for benefit reduction purposes.

Reimbursement of Expenses

If an employee spends his or her own money on gasoline, meals, parking, or other expenses related to the performance of service to the employer, and the employer reimburses the employee for those business expenses, the reimbursement is not payment for a service but rather is repayment for a business expense. It is not taxable to the employer for unemployment compensation purposes, and cannot be used to calculate the claimant's weekly benefit amount. The payment will also not be used to reduce unemployment benefits.

However, to the extent the payment exceeds reimbursement for actual business expenses incurred by the unemployed worker, it will be taxable to the employer (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year), and will be used to calculate the claimant's weekly benefit amount. It will also, in that case, be used to reduce unemployment benefits in the week the reimbursement payment was received.

Room and Board

When an employer provides meals or lodging on its premises, and the purpose of doing so is solely for the benefit and convenience of the employer, then the value of the meals or lodging is not taxable to the employer, and is not used to calculate the claimant's weekly benefit amount. The cash value of the meal or lodging is also not used to reduce a worker's unemployment benefit for the week.

If the purpose of providing meals or lodging for workers is **not** solely for the benefit and convenience of the employer, but is intended, at least in part, as compensation for the worker, then the full cash value of the meals or lodging is taxable to the employer, is used to calculate the claimant's weekly benefit amount, and would be used to reduce the worker's unemployment benefit for the week for which the payment is made. The cash value of the meals or lodging is the amount agreed upon between the employer and worker. If an amount is not agreed upon, then the value of the meals will be the amount established by Administrative Rule 112, and adjusted annually based on The Consumer Price Index:

Full Room and Board, per week	$64.96
Lodging, without meals, per week	$20.87
Lodging without meals, per day	$ 3.22
Meals without lodging, per week	$44.66
Meals without lodging, per day	$ 7.45
Meals without lodging, per meal	$ 2.29

Separation Pay (See Severance Pay)

Severance Pay (Also includes Separation Pay, Termination Allowance, Dismissal Allowance, Wage Continuation Pay)

These are payments made by an employer at the time the employee is separated from employment. These payments are taxable to the employer for unemployment tax purposes, up to the annual limit of $9,500 per employee. These payments will be used to calculate the claimant's weekly benefit amount. These payments will also be used to reduce a claimant's entitlement to unemployment benefits, even if the payment is made to the unemployed worker over several weeks or months while the unemployed worker is receiving unemployment benefits.

An employer can make the severance payment at the time of separation but allocate the payment over any period chosen by the employer. Allocated severance pay will reduce benefits in each week allocated. A lump sum severance payment will reduce benefits in the week paid.

Short Work-Week Benefits

Some employers have a contract, policy, or practice that requires the employer to pay employees an amount equal to their full week's wages when the employees come to work for a certain number of hours or days during a work week and then are laid off for the rest of the week.

The payment of such benefits will be taxable to the employer for unemployment compensation purposes (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year), and will be used to calculate the claimant's weekly benefit amount, and for benefit reduction purposes.

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Sick Pay

Paid on Account of Sickness, under a Plan, or More than 6 Months after Employment Ends.

Payments of sick pay, paid under an established employer plan, and paid to compensate the employee or his/her family for a period of actual sickness or disability, are not taxable to the employer for unemployment compensation purposes, and cannot be used to calculate the claimant's weekly benefit amount, nor to reduce unemployment benefits otherwise payable. However, if the employer is the State of Michigan, sick pay is used to calculate the claimant's weekly benefit amount, even if the payment is made on account of actual sickness or disability of the employee.

In addition, sick payments made voluntarily by an employer rather than under a plan, but **made more than 6 months** after the end of the employee's last day of work, will not be taxable to the employer for unemployment compensation purposes, and will not be used to calculate the claimant's weekly benefit amount, or for benefit reduction purposes.

Paid to Liquidate a Worker's Sick Leave Balance, or Paid within 6 Months after Employment Ends.

If sick pay is paid to an employee for a reason other than sickness, such as when an employee retires and is paid, in cash, for all or part of their accumulated sick leave hours, then the payment is taxable to the employer for unemployment compensation purposes (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year) and is used to calculate the claimant's weekly benefit amount, and for benefit reduction purposes in the week the payment is made.

Also, if the employer does not have a sick leave plan, a payment made on account of sickness or disability **within the first 6 months** after the end of the last month the unemployed worker worked for the employer, will be taxable to the employer for unemployment compensation purposes (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year) and will be used to calculate the claimant's weekly benefit amount, and for benefit reduction purposes in the week the payment is made.

Stipend

An amount paid to a worker to allow the worker to meet living expenses while engaged in a training or work-relief program is not a payment for services and therefore is not taxable as wages for UI purposes, nor usable to qualify for benefits, nor used to reduce unemployment benefits when paid.

Stock Options

If the employer grants an employee the right to purchase a share of the employer's stock at a future date for a predetermined price, the "stock option" so granted is taxable to the employer at the time of the grant, and is remuneration to the worker at that time as well. If, however, the stock option does not have a readily ascertainable fair market value at the time the option is granted, then the amount will be taxable to the employer and counted as remuneration at the time the option is exercised.

Subchapter S Distributions

A shareholder in a Subchapter S Corporation acquires individual income tax liability for a portion of the corporation's annual income, including a portion of the corporation's distribution of dividends. The Corporation provides each shareholder in the corporation with a copy of Form 1120S, Schedule K.

Line 1 of Schedule K reports the shareholder-employee's share of profit and loss of the corporation. That amount is not wages for the shareholder-employee, and is not taxable to the employer for state unemployment tax purposes. It is also not used in figuring the shareholder-employee's weekly benefit amount, or for benefit reduction purposes.

Line 20 of Schedule K shows the "Total property distributions (including cash) other than dividends." To the extent this dividend is intended as a payment to the shareholder-employee in lieu of reasonable compensation for services performed for the corporation by the shareholder-employee, this amount is a wage. If the amount of the dividend paid to a shareholder-employee is more than reasonable compensation for his or her services, only the amount that is reasonable compensation for his or her services is considered wages to him or her. Only that amount is taxable to the employer for state unemployment tax purposes, and only that amount is used to calculate the claimant's weekly benefit amount, and for benefit reduction purposes.

Supplemental Unemployment Benefits (SUB)

Some employers have a plan, either administered by a Trustee or directly by the employer, set up consistent with the criteria outlined in IRS Publication 15-A, *"Employer's Supplemental Tax Guide,"* that privately pays additional benefits to supplement unemployment benefits already paid the worker by the UIA. This is a payment of a benefit, not of a wage for services performed and, whether paid by a Trustee or by the employer directly, it will not be taxable to the employer for unemployment tax purposes, will not be used to calculate the claimant's weekly benefit amount, and will not be used to reduce unemployment benefits.

Termination Pay

(See Severance Pay)

Tips

The amount of all tips received by an employee and actually reported by the employee to the employer as provided under Section 6053(a) of the Internal Revenue Code, are taxable to the employer for unemployment tax purposes (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year), and are used to calculate the claimant's weekly benefit amount, and for benefit reduction purposes.

Transportation Fringe, Qualified

A qualified transportation fringe is a benefit paid by some employers to reimburse employees for certain costs of commuting to work, such as the use of a personal vehicle, the cost of a public transportation pass, or the cost of parking. The employee elects to divert a portion of salary to cover the cost of this benefit. Although this benefit is excluded

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from gross income of an employee under both the Internal Revenue Code, and the Federal Unemployment Tax Act, under the Michigan Employment Security Act the cash value of the qualified transportation fringe is taxable to the employer if included in the first $9,500 of wages paid to the worker in a year. This amount is also used to calculate the worker's weekly benefit amount, and to reduce the worker's unemployment benefit payment for a week.

Travel Expenses

If an employee spends his or her own money on gasoline, meals, parking, or other expenses related to travel on behalf of the employer, and the employer reimburses the employee for those travel expenses, the reimbursement is not payment for a service but rather is repayment for a business expense. It is not taxable to the employer for unemployment compensation purposes, and cannot be used to calculate the claimant's weekly benefit amount. The payment will also not be used to reduce unemployment benefits. This is true even if there are no actual receipts to support the claim that the payment is a reimbursement of expenses.

However, to the extent the payment exceeds reimbursement for actual travel expenses incurred by the unemployed worker, it will be taxable to the employer (up to the yearly limit of $9,500 of wages) and will be used to calculate the claimant's weekly benefit amount, and to reduce unemployment benefits in the week in which the reimbursement payment was received.

If the payment is a general "travel allowance" rather than a specific reimbursement for actual travel expenses, and is intended as an estimated or blanket payment for employees who travel, rather than as payment to reimburse those employees for actual travel expenses, then the travel allowance is taxable to the employer, and is used to calculate the claimant's weekly benefit amount, and for benefit reduction purposes.

Vacation Pay

A payment for a vacation will be taxable to the employer for unemployment tax purposes (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year) and will be used to calculate the claimant's weekly benefit amount, and for benefit reduction purposes, if the vacation pay is paid, or vests, within 14 days of the end of the vacation. The payment vests when the employee gains the absolute right to the vacation payment.

It will be counted to calculate the claimant's weekly benefit amount in the quarter it is paid (and will be taxable for that quarter to the employer) unless the employer assigns the vacation payment to a week that falls in a different quarter. However, the employer cannot assign the vacation pay to a different period other than the week it was paid if there is an employment contract that prevents the assignment, or that assigns the pay to a different, specified period.

If the employer has the final word on whether a worker can take vacation, the employer can assign accrued vacation pay to any week, regardless of when the payment was actually made. If a worker has the option to take vacation pay instead of taking a vacation, the vacation pay is considered a **bonus** and cannot be allocated by the employer.

So, assuming the employer has the final word on when the worker can take vacation, then any vacation pay the worker accrues during the year can be designated by the employer to any period of layoff thereafter. Employers sometimes use this option to give the unemployed worker earnings in a week when the unemployed worker is unemployed and might otherwise be entitled to unemployment benefits. The vacation pay will then be used to calculate the claimant's weekly benefit amount and will be used as wages taxable to the employer (unless the employee's wages have already exceeded the taxable wage limit of $9,500 per employee per year). In addition, unemployment benefits otherwise payable for the weeks to which the employer assigns the vacation pay will be reduced.

To assign vacation pay, though, the employer must first give a written Notice to the unemployed worker, and to the unemployed worker's collective bargaining representative if any, before his/her last day of work and prior to the period to which the pay will be allocated. If the Notice is not given properly, then the vacation pay will not be used to reduce unemployment benefits in any week.

The Notice must include the following:

- that the employer intends to make the assignment of vacation pay;
- the period to which the employer is assigning the vacation pay; and
- that the assignment of vacation pay to a period of unemployment <u>may</u> make the unemployed worker ineligible for unemployment benefits for that period.

The Notice to the unemployed worker must be made in one of the following ways:

- include the Notice in the contract of employment;
- deliver the Notice to the unemployed worker and union representative of the unemployed worker; or
- post the Notice on the job before the claimant's last day of work and give a copy to the claimant's union representative.

The employer should provide information on the *Monetary Determination*, Form UIA 1575E, under "Employer Notification of Possible Disqualification or Ineligibility for Benefits," to tell the UIA about the assignment of this special payment to a designated period, as such assignment of the payment will reduce unemployment benefits otherwise payable for that week.

If the vacation pay does not vest within 14 days of the vacation, then it cannot be used to calculate to claimant's weekly benefit amount, or for benefit reduction purposes, and will not be taxable to the employer for unemployment compensation purposes.

Wage Continuation Pay
(See Severance Pay)

Workers' Disability Compensation

The amount a worker receives in *Workers' Disability Compensation* in a week is not used to reduce the worker's entitlement to unemployment benefits for the week, although the fact that a worker is receiving Workers' Disability Compensation raises a question about the worker's ability to work. If the worker is still able to perform some work he/she has performed or for which he/she has been trained, the worker could still satisfy the "ability to work" requirement to receive unemployment benefits.

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Likewise, a payment of "Workers' Disability Compensation Differential" under Section 361(1) of the Workers' Disability Compensation Act is not used to reduce the worker's weekly unemployment benefit payment.

All Other Compensation for Personal Service

Any other kind of payment an employer makes to a worker to compensate the worker for performing a service is counted as wages to calculate the claimant's weekly benefit amount, is used to reduce a worker's unemployment benefits otherwise payable in the week, and is taxable to the employer to the extent that the employer has not yet already reached the taxable wage limit of $9,500.00 in a calendar year for that employee.

Final Report and Payment, and Filing of Discontinuance or Transfer of Payroll or Assets in Whole or Part - Form UIA 1772

Upon discontinuance of a business, or transfer of business or of payroll or assets, in whole or in part, two forms must be filed with the UIA, Form UIA 1772, *Discontinuance or Transfer of Payroll or Assets in Whole or Part*, and section 3 Form UIA 1028 showing this is the Final Report, due within 15 days of the discontinuance.

In some cases, employers have not notified UIA that the business has been discontinued. It is important to notify UIA if you are no longer in business; otherwise, you may be assessed penalties for nonreporting quarters, even for quarters that you were not in business. A copy of *Discontinuance or Transfer of Payroll or Assets in Whole or Part*, Form UIA 1772, has been provided in this Handbook. Form UIA 1772 can be mailed or faxed to the UIA Tax Office. The tax teams and their telephone numbers are listed on page 10-C.

For information about filing the *Employer's Quarterly Wage/Tax Report* on the Internet, go to the UIA Website: www.michigan.gov., click on "Employers", and scroll down to "Electronic Wage Detail Reports and click on "UIA Online Employer's Quarterly Wage/Tax Report. Then click on Register/File 1028 and sign in to your account or register for one.

Reimbursing Employer Billing for Benefit Charges - Form UIA 1763

Form UIA 1763, *Reimbursing Employer Billing for Benefit Charges*, is a billing provided each calendar quarter to Reimbursing Employers (those non-profit organizations and governmental units that repay the UIA, dollar-for-dollar, for unemployment benefits paid out), showing charges and credits to the employer's account during the quarter. Payment is due within 30 days after the date of billing (state agencies have 60 days). However, payments from local governmental entities such as school districts, cities, and counties are due within 30 days after the beginning of the entity's next fiscal year.

Domestic Employment

Beginning in 2012, an employer that is liable solely on the basis of employing domestic workers (that is, workers in the employer's household) may pay state unemployment taxes annually, rather than quarterly, upon approval by the UIA. A domestic employer must still file wage and tax reports quarterly, though.

Required Filing Online

An employer that, as of January 1, 2013, had more than 25 employees, will be required to file quarterly reports online beginning with the report due for the first quarter of 2013. Employers with more than 5 but fewer than 26 employees on January 1, 2013 will be required to file quarterly reports online beginning with the report due for the first quarter of 2014. An employer with 5 or fewer employees on January 1, 2013 will be required to file quarterly reports online beginning with the report due for the first quarter of 2015, but the UIA Director, upon request of the employer and a showing of economic hardship, can extend the effective date of the online filing for an employer with 5 or fewer employees.

Due Dates:

The *Employer's Quarterly Wage/Tax Report*, Form UIA 1028, is due by the 25th day following the end of each calendar quarter. A $50 penalty may be assessed by UIA for each failure to file a report on time, or failure to file a complete and correct report within 30 days of the due date. If the Agency notifies the employer of an error and the employer provides a corrected report within 14 days, no penalty will be assessed. When a report is filed past the filing date for the next calendar quarter, a $250 penalty applies, and an additional $250 penalty applies for each full quarter the report is late thereafter. Due dates are as follows:

UIA 1028 REPORTING SCHEDULE		
Quarter	Ending Date	Due Date
1	March 31	April 25
2	June 30	July 25
3	Sept. 30	Oct. 25
4	Dec. 31	Jan. 25

If an employer employed 25 or fewer employees on the pay period containing January 12, 2013, or in the corresponding pay period in succeeding years, and in a year experienced 50% or more of its annual unemployment tax liability in the first calendar year, then the employer can apply to the UIA, for the following year, to spread out its first quarterly liability evenly over each of the remaining three quarters, and no interest or penalty will result if the deferred payments are made on schedule. Taxes for each of the succeeding quarters must be still paid in full and on time.

Mailing Addresses

Submit each report to the correct mailing address provided on the preprinted form. Proper mailing addresses are shown below:

Form UIA 1028 – *Employer's Quarterly Wage/Tax Report*

Unemployment Insurance Agency
Tax Office
P.O. Box 33598
Detroit, MI 48232-5598

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If a large package, or mail requiring a signature, is sent, use this address:

Unemployment Insurance Agency
c/o Chase Government Operations
9000 Haggerty Road
Belleville, MI 48111

Correspondence/Protests

Unemployment Insurance Agency
P.O. Box 8068
Royal Oak, MI 48068-8068
Detroit, MI 48202

Responsibility of an employer to post Notice of Liability

An employing entity determined by the UIA to be an employer is required to post a Form UIA 1710, *Notice to All Employees*, in a location where it will be easily seen by all employees. However, in the case of domestic employment, the homeowner must only inform domestic workers that the homeowner is registered with the UIA. A copy of the Notice can be downloaded from:

www.michigan.gov/documents/UIA/ UC1710 77109 7.pdf

Responsibility of an employer to provide individual unemployment compensation notice to separated employee

When a worker is separated from employment for any reason (even if they quit or are fired), the employer is required to give the worker a copy of the Form UIA 1711, *Unemployment Compensation Notice to Employee*, showing the employer's name and UIA account number, and the address where requests for wage and separation information can be directed.

Collection of unpaid taxes

The law provides several methods that the UIA can use to collect unpaid unemployment taxes, as well as interest, penalties, damages, and court costs.

Any monies collected are applied to the oldest open quarter in the following order: court costs, damages, penalties, interest and principal taxes.

Assessments

Form UIA 1448, Notice of Assessment, is a Determination by the UIA that an employer owes the UIA taxes, and the amount of the taxes owed, as well as any interest or penalties. Assessments are mailed on a daily basis. An employer who disagrees with the amount of the assessment can protest the assessment, just as in the case of any other Determination. A protest of an assessment cannot be used, however, to protest the payment of any benefits, or any determination of liability or tax rates.

Liens

When an assessment is made against an employer and the assessment remains unpaid, the UIA may file Form UIA 1449, Notice of Michigan Unemployment Insurance Agency Tax Lien(s), with the Register of Deeds of the county in which the employer's property or other assets are located, or with the Secretary of State.

The Lien ensures that before the property can be sold, the taxes, penalty, and interest owed to the UIA will be paid. Whenever the amount owed to the UIA is paid, the Agency files Form UIA 1450, Certificate of Discharge of Michigan Unemployment Insurance Agency Tax Lien(s), indicating that the Lien is no longer in effect.

Notice to Withhold

Form UIA 1492, Notice to Withhold, can be issued to any person or organization that owes money to an employer who, in turn, owes taxes, penalties, and/or interest to the UIA. This Notice orders the person or organization not to pay money or transfer assets to the employer worth a stated amount (the amount the employer owes the UIA). When a Warrant is issued, the money or property owed to the employer must be given, instead, to the UIA. For example, the UIA may attach bank accounts and income tax refunds, and may place a levy on automobiles and other property.

Warrants

Form UIA 1461-1, Warrant, permits the UIA to receive monies being held as a result of the *Notice to Withhold*.

Collection suit

The UIA may start a lawsuit against the employer, in civil court, to collect the taxes, interest, and penalties owed. In addition, damages of 10% of the taxes owed is added. If the UIA wins a judgment in court and the employer still fails to pay, the UIA can prevent the employer from doing any further business in Michigan until the amount owing is paid.

Negligence penalty

In addition to the penalties already described, if the failure of an employer to pay taxes owing to the UIA was the result of the employer's negligence or intentional disregard of the law or administrative rules (but there was no fraud by the employer), the UIA can add an additional penalty of 5% on all taxes owed.

Administrative and criminal penalties

In addition to the penalties for failing to pay unemployment taxes on time, there are special administrative and criminal penalties for certain fraudulent acts by employers, claimants, and UIA employees.

The following is a description of the penalties applicable to employers:

Willful or Knowing Violation of Law, or Intentional Failure to Comply

An employing unit, or an owner, director, officer or agent of an employing unit, who willfully violates, or intentionally fails to comply with the law in connection with a claim for benefits or the payment of unemployment taxes, can be personally required to pay the amount involved, plus damages equal to four times that amount. If the em-

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ployer or an officer, agent, owner or director is prosecuted, the amount described above can be assessed, as well as a criminal penalty of up to 5 years imprisonment and 10,400 hours of community service. The applicable penalty depends on the amount of money involved.

False statement or representation, or failure to disclose

If an employing unit, or an officer, agent, owner or director of an employing unit, makes a false statement or representation to the UIA knowing it to be false, or fraudulently fails to disclose a material fact, the Agency can require the employer or the officer, agent, owner or director to pay the amount involved, plus damages equal to up to three times that amount.

If the employer or an officer, agent, owner or director is prosecuted, the amount described above can be assessed, as well as a criminal penalty of up to two years imprisonment and 4,160 hours of community service. The applicable penalty depends on the amount of money involved.

Requiring an unemployed worker to make a false statement, as a condition of employment

If an employing unit, or an officer, agent, owner, or director of an employing unit, requires an unemployed worker to make a knowingly false statement or representation to obtain or increase benefits or to avoid or reduce a tax payment, the Agency can require the employer or the officer, agent, owner, or director to pay the amount involved, plus damages equal to up to three times that amount, but not less than $5,000.00.

If the employer, officer, agent, owner, or director is prosecuted, the amount described above can be assessed, as well as a criminal penalty of up to $10,000.00, and imprisonment up to 10 years, and up to 20,800 hours of community service. The applicable penalty depends on the amount of money involved.

Conspiracy to Violate Michigan Employment Security Act

If an employing unit, or an officer, agent, owner, or director of an employing unit, conspires with another to violate the Michigan Employment Security Act, the Agency can require the employer, or officer, agent, owner, or director to pay the amount involved, plus damages equal to up to three times that amount.

If the employer, officer, agent, owner, or director is prosecuted, the amount described above can be assessed, as can a criminal penalty. The criminal penalty will be the amount involved plus three times that amount as a penalty, and a further penalty ranging up to five years imprisonment and 10,400 hours of community service. The applicable penalty depends on the amount of money involved.

SUTA Dumping

If an employer is found to have knowingly engaged in SUTA Dumping for the sole or primary purpose of reducing their unemployment insurance tax rate, the penalties described above can apply, and in addition, the employer's tax rate will be increased to the maximum possible rate for the year the SUTA Dumping occurred and for the next 3 years (but in no event will the tax increase be less than 2%). See a more complete description of SUTA Dumping in Part A of this Handbook, and in Fact Sheet No. 114 in Part I of this Handbook.

Conclusion

We at the UIA hope that the information provided in this booklet is clear and assists employers in understanding, and complying with, the reporting and record-keeping requirements of the Michigan Employment Security Act, and in being aware of the administrative and criminal penalties that can be imposed under the law.

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UIA 1772
Rev. 8/12

Rick Snyder
GOVERNOR

State of Michigan
Department of Licensing and Regulatory Affairs
Unemployment Insurance Agency
3024 W Grand Blvd, Suite 11-500, Detroit, MI 48202
www.michigan.gov/uia • (855) 484-2636 • (313) 456-2300

Authorized By
MCL 421.1 et seq.

Steve Arwood
DIRECTOR

Discontinuance or Transfer of Payroll or Assets in Whole or Part

Information shown on this report is used to determine termination of liability under Section 24 of the *Michigan Employment Security (MES) Act*. Completion of this report is required even though you may not be currently employing any workers. Failure to provide this information may result in a determination being made based on information available to the Agency. Penalties may be imposed under Section 54(a) or 54(b) of the *MES Act* for an intentional failure to comply with State law.

Employee Leasing companies must complete a separate Form UIA 1772 for each client entity terminating its contract.

PART 1: EMPLOYER INFORMATION

1. Name and Address used prior to discontinuance or transfer of payroll or assets in whole or part.
a) Name: _____ UIA Employer Account Number (EAN): _____
b) Business Address: _____
c) Telephone: (___)_____ Federal Employer ID (FEIN): _____

2. **Current name and address <u>used since</u> discontinuance or transfer of payroll or assets in whole or part.**
a. Name: _____
b. Business Address: _____
c. Telephone:(_____)_____

3. **Provide the following information concerning the owner(s), partners, corporate officers, LLC member(s), etc., of the organization and the person(s) who safeguard the company's books and records. If necessary, please attach additional pages to provide information on all owners.**

a. Name: _____ SSN: _____ Birth Date: _____
Address: _____
Title: _____Telephone: (___)_____ Record Holder: ☐ Yes ☐ No

b. Name: _____ SSN: _____ Birth Date: _____
Address: _____
Title: _____Telephone: (___)_____ Record Holder: ☐ Yes ☐ No

c. Name: _____ SSN: _____ Birth Date: _____
Address: _____
Title: _____Telephone: (___)_____ Record Holder: ☐ Yes ☐ No

d. Name: _____ SSN: _____ Birth Date: _____
Address: _____
Title: _____Telephone: (___)_____ Record Holder: ☐ Yes ☐ No

e. Name: _____ SSN: _____ Birth Date: _____
Address: _____
Title: _____Telephone: (___)_____ Record Holder: ☐ Yes ☐ No

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UIA 1772

(Rev. 8-12)

4. **Reason(s) for discontinuance or transfer of payroll or assets in whole or part (check one or more).**

☐	Sale	☐	Reorganization	☐	New Partnership
☐	Lease	☐	Bankruptcy	☐	Incorporation
☐	Foreclosure	☐	Dissolution/ Discontinuance	☐	No Employees
☐	Merger	☐	Death	☐	Employee Leasing Company or Professional Employer Organization (PEO) (attach copy of agreement)

☐ Client Entity terminated its contract with an employee leasing company or PEO.

☐ Other (explain):_____

5. **Provide the following information:**

a. Date of discontinuance of payroll in whole or part: _____

b. Date of last payroll : _____

6. **Provide the following information:**

a. Number of business locations in Michigan: _____

b. Number of business locations in Michigan that have been discontinued: _____

c. Did you discontinue all employment in Michigan? ☐ Yes ☐ No
If not, how many employees were retained? _____

d. Have you continued or resumed business in Michigan? ☐ Yes ☐ No

If you answered yes, please complete the section below if the information differs from what was provided in question 1.

_____ LEGAL NAME OF BUSINESS

_____ ADDRESS

_____ NATURE OF BUSINESS

_____ DATE(S) RESUMED BUSINES

7. **Employer Leasing Company (ELC) or Professional Employer Organization (PEO) must provide applicable information.**

a. Was the client entity's business discontinued? ☐Yes ☐No
Business name and FEIN of client entity: _____

b. Business/mailing address of client entity: _____

c. Number of employees leased to client entity immediately before the discontinuance or transfer:_____

d. Gross payroll of client entity immediately before the discontinuance or transfer: _____

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Complete Part II and part III only if your business was sold or transferred.

PART II: Please provide the name(s) of the person(s)who acquired the Michigan assets, Michigan organization, Michigan trade, or Michigan business. ("Acquired" refers not only to assets purchased, but also assets acquired by rental, lease, use, inheritance, merger, mortgage, foreclosure, gift, or other transfer. If more than one individual or organization is involved, answer all parts of this question for each purchaser, using separate sheets. If preferred, additional forms will be supplied upon request.)

New Owner's Name	New Owner's UIA Account Number or FEIN, if known.
New Corporate Name or DBA	Area Code & Telephone Number
Current Street Address (not a P.O. Box)	
City, State, ZIP Code	

PART III: ACQUISITION INFORMATION: Please complete this section carefully. It might be necessary to consult your accountant, attorney, or financial advisor for a complete valuation of your entire business to accurately determine the percentage of transfer for each category below.

1. Did the above acquire all, part, or none of the **assets** of any former **business?** ☐ All ☐ Part What Percent? % Date Acquired ☐ None
2. Did the above acquire all, part, or none of the **organization** (employees/payroll/personnel) of any former business?
   a. If all or part, indicate the percent and date acquired. ☐ All ☐ Part What Percent? % Date Acquired ☐ None
   b. Did the above acquire all or part of the employees/payroll/personnel of any former business by leasing any of those employee/payroll/personnel? ☐ Yes ☐ No (If yes, please provide a copy of your lease agreement)
3. Did the above acquire all, part, or none of the **trade** (customers/accounts/clients) of any former business? ☐ All ☐ Part What Percent? % Date Acquired ☐ None
4. Did the above acquire all, part, or none of the former owner's Michigan **business** (products/services) of any former business? ☐ All ☐ Part What Percent? % Date Acquired ☐ None
5. Was your Michigan business described in 1-4 above being operated at the time of acquisition? If no, enter the date it ceased operation. ☐ Yes ☐ No Month Day Year
6. Is the above conducting/operating the Michigan business acquired from you? ☐ Yes ☐ No
7. Is the above substantially owned, merged, or controlled in any way by the same interests who owned or controlled the organization, business or assets of your business? ☐ Yes ☐ No
8. Did the above hold any secured interest in any of the Michigan assets acquired from you? ☐ Yes ☐ No If yes, enter balance owed $
9. Please enter the reasonable value of the Michigan organization, trade, business or assets sold or transferred?

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Upon discontinuance, disposition or transfer of all of your Michigan payroll and/or assets, taxes become immediately due and payable, and your final Quarterly Tax Report must be filed within 15 days.

TERMINATION OF COVERAGE WHEN COMPLETE TRANSFER OF MICHIGAN BUSINESS IS INVOLVED. If you disposed of your Michigan business and the Agency finds that a total transfer of your experience account is required, your coverage will be terminated as of the transfer date. HOWEVER, should you have persons in your employ subsequent to the date on which your Michigan payroll and/or assets were transferred, you are required to notify this Agency immediately because you may be liable for taxes on your payroll regardless of the number of individuals in your employ.

DISCONTINUANCE OR PARTIAL TRANSFER OF MICHIGAN BUSINESS DOES NOT TERMINATE YOUR COVERAGE. Even though you may have disposed of a part, or all of your Michigan business in separate transactions, or discontinued all Michigan operations, you are required to continue to report and pay taxes on any wages paid to Michigan workers whom you may employ until such time as your coverage is legally terminated.

As prescribed in RuleR 421.115 of the *Michigan Administrative Code*, all documents, agreement or records describing the transactions indicated in Part 1 Item 4, Part II, and Part III above, should be kept available for examination by this Agency for six years.

CERTIFICATION

I certify that the information contained in this report is accurate and complete to the best of my knowledge and belief. I understand that if I fail to provide accurate and complete information concerning the discontinuance of a business or the transfer of payroll or assets of a business, I may be subject to penalties of up to four times the amount of resulting unpaid unemployment taxes and imprisonment for up to five years.

Date: _____ Name: _____

_____ _____

(Phone Number w/Area Code of Person Signing this Report) (Title)

Directions for Submitting Form:

You may submit this Form through your MiWAM account at www.michigan.gov/uia or you may send a completed UIA Form 1772 via fax to: (313) 456-2130 or email to: EmployerLiability@michigan.gov. If you are mailing this Form, please send it to the following:

UNEMPLOYMENT INSURANCE AGENCY
Tax Office
P.O. Box 8068
Royal Oak, Michigan 48068-8068

QUESTIONS: If you have any questions, please contact the Office of Employer Ombudsman (OEO) at 1-855-4UIAOEO (855-484-2636), 313-456-2300, or by e-mail at OEO@michigan.gov

LARA is an Equal Opportunity Employer/Program.

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Form UIA 1763 - Reimbursing Employer Billing for Benefit Charges

UIA 1763
(Rev. 6-11)

Authorized by MCL 421.13c(1)

State of Michigan
LICENSING AND REGULATORY AFFAIRS
Unemployment Insurance Agency
Tax Office - Reimbursing Unit
3024 W. Grand Blvd., Suite #11-500
Detroit, Michigan 48202
www.michigan.gov/uia

RICK SNYDER,
GOVERNOR

REIMBURSING EMPLOYER BILLING
FOR BENEFIT CHARGES

(313) 456-2085
(313) 456-2132 FAX

Mailing Date:
UIA Employer Account No.:

Balance Forward*:
As of (date printed):

Accrued Interest:
As of due date

Benefit Charges For
(Quarter/Period Ending):

Reimbursing employers are required to pay, in lieu of tax payments, an amount equal to the full amount of regular benefits, training benefits, and the amount of extended benefits not paid for by the Federal Government. The benefit charges above summarize the Weekly Charges or Credit Notices (Form UIA 1136) and Quarterly Charges or Credit Notices (Form UIA 1770) previously mailed to you.

Balance Due:	**Retain For Your Records**
Payment Due Date:	Check Number:
Daily Interest Accural:	Date:
If there is a Credit Balance, no payment is necessary.	Amount Paid $

Note: As provided in Section 54 of the MES Act, a $25.00 Wage Report Penalty will be assessed to your account for failure to timely submit the Wage Detail Report, Form UIA 1017, and a $10.00 Payroll Report Penalty will be assessed to your account for failure to timely submit the Reimbursing quarterly Payroll Report, Form UIA 1020R. This amount, if applicable, is reflected in the Balance Forward* indicated.

***BALANCE FORWARD INCLUDES PAYMENTS AND INTEREST POSTED AS OF DATE INDICATED**
This billing is due and payment upon receipt, and is past due if unpaid after the due date on this bill.
UNEMPLOYMENT INSURANCE AGENCY PAYMENT INSTRUCTIONS:

1. Make your check or money order payable to **UNEMPLOYMENT INSURANCE AGENCY.**
2. Place your seven digit employer account number on the face of your check or money order.
3. Detach and return the payment statement below, with your payment in the enclosed envelope.

Cut here and return bottom portion with payment.

UIA 1763-1

UNEMPLOYMENT INSURANCE AGENCY PAYMENT NOTICE
LARA is an Equal Opportunity Employer/Program.
DO NOT SEND CASH

UIA Employer Account No.:

Amount Due	Amount Enclosed
$	$

Period Ending:

MAIL TO: **UNEMPLOYMENT INSURANCE AGENCY**
P.O. Box 33598
Detroit, Michigan 48232-5598

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Form UIA 1710 - Notice to All Employees

Notice To All Employees:

Information about Unemployment Benefits

This employer is covered by the . . .

MICHIGAN EMPLOYMENT SECURITY ACT

Unemployment benefits are payable to qualified and eligible workers of this employer through Michigan's Unemployment Insurance Agency (UIA).

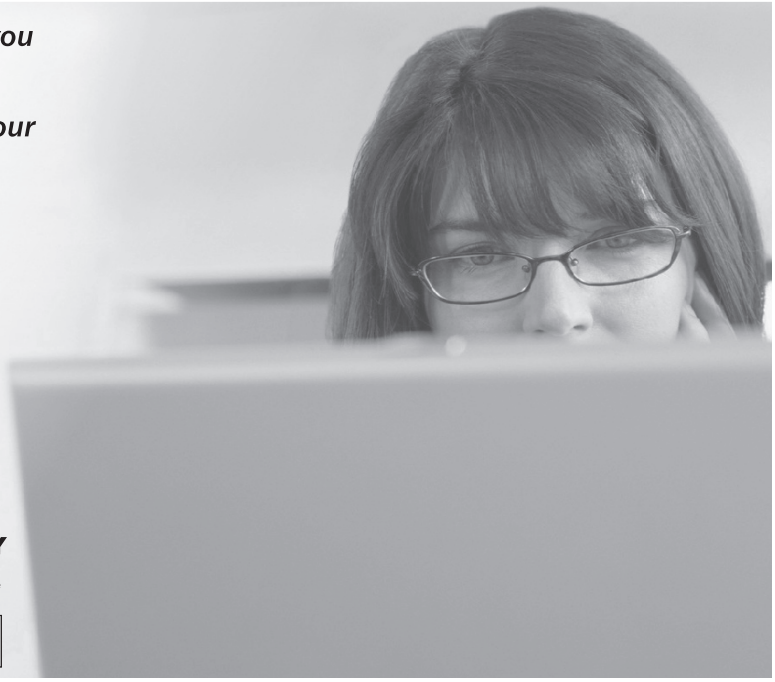
How to file an unemployment claim:

If you become unemployed, you can file your new unemployment claim or reopen an established claim by:

Internet - file online at UIA's website:
www.michigan.gov/uia

Telephone - call UIA's toll free claims line:
1-866-500-0017

New Payment Options: *When you file for unemployment benefits, you will choose how you want to receive your benefit payments. You can select a* ***debit card*** *or* ***direct deposit*** *into your checking or savings account. For more information about these payment options, visit UIA's website at www.michigan.gov/uia.*



LICENSING AND REGULATORY AFFAIRS
CUSTOMER DRIVEN. BUSINESS MINDED.

STATE OF MICHIGAN
UNEMPLOYMENT
INSURANCE AGENCY

LARA is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

State of Michigan, Department of Licensing and Regulatory Affairs, Unemployment Insurance Agency; Authority: Michigan Administrative Code, Section R 421.105; Quantity: 20,000; Cost: $600 (3¢ per copy); Paid for with federal funds.

UIA 1710 (Rev. 6-11)

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Form UIA 1711 - Unemployment Compensation Notice to Employee

UIA 1711
(Rev. 06-12)

State of Michigan
Department of Licensing and Regulatory Affairs
UNEMPLOYMENT INSURANCE AGENCY
www.michigan.gov/uia

Authorized by
MCL 421.1, et seq.

UNEMPLOYMENT COMPENSATION NOTICE TO EMPLOYEE

Keep This Form

Please ensure that you read both sides of this form prior to filing a claim for unemployment benefits. If you become unemployed, this information may help to determine your unemployment benefit entitlement.

When to file a claim for unemployment benefits:

A claim for unemployment benefits begins the week it is filed. Therefore, you should file your claim for benefits during your first week of unemployment.

To receive unemployment benefits, you must be eligible and qualified. You must:

- File a claim and report for benefits as directed by the Unemployment Insurance Agency (UIA).
- Register for work as directed by the UIA.
- Have sufficient earnings in the past 18 months.
- Be able to work.
- Be available for work. You must immediately inform the UIA and all base period employers of any changes to your contact information (mailing address and telephone number) and respond to all UIA requests to update your contact information.
- If directed by the UIA, appear at a specified location provided in a mailed notice for an evaluation of your eligibility for unemployment benefits.
- If requested by the UIA, provide a statement of wages (wage affidavit) for purposes of calculating your unemployment benefits as state law requires that you produce evidence of those wages (pay stubs, W-2, employer payroll records, etc.).
- Be actively engaged in seeking work.
- Beginning with benefit years effective January 1, 2013, conduct a systematic and sustained work search effort by submitting your work search efforts as directed by the UIA.

To file a claim for benefits, you will need the following:

1. This form and any similar forms you received from any employer in the past 18 months, or pay stubs with employer name, employer payroll record, or W-2 Form.
2. Your Social Security number, complete mailing address (zip code), telephone number, and county of residence.
3. Your driver's license, state identification card, or your MARVIN Personal Identification Number from a previous claim.
4. Your Alien Registration Number and the expiration date of your work authorization if you are not a citizen or national of the United States.
5. Name(s) of employer(s), date(s) of employment, and reason for separation from each employer you worked for in the past 18 months.
6. Gross earnings since you were last separated from your most recent employer.
7. Gross earnings from all of your previous employers during the past 18 months.
8. Information from your financial institution if you choose to have your benefits directly deposited into your checking or savings account.

Filing Claims by Telephone

Day and Time to File Claims by Telephone

If the last two digits of your Social Security Number are:

00 through 15	Monday	8:00 a.m. - 12:30 p.m., ET
16 through 33	Monday	12:30 p.m. - 4:30 p.m., ET
34 through 48	Tuesday	8:00 a.m. - 12:30 p.m., ET
49 through 66	Tuesday	12:30 p.m. - 4:30 p.m., ET
67 through 81	Wednesday	8:00 a.m. - 12:30 p.m., ET
82 through 99	Wednesday	2:30 p.m. - 4:30 p.m., ET

If you miss your assigned day and time, claims are accepted on Thursday or Friday from 8:00 a.m. - 4:30 p.m. ET.

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UIA 1711
(Rev. 06-12)
Reverse Side

Filing Claims on the Internet

You may file your new, additional, or reopened claim on the UIA website at www.michigan.gov/uia. Select "*Filing Unemployment Claims Online*" link. You may file your claim through the Internet if ALL of the following requirements are met:

- You have worked under only one Social Security number.
- You have not filed a claim for unemployment benefits against another state during the past 12 months.
- You have not claimed weeks prior to the filing week.
- You have been employed by at least one, but not more than 19, Michigan employer(s) during the past 18 months.

Before filing online, ensure you have the information from Items 1 through 8 (listed above), a pen or pencil, and paper to make notes of information you will receive from the UIA. You may wish to print a copy of Form UIA 1538, *What you need to file a Unemployment Claim,* from the UIA website at www.michigan.gov/uia. You can write the information you need on this form so that it is available when you file your claim.

The Internet Filed Claim system is available Monday through Saturday, 7:00 a.m. to 7:00 p.m. ET, regardless of the last two digits of your Social Security number.

If you have a problem or question about your claim, you can call the UIA at 1-866-500-0017 (TTY customers use 1-866-366-0004). UIA staff is available to assist you from 8:00 a.m. to 4:30 p.m., ET, Monday through Friday.

To Be Completed by the Employer

Rule R 421.204 of the Michigan Administrative Rules requires that a completed copy of this form, or an equivalent written notice, be given to each employee before, or when he/she is separated from your employ. A $10.00 penalty for non-compliance with this rule may be imposed by the UIA. Please complete the following information in the spaces below.

Your 10-digit UIA Account Number:

Your 9-digit Federal Identification Number:

Employer's Name with **Doing Business As (DBA)**, and complete mailing address where wage and separation information is available for the worker listed on this form.

Name _____ DBA _____

Address for Employment _____ City, State, Zip Code _____

Name of Contact Person _____ Telephone Number _____

Reason for Separation _____

Employers with questions may contact the Office of Employer Ombudsman (OEO) at 1-855-484-2636, 1-313-456-2300, or OEO@michigan.gov.

LARA is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

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27-B

Form UIA 1136 - Statement of Unemployment Benefits Charges or Credits

UIA 1136
(Rev. 12/11)

State of Michigan
Department of Licensing and Regulatory Affairs
Unemployment Insurance Agency
www.michigan.gov/uia

Authorized by
MCL 421.1, et seq.

LARA
LICENSING AND REGULATORY AFFAIRS
CUSTOMER DRIVEN. BUSINESS MINDED.

STATEMENT OF UNEMPLOYMENT BENEFITS CHARGED OR CREDITED TO EMPLOYER'S ACCOUNT

Page No.: 1

Norelmach Company
55555 Some Avenue
City, State 48708-8026

MAIL DATE: 03/18/2004

UIA Employer Account No.: 0000000 000
Employer Name: Norelmach Company

Unemployed Worker SSN	Unemployed Worker Name	BO NBR	Payment/ Adjustment Date	CERT WK END DATE	AD TYP	CHG TYP	UNEMPLOYED WORKER EARNED INCOME	TOTAL
333-33-3333	J. Doe	021	03/03/2004	02/21/2004	01	REG	0.00	201.00
333-33-3333	J. Doe	021	03/03/2004	02/28/2004	01	REG	0.00	201.00

TOTAL TO ACCOUNT 0000000 000
FOR WEEK ENDING 03/06/2004 **402.00**

LAST PAGE FORM 1136

In accordance with Section 20(f) of the MES Act, "For benefit years beginning after the conversion date prescribed in section 75, if benefits for a week of unemployment are charged to 2 or more base period employers, the share of the benefits allocated and charged under this section to a contributing employer shall be charged to the nonchargeable benefits account if the claimant during that week earns renumeration with that employer that equals or exceeds the amount of benefits charged to that employer."

THIS IS NOT A REQUEST FOR PAYMENT - SEE IMPORTANT INFORMATION ON REVERSE SIDE

LARA is an equal opportunity employer/program.

sample

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UIA 1136
(Rev. 12/11)
Reverse Side

STATEMENT OF AUTHORITY AND RIGHT OF PROTEST: THE UNEMPLOYMENT INSURANCE AGENCY (UIA) IS REQUIRED BY SECTION 421.21(a) OF THE MICHIGAN EMPLOYMENT SECURITY (MES) ACT TO PROVIDE EMPLOYERS WITH STATEMENTS SUMMARIZING THE TOTAL BENEFITS CHARGED AGAINST AN EMPLOYER'S ACCOUNT. If you disagree with these charges and/or credits, you may request a redetermination in writing by mail or fax. To be filed on time, such request must be received by the UIA within thirty (30) calendar days after the MAIL DATE shown on the front of this form, or if such 30th day is a Saturday, Sunday, legal holiday, or Agency non-work-day, by the next day which is neither a Saturday, Sunday, legal holiday, nor Agency non-work day. Good cause may be considered for late protests.

INSTRUCTIONS FOR FILING A REQUEST FOR REDETERMINATION: A request for a redetermination regarding an unemployed worker's eligibility for unemployment benefits (charges) and/or credit adjustments should be directed to the address or to the fax number listed below. Refer to the MAIL DATE as shown on the front of this form in your request for redetermination. When the protest involves individual charge(s) and credits(s), include the unemployed worker's name, social security number, the employer's account number, date payment or adjustment was issued, week ending date involved, and the amount of the charge or credit. In addition, the reasons for disagreeing with the charges or credits should be stated. For information or assistance with questioned benefit payments or adjustments, contact our Employer Customer Relations Hotline at 1-800-638-3994 (TTY callers use 1-866-366-0004).

ATTENTION CONTRIBUTING EMPLOYERS: If the wages you paid an unemployed worker for any of the week(s) listed on the front of this form equal or exceed your charge please notify the UIA in writing so your account may be credited. Note: This only applies if two or more employers have been charged. See Section 20(f) of the MES Act.

ALL REQUESTS MUST BE COMPLETED IN BLACK INK

MAIL OR FAX REQUEST FOR REDETERMINATION TO:
UIA P.O. Box 169 Grand Rapids, MI 49501-0169
Fax: 1-517-636-0427

NOTE: The cost of Extended Benefits paid from 1-25-09 through 2-21-09 will be shared 50/50 by the federal government and Michigan employers. Effective 2-22-09, the American Recovery and Reinvestment Act of 2009 established that the federal government will pay 100% of the cost of EB. Government entities and Indian tribes and tribal units are charged 100% of the cost of EB regardless.

KEY ADJUSTMENT/PAYMENT (ADTP) CODES ON LISTING OF DETAIL CHARGES AND CREDITS

01 - NORMAL EMPLOYER CHARGE FOR BENEFITS PAID TO UNEMPLOYED WORKER
04 - NORMAL EMPLOYER CHARGE/CREDIT ADJUSTMENT
06 - CHARGES PREVIOUSLY HELD IN 20A SUSPENSE ARE BEING RECHARGED TO YOUR ACCOUNT
08 - CREDIT DUE TO RESTITUTION
17 - CHARGE FOR BENEFITS PAID BY ANOTHER STATE ON COMBINED WAGE CLAIM
20 - CREDIT DUE TO RESTITUTION
03 - OFFSET TYPE ADJUSTMENT
05 - CHARGES HELD IN 20A SUSPENSE PENDING DISPOSITION OF A PROTEST
07 - YEAR OLD VOID
14 - RESTITUTION ADJUSTMENT
18 - ADJUSTMENT OF BENEFITS PAID BY ANOTHER STATE ON COMBINED WAGE CLAIM
21,23,24 - RE-CHARGE DUE TO CANCELLATION OF RESTITUTION

Sample

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Form UIA 1801 - Notice of Hearing

UIA 1801
(Rev. 12/11)

State of Michigan
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

Authorized by
MCL 4211, et seq.

Mailed or Personally Served On:

NOTICE OF HEARING

Appeal No:

NOTICE OF HEARING

PLEASE READ THE IMPORTANT INFORMATION ON THE BACK OF THIS NOTICE

Hearing Date: Time:

Place:

Issue(s) Involved In Dated

IMPORTANT

Please be on time for this hearing. You must be prepared to present your case. Postponements will only be granted at the discretion of the Judge, and if your request is timely.

OTHER IMPORTANT INFORMATION ON REVERSE SIDE OF THIS NOTICE. AUTHORITY AND JURISDICTION MCL 421.33

sample

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Purpose of this chapter

The purpose of this chapter is to explain, in plain English, how employers are taxed under Michigan's unemployment insurance system, created by the Michigan Employment Security Act.

This chapter only summarizes the provisions of a rather complex law. It is not intended to cover every aspect of unemployment taxes, and is not intended to substitute for the law itself. We hope that by understanding the tax system better, you may be better able to control some of your unemployment insurance costs.

This chapter has been prepared as part of a general guide to unemployment taxes and benefits in the State of Michigan. It does not have the force or effect of law or regulation. It is written to assist in understanding the *Michigan Employment Security Act* which is the unemployment compensation law in Michigan.

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What is Unemployment Insurance?

Unemployment insurance is a form of social insurance, administered in Michigan by the Unemployment Insurance Agency (UIA). It is designed to provide unemployment benefits to help workers replace some of their lost wages after they have become unemployed through no fault of their own, such as by a layoff.

The benefits allow workers enough time to look for a job reasonably similar to the one they had. It also helps an employer by keeping experienced workers in the area and available to return to the employer when times get better. Finally, it helps the entire community during an economic downturn, because unemployment benefits are spent locally to buy food, clothing, and other necessities of life that local merchants sell.

Unemployment insurance is like fire insurance you carry on your building, or health insurance you carry on yourself, your family, and your employees. Insurance is a fact of business life. It protects against the uncertainties of the future. Unemployment insurance works the same way, except that it is not optional, and the "premiums" you pay are in the form of a tax.

Employers pay either "contributions" or "reimbursements"

The UIA keeps an "account" for each employer that pays Michigan unemployment taxes. The account keeps track of taxes paid and benefits charged, but it is a bookkeeping account only, and does not contain actual dollars. In most cases, when a worker becomes unemployed from the employer and collects unemployment benefits, a charge is made to the employer's account. When the employer pays taxes, the account is credited.

There are two methods for employers to pay unemployment insurance. Private, for-profit employers, which include most employers, are called "contributing" employers. Each calendar quarter, a contributing employer files a report with the UIA, Form UIA 1028, *Employer's Quarterly Wage/Tax Report*. Employers use the report to compute and pay their unemployment insurance tax and to report quarterly wages. The tax is based on a formula that uses the employer's past experience with the unemployment of its workers, and the size of its payroll as a measure of its potential risk of unemployment.

The second method of paying for unemployment insurance is available only to units of government, Indian tribes, tribal units and non-profit organizations. Generally, a non-profit organization is one whose purpose is either educational, religious, cultural, or scientific (as defined in Section 501(c)(3) of the Internal Revenue Code), and is exempt from federal income taxes under Section 501(a) of that Code. This second method is called the "reimbursing" method and the employers who use it are "reimbursing" employers.

A non-profit organization can file a written request with the UIA to become a reimbursing employer. A governmental unit or Indian tribe is automatically a reimbursing employer, unless it requests, in writing, to be a contributing employer. An Indian Tribe is a reimbursing employer, but may elect to be contributing. A non-profit organization wishing to switch from the contributing to the reimbursing method must notify the UIA within 30 days of being found to be a liable employer, or not less than 30 days before the beginning of the calendar year in which the change will be effective.

A reimbursing employer does not pay quarterly taxes to the UIA. But if unemployment benefits are paid to former employees, the reimbursing employer must repay the UIA, dollar-for-dollar, for unemployment benefits paid out.

Who is required to pay unemployment insurance taxes?

Unemployment insurance taxes are required to be paid by an employer that has been determined by the UIA to be a **liable employer**. (Before being determined to be a liable **employer**, a company is known as an **employing unit**.)

Generally, a liable employer is an employing unit that either (1) employed 1 or more employees in each of any 20 different weeks in a calendar year (i.e., a January 1 through December 31 year); or (2) paid $1,000 or more in payroll in a calendar year to employees covered by unemployment insurance; or (3) acquired the trade, organization (i.e., all employees), or business, or at least 75% of the assets of a liable employer. (This last situation is called successorship and is discussed in more detail later in this Handbook.)

The requirements are different for employers of agricultural or domestic workers. An employer that pays a total of $1,000 or more, in cash, to all its **domestic** employees (such as housekeepers or babysitters) in any calendar quarter in the current or preceding year, is a liable domestic employer.

An employer that (1) pays a total of $20,000 or more, in cash, to all its **agricultural** workers in a calendar quarter, or (2) employs 10 or more agricultural workers in at least 20 different weeks, in the current or preceding year, is a liable employer. Agricultural employees furnished by a crew leader are employees of the crew leader. Agricultural workers include, in general, those who raise food or horticultural crops and those who raise or tend animals for use as a product source.

If you are not now registered with the UIA as an employer, and you believe you may fall into one of the categories described above, you should request from the UIA Form UIA 518, *Michigan Business Taxes Registration Booklet*. It is available on our website (www.michigan.gov/uia) or from the UIA Tax Office, Cadillac Place – Suite 11-500, 3024 W. Grand Blvd., Detroit, Michigan 48202.

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Which employer pays the taxes in special employment relationships?

1. EMPLOYEE LEASING COMPANY (ELC)

A. Definitions

1) An "Employee Leasing Company" (ELC) is also known as a "Professional Employer Organization" (PEO). The ELC is an independently established business entity that provides employees to a client entity, pays the wages of those employees, reports and withholds applicable taxes from the wages of those employees, administers the benefits for those employees, and provides whatever other payroll, human resources, and other management assistance services that are agreed upon with its client entity.

   The employees provided to the client entity may have previously been employed directly by the client entity. The relationship between the client entity and ELC is intended to be long-term or continuing, rather than temporary or intermittent, and the employees are, generally, not subject to re-assignment. Also, a majority of the workers at a client entity's worksite, or a majority of workers in a specialized group within that workforce, consists of employees assigned by the leasing company.
2) A "Client Entity," also known as a "Work-site Employer," is the business entity that contracts with an Employee Leasing Company for the purpose of providing to the client entity employees and related services.
3) A "Captive Provider" is an ELC that limits itself to providing services and employees to only one client entity and that entity's subsidiaries and affiliates, and does not hold itself out as available to provide leasing services to other client entities that do not share an ownership relationship with the ELC.

B. Criteria for Recognition of ELC Status in Michigan

An ELC that meets the requirements of Section 41 of the *Michigan Employment Security Act* is a "liable" employer and responsible to pay unemployment taxes on the employees leased to the client entity. For unemployment tax purposes in Michigan, the ELC, and not the client entity, will be considered the employer of the leased employees if all of the following conditions are met:

1) An employing entity representing itself to be an ELC must comply with the requirements of Administrative Rule 190 to be considered by the Agency to be an ELC for purposes of the *Michigan Employment Security Act* and this rule. If the Agency determines the entity is not an ELC within the meaning of this rule, the payroll of workers at the client entity will be (re)assigned to the client entity, and the client entity's prior experience rating will be reinstated; and
2) Administrative Rule 190 requires that for an ELC to be the employer of the leased employees, the ELC must administer all payroll and benefit services for the client entity, pay the wages of the worker, and have the right both in contract and in fact to hire, promote, reassign, discipline, and terminate the leased workers. These rights cannot be delegated by the ELC to the client entity. The client entity's officers may be considered employees of the leasing company when they are acting as operational managers, or performing services, for the client entity; and
3) The ELC retains the right to exercise direction and control over the daily activities of the workers or can delegate such right to the client entity; and
4) Neither the ELC, nor any individual owner of the ELC, nor owners of the ELC in the aggregate, has an ownership interest in excess of 20% in the client entity, including its subsidiaries and affiliates, nor does the client entity have in excess of a 20% ownership interest in the ELC; and
5) Neither the ELC nor any individual owner or other employee of the ELC has direct or indirect control over the client entity; and
6) The ELC does not limit itself to providing services and employees to any one client entity, including that entity's subsidiaries and affiliates, but holds itself out to the public in general as available to provide such leasing services. It shall not be a "captive provider" of employee services as that term is defined in this rule.

Operational Requirements with which the ELC must comply

1) The ELC is responsible for maintaining records pertaining to the employees of the ELC who perform services for the client entity. The ELC is also responsible for making such records available to the Agency, on request.
2) The ELC must promptly provide the Agency, on request, with a copy of the employee lease agreement with any of its client entities, and with a list of the ELC's client entities.
3) The ELC must comply with federal, state, and local employment and business registration laws, regulations, and ordinances. If the ELC does not so comply, the Agency may decline or cease to recognize an employing entity as an ELC.
4) An ELC that became a liable employer on January 1, 2011 or later must file, online, a single quarterly wage/tax report on behalf of each of its client entities ("client-level reporting"), using the UIA account number of each client entity to report the tax and wage information individually for each client entity. An ELC that was a liable employer before January 1, 2011 must comply with this "client-level reporting" requirement not later than January 1, 2014.
5) The ELC must notify the UIA within 30 days of the addition or deletion of any client entity.
6) A client entity of an ELC that begins reporting by "client-level reporting" will resume its own former unemployment tax rate if it has been a member of an ELC for less than 8 calendar quarters (12 calendar quarters beginning in 2014); it will become an employer in the first year of liability if it has been 8 quarters or more (12 calendar quarters beginning in 2014), since it was a liable employer outside of an ELC.
7) An ELC must provide the mailing address and the physical address of each of its client entities.
8) The FUTA tax credit will be certified by the UIA for the client entity, unless an ELC completes and provides to the UIA, by November 30, for the certification provided by UIA to the IRS the following January 31, a form attesting to the payment of wages to the leased employees, on a form provided by the UIA.

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2. TEMPORARY HELP FIRM (THF)

A. Definitions

A "Temporary Help Firm" (THF) is an employer whose primary business is to provide a client entity with the temporary services of one or more individuals under contract with the employer. Employment with a temporary help firm is characterized by a series of limited-term assignments of an individual to a client entity based on a contract (not necessarily a written contract) between the THF and the client entity. The assignment is usually for a specified period. A separate employment contract (not necessarily a written contract) exists between the THF and each individual it hires as an employee. The employee of the THF is subject to reassignment by the THF. Completion of an assignment for the client entity by an employee employed by the THF does not, in itself, terminate the employment contract between the THF and the individual.

B. Liability for Unemployment Taxes

A THF that meets the requirements of Section 41 of the MES Act is a "liable" employer and must pay unemployment taxes on its employees. Some of these types of firms may call themselves leasing companies but for purposes of this rule they fall within the definition of a THF.

3. PAYROLLING

A. Definitions

"Payrolling" is the practice of establishing a related or associated company for the purposes of reassigning the employee payroll functions from one business entity to the related business entity, usually to take advantage of the lower unemployment tax rate of the related business. Direction and control of the involved employees are not transferred along with the payroll to the related business entity, though, and therefore the related entity is not an employee leasing company.

B. Liability for Unemployment Taxes

The related business entity to which the payroll is assigned will therefore not be considered the "employer" for unemployment insurance tax purposes because the entity for which services are performed is the actual employer which exercises direction and control over the employee.

4. COMMON PAYMASTER

A. Definitions

"Common Paymaster" is the arrangement by which different services performed by one individual are divided among two or more employers that are related through commonality of ownership, and the individual is compensated by one of those employers that acts as the "common paymaster." Under such an arrangement, different employers benefit from the services of the same individual, but these services are reflected in the experience rating of, and the payment of unemployment taxes by, only one of the employers.

Generally , entities are "related" if the entities are corporations that are members of a controlled group of corporations. If the corporations do not issue stock, then they are related if they share 50% or more of their directors or 50% or more of holders of the voting power to select the governing members. Corporations are also related if they share 50% or more of their officers, or if they share 30% or more of their employees.

B. Liability for Unemployment Taxes

The two or more related entities that compensate an individual may elect to have one of those entities act as the common paymaster of that individual. The unemployment tax would be paid on the first $9,500 of that employee's aggregate wages from all of the related entities. The related entity that acts as the common paymaster is the one with highest state unemployment tax rate from among the related entities for which the individual performs services.

Limited Liability Companies (LLCs) and Limited Liability Partnerships (LLPs)

In addition to the traditional ways businesses have been organized, such as sole proprietorships, partnerships, and corporations, some new business organizations have been developed, by statute, and become popular in recent years.

A Limited Liability Company (LLC) is an unincorporated business entity formed by one or more persons called "members." These members are identified in the LLC's Articles of Organization. A "person" can be an individual, a partnership, another LLC, a trust, an estate, an association, a corporation, a governmental entity, or any other legal entity. The LLC has the flexibility and tax advantages of a partnership, and the protection against personal liability of a corporation, yet is neither a partnership nor a corporation.

Under current IRS regulations various business organizations such as an LLC may choose to be taxed, for federal tax purposes, as a different entity, such as a corporation. For Michigan unemployment tax purposes, however, an LLC with two or more individual members will be taxed as a partnership. Members who perform services for such an LLC are not employees and the LLC will not be taxed on their services, nor will they be entitled to unemployment benefits. The LLC is responsible for payment of unemployment taxes on the services performed by its non-member employees.

Also, regardless of the election an entity might make for federal tax purposes, for Michigan unemployment tax purposes, an LLC with a single member who is an individual (rather than a corporation or other business entity) will be treated as a sole proprietorship. The single member in an LLC is not an employee and consequently the LLC is not responsible for paying unemployment taxes on services performed by the member, nor is the member entitled to unemployment benefits. A single-member LLC must pay unemployment taxes on services performed by its non-member employees as with any other business organization.

IRS regulations allow some business entities to be disregarded as the employer of its employees for federal tax purposes. Instead, the parent or owner organization of the disregarded entity reports wages and pays federal unemployment taxes on the services performed by the employees of the disregarded entity. Michigan unemployment law generally does not provide for disregarded entities. Each entity will be examined to determine its status under the

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Michigan Employment Security Act and will be required to report wages and pay taxes to an assigned account where the entity is determined to qualify as the employing unit. If the Agency determines that a business entity meets the definition of an employer under the *Michigan Employment Security Act*, and administrative rules, then that entity is responsible for reporting the wages and paying the unemployment tax on services performed by its employees.

A Limited Liability Partnership (LLP) is established by means of a "Registration Form." As with members of an LLC, partners in an LLP are not entitled to unemployment benefits and the LLP is not liable for the payment of state unemployment taxes on wages paid such individuals who perform services for the LLP. However, state unemployment taxes must be paid on wages paid for services performed by non-partners of the LLP.

Which employees are covered by Unemployment Insurance?

Most services performed by an employee for an employer are covered by unemployment insurance. Even if an employee is temporary or seasonal, or working during a probationary or training period, his or her services are probably covered by unemployment insurance. But employees who are covered by unemployment insurance will be entitled to unemployment benefits only if they earn enough wages, properly file a claim, and meet all other eligibility requirements.

Certain services performed by employees, however, will not qualify them for unemployment benefits, because the services are not covered services.

For example, services performed for a "for-profit" employer by a student as part of a program for academic credit, i.e., "co-op student," are not covered. Neither are services of high school students who are under 18 in the week they perform the service and who work restricted hours or during a school break following which they return to school.

Also not covered are services performed by a student for his or her school, if the worker is "primarily a student" at the school.

A worker for a religious organization is usually not covered, although some religious groups have volunteered to cover their workers in Michigan.

Salespeople who work for real estate brokers, or investment or insurance companies, and who are primarily paid on commission, are also not covered by unemployment insurance, nor are most home improvement or home remodeling salespersons.

Employees of public or non-profit schools are covered by unemployment insurance, but benefits are not payable to them between terms or during school holiday periods, if they are reasonably assured of returning to work following the break. The same applies to professional athletes between seasons.

All elected government officials and most appointed government officials are not covered for benefits based on their service in public office.

Some workers are regarded by employers not as employees but rather as independent contractors. In general, if a worker makes his or her services available to the public at large, and provides his or her own tools and works his or her own hours without any particular direction or control, the worker can be regarded as an independent contractor. But if the worker regularly performs almost all services for one company, and relies for his or her livelihood on performing work for that employer, he or she will probably be regarded by the UIA as an employee.

If the family business is a partnership or sole proprietorship, then a worker is not covered at all by benefits if the business is owned by the worker's child or spouse, or if the business is owned by the worker's parents and the worker is under age 18.

How much is the Unemployment Insurance Tax?

For a reimbursing employer, the amount of the liability will be equal to the amount of unemployment benefits paid out to former workers and charged to the UIA account.

For a contributing employer, the Michigan unemployment tax is determined by multiplying the first $9,500 of each covered employee's wages paid each calendar year, by the employer's own **unemployment tax rate**. Each calendar quarter, the employer will receive a Form UIA 1028, "*Employer's Quarterly Wage/Tax Report*" that requests information about payroll for the calendar quarter.

The form reminds the employer of the tax rate for that year, and requests payment of the tax on each employee who had not yet reached the $9,500 limit for the current year. It also asks for the total wages paid in the quarter on all employees, even if they have reached the $9,500 limit.

How is the unemployment tax rate computed?

For an employer that became liable before January 1, 2012, in the first two years of a business's liability, the tax rate is set by law at 2.7%, except for employers in the construction industry, whose rate in the first two years is that of the average employer in the construction industry, which is announced by the UIA early each year. In 2013, the average construction rate is 8.8%.

The rates in the third and fourth years of liability are partly based on the employer's own history of benefit charges and taxable payroll. This history is known as an employer's unemployment insurance **experience** (this will be more fully explained later).

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For an employer that was liable before 2012, in the first two years of liability the employer's rate was assigned at 2.7%; the third year of liability used 1/3 of the employer's Chargeable Benefits Component (CBC) + 1.8%; the fourth year used 2/3 of the employer's CBC + 1.0%; in the fifth year of liability and thereafter, the employer's calculated CBC, Account Building Component (ABC), and Nonchargeable Benefits Component (NBC) were used to calculate the rate.

For an employer that became liable in 2012, the first year's tax rate is an assigned rate of 2.7%; the second year's rate is 2.7% + 1/3 of the employer's calculated CBC; the third year's rate is 2.7% + 2/3 of the employer's CBC; in the fourth year and thereafter, the rate is the employer's CBC + ABC + NBC.

For an employer that becomes liable in 2013 and thereafter, the first year's tax rate is 2.7% + 1/3 of the employer's calculated CBC; the second year's rate is 2.7% + 2/3 of the employer's CBC; in the third year and thereafter the rate is the employer's CBC + ABC + NBC.

The Chargeable Benefits Component and the Account Building Component are affected by the employer's payroll, and the unemployment benefit charges to their account. Since these components reflect each company's **experience**, they are known as the experience components, and the entire taxing computation is known as experience rating. Generally, employers that have many former workers drawing unemployment benefits have higher tax rates, while employers that have few former workers drawing benefits have lower tax rates.

Michigan's unemployment tax system is one of the most highly "experience rated" systems in the country. This generally means that a Michigan employer's tax is more closely based on the actual benefit charges to its account, and the size of payroll, than employers in most other states.

Chargeable Benefits Component (CBC)

This component takes into consideration the amount of unemployment benefits charged to an employer's account over a 48-month period in 2012 and over a 36-month period in 2013 and thereafter. The calculation period ends the previous June 30.

For example, the 48-month period used to compute the tax rate for calendar year 2012 (as shown on the tax rate notice mailed in early 2012) would be the 48-month period ending June 30, 2011.

This amount is then divided by all of the **taxable payroll** during that same period of months. Taxable payroll is the first $9,500 of each covered employee's annual wages.

To summarize, the Chargeable Benefits Component is figured like this:

$$\text{CBC} = \frac{\text{48 (36) months of benefits paid}}{\text{48 (36) months of taxable payroll}}$$

The result is rounded to the next higher 0.1%. The Chargeable Benefits Component can range from zero to 6.3%.

Account Building Component (ABC)

Unemployment insurance, like any insurance system, uses past experience to try to achieve solvency for the insurance system. In the case of unemployment insurance, the Account Building Component serves this purpose. It does this by comparing an employer's individual UIA employer account (the Actual Reserve) with the statewide average UIA employer account. It then takes into consideration each employer's total payroll for the 12-month period ending the previous June 30.

Specifically, the calculation works as follows: subtract the Actual Reserve from the Required Reserve, multiply the result by "0.50" and then divide the result of all of the above by total payroll (not just taxable payroll) for the 12-month period ending the previous June 30. The yearly tax rate notice (Form UIA 1771), mailed in late December each year, shows the amount of the Required Reserve.

The Actual Reserve is all the money an employer has paid in taxes to the UIA (based on the ABC and CBC components) since the business began, minus all the benefits that have been charged to the employer's account since the business began. In other words, it is the "net amount" in an employer's UIA account, and may be either a positive (+) or a negative (–) number. If negative, the employer is known as a negative balance employer.

The Form UIA 1771 shows all taxes paid to the employer's account and all benefits charged against the account.

The Required Reserve is calculated by taking the employer's total payroll for the 12 months ending the previous June 30, and multiplying that amount by 3.75% (.0375).

To summarize, the Account Building Component is figured like this:

$$\text{ABC} = \frac{[(\text{Required Reserve}) - (\text{Actual Reserve})] \times 0.5}{\text{12 months of total payroll}}$$

The result is rounded up to the next higher one tenth of one percent (0.1%). The amount of the Account Building Component is limited, and cannot exceed 3.0%.

Because the Account Building Component is rounded up, a small **voluntary payment** to the UIA can make a difference in the employer's tax liability. It is generally not cost-effective to use a voluntary contribution to try to reduce the Account Building Component by more than 0.1%. Once made, a voluntary payment is irrevocable. If paid, it must be received by the UIA within 30 days of the mailing of the annual tax rate notice (Form UIA 1771) or within 120 days after the beginning of the calendar year, whichever is earlier. Please see the "Voluntary Payment Worksheet" on page 11-C of this Handbook, to see if a voluntary payment could benefit you.

Nonchargeable Benefits Component (NBC)

This component is the only one of the three components of the unemployment tax rate that does not reflect an employer's own experience. This component is generally a flat 1.0% for all contributing employers with five or more years in business. However, for employers with no, or very few, benefit charges the Nonchargeable Benefits Component (NBC) can be lower than the standard 1.0%. The following reductions apply:

- The NBC is 0.5% if the CBC calculates to less than 0.2%
- The NBC is 0.1% if the employer had no benefit charges in the 5 years ending the prior June 30.

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- The NBC is 0.09% if the employer had no benefit charges in the 6 years ending the prior June 30.
- The NBC is 0.08% if the employer had no benefit charges in the 7 years ending the prior June 30.
- The NBC is 0.07% if the employer had no benefit charges in the 8 years ending the prior June 30.
- The NBC is 0.06% if the employer had no benefit charges in the 9 years ending the prior June 30.

This component is used to pay the costs of unemployment benefits that are pooled among employers, *i.e.* benefits not charged directly against any specific employer's account and benefits charged against employers that have gone out of business.

For example, if a worker is disqualified for benefits for quitting a job or for being fired, and then earns the required amount to requalify, unemployment benefits may be paid to the worker if he or she later becomes unemployed. Those benefits will not be charged, however, to the account of the employer involved in that quit or firing. Instead, they are paid from the Nonchargeable Benefits Account.

Another example is a bankrupt employer whose former workers will receive benefits, even though the UIA probably will not receive further tax payments from the employer. Those benefits will be financed from the pooled reserves of all employers. The Nonchargeable Benefits Component provides the money for this pooled reserve.

For an employer whose business has existed for 4 years or more, or in 2013 and thereafter, for 3 years or more, the unemployment tax rate will equal the Chargeable Benefits Component plus the Account Building Component plus the Nonchargeable Benefits Component. The lowest possible rate is .06%.

Solvency Tax

If the UIA has to borrow money from the federal government to pay unemployment benefits, then a special solvency tax triggers on to pay the interest on the federal loan. It is assessed only on an employer with 5 or more years of liability whose Actual Reserve is a negative number. As mentioned before, these employers are called negative balance employers.

The solvency tax is calculated in the same way as the Account Building Component, but will not exceed the lesser of 1/4 of the calculated Account Building Component, or 2.0%. For most employers who pay in, it will be 0.75%.

It may benefit a negative balance employer to make a voluntary payment by the 30th day after the Rate Determination is mailed to bring the negative balance up to zero, to avoid the solvency tax. See Fact Sheet #121, "Solvency Tax".

Obligation Assessment

Because of a prolonged economic downturn in 2009 and 2010, Michigan's Unemployment Compensation Fund (Trust Fund) became insolvent and Michigan had to borrow from the federal government to pay unemployment benefits. As required under the *Federal Unemployment Tax Act* (FUTA), the credit employers received against their FUTA when they paid their state unemployment tax in full and on time was increasingly reduced, resulting in yearly increases in FUTA. Also, the federal government charged Michigan interest on those loans.

Michigan law was amended to allow the state to secure bonding to pay off the federal loans and interest, and *Michigan Employment Security Act* was amended to provide for an "Obligation Assessment" (OA) to pay off the bonds over a number of years.

The OA is applied on all contributing employers until the bonds are repaid. The bonds are scheduled for a 7-year repayment. The OA is structured to incorporate your experience rate and a base assessment of $42 per employee for 2012, and $63 for 2013 and beyond. The calculation for the OA takes into consideration an employer's tax rate, the OA ratio, a base assessment, and the taxable wage base. The OA ratio is computed by dividing the yearly amount required to retire the bonds by the estimated amount of revenue collected in 2012. This number will be set by the State Treasurer. See the calculations on pages 12 and 13.

What is the tax rate when a new owner acquires an existing business, or businesses merge?

If a new owner **acquires** the organization, trade, or business, or 75% or more of the assets, of an existing business, and the existing business was liable for the payment of Michigan unemployment taxes, then the new business becomes a successor employer. A business can acquire another business by a sale, or through foreclosure, lease, bankruptcy, or merger. The new owner is known as the successor, and this process of acquiring an existing business is called successorship.

The new or existing business also becomes responsible for the payment to the UIA of any unpaid unemployment taxes and interest owed by the old business, up to the reasonable value of the assets at the time of acquisition.

Either the purchaser or seller may request from the UIA, in writing, not less than 10 days before the transfer of business, a Clearance of Account as to any amounts owing to the UIA. Once the UIA gives this Clearance of Account to a person, it will stand behind the accuracy of such clearance.

By law, the seller must provide the buyer with certain unemployment insurance information at least two days before an offer to purchase is accepted. On a Form UIA 1027, *Business Transferor's Notice to Transferee of Unemployment Tax Liability and Rate,* which is provided by the UIA, the seller must give information about the business's unemployment tax rate, outstanding liabilities, and other details about jobless benefit payments and taxes. The seller must also list for the buyer employees laid off in the year before the sale and give the names of all current employees. The seller and his/her agent face civil and criminal penalties for failing to give the buyer this information.

If a new or existing business acquires 75% or more of the <u>assets</u> of another business, and within 12 months either continues the previous or a similar business, or uses the trade name or good will of the previous business, then there is a mandatory transfer of the

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unemployment tax experience, or history, of the previous business.

This tax experience, or history, includes benefit payments charged against the old business, and tax payments made by the old business. It is very important you understand that when a new employer inherits this experience, or history, from the old employer, this really means that the new business is inheriting all the ingredients of the employer's tax rate. This also means that if unemployment benefits are being paid to former employees of the old business, any benefits chargeable to the old business will, in fact, be charged to the new employer's account.

If a new or existing business acquires less than 75% of the assets of an existing business, then there can be a voluntary transfer of the unemployment experience of the previous business. This may be to the advantage of the new business if the previous business had a low unemployment tax rate.

In order to effect a voluntary transfer, the UIA must be notified of the transfer of assets within 30 days after the end of the calendar quarter in which the transfer occurred, and the UIA must receive a written request from both the old and new businesses requesting the transfer of the account.

If there is a transfer of business (whether mandatory or voluntary), a portion of the unemployment tax history of the previous employer, including payroll, unemployment tax payments, and benefit charges, will be merged into the account of the new employer and will become part of the new employer's experience. (As you can see, this is more involved than just computing the average rate of the two employers.)

The amount of the previous employer's experience that will transfer is based on the amount of payroll (paid for the four completed quarters before the transfer) associated with the assets transferred to the new business. If the payroll associated with these assets is less than 100%, then the transfer of experience is called a partial transfer.

As an example, if a transfer of business (whether mandatory or voluntary) involved the transfer of assets associated with a certain percentage of the payroll, such as 60%, then 60% of the unemployment experience of the former employer would transfer to the new business. This means that 60% of the payroll, 60% of benefit charges, and 60% of tax payments attributed to the old employer would transfer to the new employer. The tax rate of the new business will be based on all of those experience factors that have transferred, plus any applicable experience of the new owner.

Unemployment taxes under the Federal Unemployment Tax Act (FUTA)

In addition to the state tax, contributing employers also pay a federal unemployment insurance tax. The Internal Revenue Service administers the federal tax. If an employer has paid the state unemployment tax, on time, then the employer will be entitled to a credit on the federal unemployment tax return. If the state tax is paid late, the credit is reduced by 10%. The net federal tax, after full credit, is 0.6%, multiplied against the first $7,000 of wages of each employee covered under the federal law.

In states like Michigan that have received advances from the federal government to pay benefits, the tax credit is reduced by 0.3% the first year advances are outstanding, then 0.6% the second year, etc. until the advances are repaid. But 1/2 the increased FUTA is recoverable as a state unemployment tax credit. See Fact Sheet #130.

What happens to state and federal unemployment tax payments?

The state unemployment taxes employers pay to the UIA are used only for the payment of unemployment benefits to Michigan workers. All regular state benefits are paid from these taxes, as are half of any Extended Benefits paid to former employees. These regular and extended benefit payments are usually charged to the employer's account. However, in most cases, if a unemployed worker was disqualified for benefits when he or she left work, and then requalifies and is paid benefits, the benefits will not be charged to the employer's account.

The federal unemployment taxes paid to the Internal Revenue Service (Form IRS 940), are used to pay the costs of administration of the unemployment insurance and Job Service programs in all states. It also pays the federal share of Extended Benefits, and is used to build a fund from which states may borrow, if necessary, to pay benefits.

Notification of state unemployment tax rates

Early each year, the UIA issues its Form UIA 1771, *Tax Rate Determination for Calendar Year* _____ for that calendar year. It shows an employer's prior Actual Reserve, benefits charged and taxes paid (based on the CBC and ABC components) since the last annual determination, and the employer's new Actual Reserve.

It also shows the employer's 12-month total and taxable payrolls, and the Required Reserve, as well as the employer's 48 (and in 2013 and thereafter, 30) month taxable payroll, and the benefit charges in that same period. It then shows the calculated amount of each component of the tax rate, and the rate itself.

How, when and where to pay your unemployment taxes

Near the end of each calendar quarter, the UIA mails every contributing employer Form UIA 1028, "*Employer's Quarterly Wage/Tax Report*." The form asks for information about the total and the taxable wages you paid to employees during the quarter. The completed form is due to the UIA by the 25th day of the month following the end of the calendar quarter. The due dates are as follows:

Jan.-Mar. – April 25	**Jul.-Sept. – October 25**
Apr.-Jun. – July 25	**Oct.-Dec. – January 25**

If you don't receive a tax return form for a certain calendar quarter, you should request one, because you still must file your report on time. Call 1-800-638-3994 and press option "5", or from

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the Internet go to www.michigan.gov/uia.

It is very important that the UIA receives all your quarterly tax reports, even if you are unable to pay the tax due or there was no payroll for a quarter. The law imposes a penalty for failure to file a tax report on time, and assesses interest for failure to make a tax payment on time.

Mail Form UIA 1028, *Employer's Quarterly Wage/Tax Report* and payments to:

Unemployment Insurance Agency
P.O. Box 33598
Detroit, MI 48232-5598

Effect of Missing Tax Report(s)

If any tax reports are missing from the period used to compute the rate (the four quarters ending each June 30), the UIA will compute the rate using the tax reports that are on file for that period, and will add a penalty of 3.0%. If no tax reports are on file for that period, then the UIA cannot compute the rate and the law requires the UIA to assess the employer the maximum possible tax rate, even if your experience would have resulted in a lower rate. A penalty of 3.0% is also added.

If all of the missing reports are provided within 30 days of the mailing of Form UIA 1771, *Rate Determination*, the rate is calculated using the missing information, and the penalty is dropped. If the missing reports are filed beyond 30 days but within 1 year, the penalty is dropped to 2.0%. If there was "good cause" for the lateness in filing then the penalty is dropped entirely. If the missing reports are filed beyond 1 year but within 3 years, the rate is recalculated but the penalty remains at 3.0%.

If your annual Tax Rate Determination shows your rate as the maximum, and the space called “See Code Below” is marked “02,” a penalty has been added due to at least one missing quarterly report.

You should send in the missing report(s) within 30 days, so that your rate can be correctly computed and the penalty removed. Even if you previously submitted the report the UIA says is missing, you should send in a duplicate within the 30 days, so that your rate can be correctly computed and the penalty removed.

Also, if a quarterly tax report is missing, the credit against the federal FUTA tax cannot be applied, and the FUTA tax may be assessed at its maximum, as well.

Reimbursing employers are billed quarterly for unemployment benefits paid to former workers during the quarter. Payment is due within 30 days after the billing (or, for local governmental entities and school districts, within 30 days after the start of their next fiscal year).

Reimbursing employers must also file Form UIA 1028. For Indian Tribes, the billing is annual and payment is due within 30 days after the start of the calendar year.

Effect of SUTA Dumping

If an employer is found to have knowingly engaged in SUTA Dumping (see Page **3-A** of this Handbook) for the sole or primary purpose of reducing their unemployment insurance tax rate, the employer will be assigned the maximum possible tax rate for the year the SUTA Dumping occurred and for the next 3 years (but in no event will the tax increase be less than 2%).

Protest/Appeal Rights

Any determination made by the UIA concerning an employer’s liability, the coverage of a worker’s services, an employer’s tax rate, or the payment of benefits to a worker, can be appealed. After a “determination” is issued, a protest may be filed and a “redetermination” is issued. From a redetermination, the matter may be appealed to a Referee.

The protest or appeal must be in the UIA’s possession (not merely postmarked) within 30 calendar days after the determination or redetermination was mailed or personally served.

The Michigan Administrative Hearing System has published a booklet to help employers and claimants in preparing for an Administrative Law Hearing. The booklet is called “A Guide to Unemployment Insurance Appeals Hearings.” It is reproduced in Section E of this Handbook. There is also a webcast that explains the appeal process, and one that shows a mock hearing. Go to www.michigan.gov/uia and click on Webcasts.

Helpful Telephone Numbers

In a booklet this brief, it is necessary to summarize the provisions of law and administrative rules. If something we’ve discussed here is unclear, or if you’d like more information about the topic, you are welcome to call or write us for a fuller explanation. The address for all correspondence is UIA TAX QUESTIONS, Cadillac Place – Suite 11-500, 3024 W. Grand Blvd., Detroit, Michigan 48202. The following are useful sources of UIA tax information.

Contributing Employers

TAX STATUS

Voice: 1-313-456-2080, Fax: 313-456-2131
Email: EmployerLiability@michigan.gov

- Register a New Business
- Sale/Discontinuance of a Business
- Taxability of Services/Wages
- Seasonal Designation
- Protest/Appeal of a Tax Status Issue
- Recent Audit

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TAX MAINTENANCE
Voice: 1-313-456-2010, Fax: 313-456-2131
Email: Tax Support@michigan.gov

- Tax Rates
- Overpayments
- 940 Certification
- Protest/Appeal of a Tax Rate
- Audit Adjustments
- Verification of Payments on your Account

COLLECTIONS
Voice: 1-313-456-2072, Fax: 313-456-2001
Email: TaxCollections@michigan.gov

- Notice of Assessment
- Pay-off Amount for a Judgement
- Arrange a Payment Plan
- Tax Lien or Discharge
- Statement or Clearance of Account

TEAM SUPPORT
Voice: 1-313-456-2180, Fax: 313-456-2130

- Request Forms
- Address Change
- General Information

Reimbursing Employers
Voice: 313-456-2085, Fax: 313-456-2132
Email: ReimbursingUnit@Michigan.gov

Field Audit
Voice: 248-379-1244

Other Important Contacts
Michigan Business One Stop
Voice: 313-456-2188, Fax: 313-456-2132
Email: MiWAMSupport@michigan.gov

Work Opportunity Tax Credit (WOTC)
Voice: 1-800-482-2959, Fax: 313-456-2132

Sample calculations
To help you understand how an employer's unemployment insurance tax rate is calculated and how a voluntary tax payment might reduce that tax rate, we have prepared an example of each calculation for you to review.

Voluntary payments
The first example includes a sample voluntary payment calculation and a worksheet you can do yourself. By completing the worksheet, you can determine if a voluntary tax payment may benefit you.

The voluntary payment is irrevocable. To be on time, it must be received by the UIA within 30 days of the mailing of the rate notice (Form UIA 1771), but not later than the 120th day of the calendar year.

The sample voluntary payment calculation uses the same amounts for "Required Reserve," "Actual Reserve" and "Present ABC," as are used in the sample tax rate calculation on page 12.

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Voluntary Payment Worksheet

Present ABC _____ Desired ABC _____

1. Enter Required Reserve (from Form UIA 1771) ..... _____
2. Enter Total Payroll (from Form UIA 1771) ..... _____
3. Multiply Line 2 by "4" ..... _____
4. Add .0001 to Desired ABC. ..... _____
5. Multiply Line 3 by amount on line 4. ..... _____
6. Subtract Line 5 from Line 1 ..... _____
7. Enter most recent Actual Reserve (from Form UIA 1771) ..... _____
8. Subtract Line 7 from Line 6 ..... _____
9. Add .01 to Line 8. THIS RESULT IS YOUR VOLUNTARY CONTRIBUTION. ..... ==========

   The amount on Line 9 is what you would need to pay the UIA, as a voluntary payment, in order to achieve your desired Account Building Component.
10. Enter your estimated taxable payroll for the current calendar year ..... _____
11. Multiply Line 10 by .001 ..... ==========

    The amount on Line 11 is the additional tax you would have to pay if you did not make the voluntary payment. If line 11 is **greater** than line 9, it is to your advantage to make a Voluntary Payment.

    The voluntary payment is **irrevocable**. To be on time, it must be received by the UIA within 30 days of the mailing of the rate notice (Form UIA 1771), but not later than the 120th day of the calendar year.

Sample Payment Worksheet

Here is a sample voluntary payment calculation. The amounts for "Required Reserve," "Actual Reserve," and "Present ABC" are the same as used in the sample tax rate calculation on the next page.

Present ABC = 0.3% = .003

Desired ABC = 0.2% = .002

1. Enter Required Reserve (from Form UIA 1771) 26,638.50
2. Enter Total Payroll (from Form UIA 1771) 710,359.87
3. Multiply Line 2 by "4" $2,841,439.48
4. Add .0001 to Desired ABC. (.010 + .0001 = .0101) ..... .0021
5. Multiply Line 3 by amount on line 4. ..... $5,967.02
6. Subtract Line 5 from Line 1 ..... $20,671.48
7. Enter most recent Actual Reserve (from Form UIA 1771) 20,534.12
8. Subtract Line 7 from Line 6 ..... 137.34
9. Add .01 to Line 8. THIS RESULT IS YOUR VOLUNTARY CONTRIBUTION. **137.37**
10. Enter your estimated taxable payroll for the current calendar year. 203,455.00
11. Multiply Line 10 by .001 ..... **203.45**

    If you wish to reduce your ABC by 0.1%, use .001 as the multiplier in this step.

    If you wish to reduce your ABC by 0.2%, use .002 as the multiplier in this step.

The amount on Line 11 is the additional tax you would have to pay if you did not make the voluntary payment shown on Line 9. Therefore, if Line 11 is greater than Line 9, it is to your advantage to make the voluntary payment.

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Below is a sample rate calculation showing how each of the tax components is calculated.

Sample Tax Calculation

Form UIA 1771 (*Tax Rate Determination*) gives you all the information you will need to calculate your unemployment tax rate. Suppose, for example, your Form UIA 1771 showed the following numbers:

ACTUAL RESERVE: 50,100.20
TOTAL PAYROLL (12 Months): 2,428,871.34
REQUIRED RESERVE: 91,082.68
TAXABLE PAYROLL (60 Months): 2,972,332.91
BENEFIT CHARGES (60 Months): 32,869.00

Chargeable Benefits Component:

The calculation is done this way:

$$\frac{\text{60 months of benefit charges (ending 6/30)}}{\text{60 months of taxable payroll (ending 6/30)}} = \text{CBC}$$

Taking the sample numbers from above:

$$\frac{32{,}869.00}{2{,}972{,}332.91} = .0110 = \mathbf{1.1\%}$$

The result is rounded to the next higher 0.1%. (In this example, the fourth decimal place was a "zero," and no rounding was done.)

Account Building Component:

The calculation is done this way:

$$\frac{\text{(Required Reserve) - (Actual Reserve) X .50}}{\text{12 months of total payroll (ending 6/30)}} = \text{ABC}$$

Taking the sample numbers from above:

$$\frac{(91{,}082.68 - 50{,}100.20) \text{ X } .50}{2{,}428{,}871.34} = 0.0084 = \mathbf{0.9\%}$$

If there is **any** remainder (as there is here with the "4" in the fourth place to the right of the decimal), the result is rounded up to the next higher 0.1%.

Nonchargeable Benefits Component:

This component can range from **.06%** to **1.0%** for employers who have been in business for four or more years. The longer an employer goes without having benefit charges, the lower this rate can drop, until it reaches **.06%**.

Obligation Assessment Rate:

This rate is calculated using several factors.

1. A multiplier called the "Obligation Assessment Ratio" or OA Ratio. This is calculated using the principal, interest, and administrative expenses on bonds outstanding in 2013, divided by the anticipated regular unemployment taxes paid by contributing employers in 2013. In 2013, the "Obligation Assessment Ratio" is **0.145015**.
2. A "Base Assessment" per employee, for all employers, which in 2013 is $63.00.
3. Each contributing employer's unemployment tax rate for the year in question.
4. The taxable wage base in effect. It is currently **$9,500.00**

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The Obligation Assessment Rate for 2013 is calculated for each employer using the following formula:

(2013 rate x OA Ratio) + (Base Assessment ÷ Taxable Wage Base)

In this example, the employer's CBC, ABC, and NBC resulted in a 2013 Tax Rate of 2.4%. Here is the calculation of this employer's 2013 Obligation Assessment:

(2.4% x 0.145015) + ($63 ÷ $9,500) =
0.003480 + 0.0066316 =
0.010116 =
1.011% rounded to 1.02%

If the digit in the 3rd decimal place is greater than zero, the 2nd decimal place is rounded up, so this employer's Obligation Assessment Rate is **1.02%.**

Solvency Tax:

This tax component applies to a tax year only when there are outstanding federal advances to the Unemployment Insurance Trust Fund as of the June 30 preceding that tax year. It is only assessed on a contributing employer with 5 years or more of liability that has a negative balance in its experience account, meaning that its former workers have been paid more in unemployment benefits than the employer has paid into its experience account. It is calculated the same way as the Account Building Component, but cannot exceed the lesser of ¼ of the percentage calculated, or 2.0%. For most employers to whom it applies, it will be 0.75% (.0075). If an employer makes a voluntary payment by the 30th day after the date of mailing of a tax rate determination and that payment causes the employer's balance to be either zero or a positive amount, the employer will not be subject to the solvency tax for that tax year.

The Solvency Tax is currently not in effect.

Unemployment Tax Rate:

For an employer with five or more years of business experience, the unemployment tax rate is computed by adding together the three components:

Chargeable Benefits Component:	1.1%
Account Building Component	0.9%
Nonchargeable Benefits Component:	1.0%
Obligation Assessment	0.69%
UNEMPLOYMENT TAX RATE:	3.69%

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Form UIA 1771 – Annual Tax Rate Determination

UIA 1771
(Rev. 08-12)

Rick Snyder
GOVERNOR

State of Michigan
Department of Licensing and Regulatory Affairs
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Authorized By
MCL 421.1 et seq.

Steve Arwood
DIRECTOR

Mail Date:
Letter ID:
Account #:
Employer:

TAX RATE AND PENALTY DETERMINATION/REDETERMINATION FOR CALENDAR YEAR 2013

THIS IS NOT A REQUEST FOR PAYMENT

Your Unemployment Insurance tax rate, as provided under sections 18(d), 19, and 22 of the Michigan Employment Security Act (Act), is shown below as "YOUR COMPUTED RATE." Your penalty (if applicable) is shown as "NON-REPORTING PENALTY ." For information on the "OBLIGATION ASSESSMENT", "SUTA PENALTY RATE," and other important information, see explanations on back.

FORMULA FOR EACH COMPONENT	FIGURES BASED ON EMPLOYER ACCOUNT	RESULT (in percent)
NonChargeable Benefits Component (NBC)		(Maximum 1%)
Amounts paid based on this component will not appear in the "Taxes Credited" line of the ABC calculation below.		0.00%
Chargeable Benefits Component (CBC)		(Maximum 6.3%)
36 months of Benefit Charges (ending 6/30/2012)	0.00	0.00%
36 months of Taxable Payroll (ending 6/30/2012)	20,072.56	

Account Building Component (ABC) — Negative Numbers Shown in Parenthesis

Actual Reserve		
Prior Actual Reserve (as of 6/30/2011)		0.00
Total Payments Credited to Reserve (as of 7/31/2012)	186.44	
Total Voluntary Payments Credited to Reserve	0.00	
Total Taxes Credited to Experience Account	+	186.44
Minus Benefits Charged (12 months ending 6/30/2012)	−	0.00
Equals Active Reserve (as of 6/30/2012)	=	186.44
Required Reserve		
12 months of Total Payroll (ending 6/30/2012)		55,635.89
Multiplied by Cost Criterion	×	0.0375
Equals Required Reserve (6/30/2012)	=	2,086.35

ABC Calculation

$$\frac{[\,2{,}086.35 - 186.44\,] \times 0.50}{55{,}635.89}$$

(Required Reserve - Actual Reserve) X ABC multiplier 0.50
12 months Total Payroll (ending 6/30/2012)

(Maximum 3%) 2.70%

Your Computed Rate	2.70%
Non-Reporting Penalty	3.00%
Obligation Assessment	1.06%
SUTA Penalty Rate	0.00%
Solvency Rate	0.00%
Your Total Rate Plus Penalty (if applicable)	6.76%

Taxable Wage base for the year is: 9,500.00
Your taxable payroll for 12 months ending 6/30/2012 was: 20,072.56

You have not submitted quarterly reports (Form UIA1020) for the quarter(s) ending:

6/30/2012

Therefore, you have been assigned the tax rate applicable under Section 18(d)(2) of the Act. See 'Non-Reporting Penalty' statement on reverse side for instructions on eliminating or reducing your penalty.

APPEAL STATEMENT: Any protest or appeals from this determination must be filed either through MiWAM, in person, by mail, or by fax (313) 456-2130 and must be received within **30 calendar days** of the "Date Mailed" shown above, or if such 30th day is a Saturday, Sunday or legal holiday, by the end of the next business day.

For details on how this rate was calculated, see the Years of Liability Table on reverse side. Your years of liability is: 2

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UIA 1771
(Rev. 08-12)

TAX RATE AND EXPLANATION OF TERMS

For Assistance Call 313-456-2010

Years of Liability	TABLE- A Section 19(a)(1) of the Act All Employers Except Those Covered by Table B	Table B - Section 19(a)(1) of the Act Only for Employers in the Construction Industry
1	2.7%	Average construction contractor rate as determined by the Agency.
2	2.7%+1/3 CBC	Average construction contractor rate + 1/3 CBC
3	2.7% + 2/3 CBC	Average construction contractor rate + 2/3 CBC
4 and Over	CBC+ABC+NBC	CBC+ABC+NBC

Explanation of Terms Used on the Front of This Form:

Chargeable Benefits Component (CBC): This component takes into account the individual employer's benefit charges during the 60 months ending the preceding June 30, and the individual employer's taxable payroll for the same period for the rate year. The result is rounded to the next higher 0.1%. The maximum for this component is 6.3 %.

Account Building Component (ABC): This component compares the employer's Actual Reserve and Required Reserve, in order to measure the adequacy of the employer's reserve to cover potential benefit charges. The result is rounded to the next higher 0.1%. The maximum for this component is 3 %.

Voluntary Payment: Because of the rounding of the Account Building Component (ABC), an irrevocable voluntary payment, as provided under Section 19(d), may reduce a rate by 0.1% or more, thereby saving the employer some unemployment taxes. Voluntary payments must be received by the Agency within 30 days of the mailing of this notice but no later than the 120th day of the year to be included in the current tax rate calculation. Payments after this time period will be included in the calculation of your tax rate for the next calendar year. Voluntary payments can be submitted through your MiWAM account. Checks or money orders MUST be mailed separately to UNEMPLOYMENT INSURANCE AGENCY, Tax Office- 3024 W. Grand Blvd., Suite 11-500 Detroit, MI 48202. Write "Voluntary Payment" on the face of the check or money order.

Nonchargeable Benefits Component (NBC): This component does not reflect the experience of the business, but is assigned to recover costs, which are pooled among all employers. Most employers pay a uniform rate of 1%. However, if there are no benefit charges for the last nine years, ending last June 30, the rate could be as low as 0.06%.This component is applied to the accounts of all contributing employers beginning in the fourth year of liability. Amounts paid based on this component will not appear in the "taxes credited to experience rating account" portion of the rate calculation.

Non-Reporting Penalty: As required by Section 18(d)(2) of the Act (as amended by Public Act 296 of 1993), a penalty of 3% has been added to your computed rate because the tax report(s) for the calendar quarter(s) shown on the front of this form is missing. THIS WILL RESULT IN YOU PAYING CONSIDERABLY MORE. The penalty portion of the rate will be removed and your rate recalculated ONLY if the missing report(s) are filed within 30 DAYS from the mailing date of this determination, even if you believe you previously submitted the report(s), and even if you had no payroll during the quarter. If you file the missing report(s) past 30 days but within 1 year, your rate will be recalculated and the penalty reduced to 2.0%. If you file the missing reports past the 1 year but within 3 years, your rate will be recalculated but the penalty will remain at 3.0%.

Obligation Assessment: Public Acts 267 and 268 of 2011 grant the State of Michigan authority to issue bonds to reduce or eliminate Federal debt incurred by the Unemployment Insurance Trust Fund. On December 29, 2011, the State of Michigan, through the Michigan Finance Authority, issued $3,320,951,556.55 in bonds and retired the debt and accrued interest. The obligation assessment represents the amount required by law to repay the bonds. The Obligation Assessment is levied against all contributing employers and is not credited to the employer's experience account.

SUTA Rate Penalty: As required by Section 22b, a SUTA Rate Penalty has been added to your computed rate because it has been determined that you knowingly violated or attempted to violate Section 22(b)(1) of the Michigan Employment Security (MES) Act. The "SUTA Rate Penalty" box (if applicable) is the difference between your computed rate and the maximum possible rate for the year. Minimally, the SUTA Rate Penalty must be at least 2.0%. The penalty rate is effective for the year in which the Agency determines you engaged in SUTA Dumping, and for the next three years.

Solvency Tax: When the UI Trust Fund has interest-bearing advances from the federal government, a Solvency Tax becomes effective. This tax is levied against all fully experienced employers with a negative (Actual Reserve) balance. Solvency tax monies are not credited to the employer's experience account. The Solvency Tax, if applicable, shall be computed in accordance with the provisions of Section 19(a)(2)(e) of the MES Act. Employers can avoid the Solvency Tax by making a voluntary payment to pay off their negative reserve, which will generate a balance of zero or more in their Actual Reserve.

Taxable Wage: This is the amount of each covered workers yearly wages that is considered taxable for unemployment tax purposes.

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Purpose of this chapter

In this chapter, we explain what happens when a worker files a claim for unemployment benefits. We explain the law that requires the employer to give us quarterly wage information and that requires the employer to notify the Unemployment Insurance Agency (UIA) if the employer believes benefits should not be charged to the employer's account. We explain how the employer can require UIA to reconsider any decision we make to charge benefits to the employer's account. We also give other basic information about the requirements of the law, known as the **Michigan Employment Security Act**.

This chapter has been prepared as part of a general guide to unemployment taxes and benefits in the State of Michigan. It does not have the force or effect of law or regulation. It is written to assist in understanding the *Michigan Employment Security Act* which is the unemployment compensation law in Michigan.

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Filing a Claim for Unemployment Benefits

What happens when a worker files a new claim for unemployment benefits?

When a worker files a new claim for benefits, the UIA must decide two things:

(1) Did the worker earn enough in wages in his or her recent work history to be entitled to unemployment benefits, and

(2) What is the reason the worker is no longer working, and whether the worker is eligible and qualified to draw unemployment benefits.

Once the worker files a claim with the UIA, we call the worker the **unemployed worker** or sometimes the "claimant" for unemployment benefits. The unemployed worker and employer are both **interested parties** in the claim. As such, both are equally entitled to see the file of the claim, and to formally **protest** or **appeal** any adverse determination made by the UIA concerning the claim.

Information we ask the unemployed worker to provide

The unemployed worker can file an *Application for Unemployment Benefits*, Form UIA 1554, by phone or internet. If required, the unemployed worker also registers for work with an office of the Michigan Works! Agency. We receive wage information from all Michigan employers every calendar quarter (on Form UIA 1017). When a claim is filed, we check our wage database to see whether the unemployed worker had sufficient earnings to be entitled to establish a new claim. We consider the total wages paid to the unemployed worker in the first 4 of the last 5 completed calendar quarters. This period is called the base period of the claim.

The calendar quarters are 3-month periods that run as follows:

Quarter 1 – January 1 through March 31

Quarter 2 – April 1 through June 30

Quarter 3 – July 1 through September 30

Quarter 4 – October 1 through December 31

In some cases, the unemployed worker will not have sufficient wages during the base period to establish a new claim. We will then check the wages paid to the unemployed worker in the 4 most recently completed calendar quarters, known as the **alternate base period.**

If we find sufficient wages to establish the claim, we ask the unemployed worker about the reason he or she was separated from each of the employers in the base period of the claim, and from the most recent employer. We also ask the unemployed worker about his or her dependents. If the unemployed worker disagrees with any of the wage information or about any of the employers we located in our wage database for that unemployed worker, we ask the unemployed worker to correct the information.

We then mail the unemployed worker Form UIA 1575C, *Monetary Determination*, that shows our calculation of the claimant's weekly benefit amount and the number of weeks of benefits allowed. Also shown are the number of dependents allowed, the names of each of the claimant's base period employers, wages paid by each of those employers, and the reason indicated by the unemployed worker for separation from each of those employers.

Information we ask the employer to provide

We send the employer a copy of Form UIA 1575E, *Monetary Determination*. We notify the employer that the employer's UIA account will be charged, as shown, unless the employer provides the UIA with information showing the unemployed worker was separated for a reason that would disqualify the unemployed worker from receiving benefits. The employer's response to the monetary determination must be **received** by the UIA within 10 calendar days after the mail date shown on the form. If the employer has no disagreement with the *Monetary Determination*, then no response from the employer is necessary. If the Agency needs more information from the employer regarding a claimant's separation from employment, computer-generated Form UIA 1713, *"Fact-Finding Form"* is sent to the employer.

If the employer provides information they feel should disqualify the unemployed worker or should result in no benefits being charged to the employer, the UIA may ask for further information from the unemployed worker and the employer. A member of the Agency's staff may telephone the employer for follow-up information, or may send Form UIA 1707, *Request for Information Relative to Possible Ineligibility or Disqualification.* If the decision made by the UIA involves whether the unemployed worker should receive benefits, a **Non-Monetary Determination** will be issued. The Non-Monetary Determination can generally be appealed by either the unemployed worker or the employer.

The UIA might conclude that benefits are properly payable to the unemployed worker because the reason for unemployed worker's separation from work is not disqualifying, or because the unemployed worker has already requalified for benefits. However, even if benefits are payable, the employer's account may still be **noncharged** for the benefits. These benefits will be charged to the Nonchargeable Benefits Account rather than to the employer's account, and do not affect the employer's unemployment tax rate. In the case of a quit, the employer's account will usually be automatically noncharged. In the case of a discharge, the employer will need to respond to the Monetary Determination to explain why the quit should have been disqualifying. Then the employer's account can be noncharged. The employer is notified of whether or not the employer's experience account will be charged by Form UIA 1955, *Redetermination of Charges*.

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What happens if the UIA's information is wrong and the employer does not respond?

If the UIA does not receive a response from the employer, then the UIA will set up the claim on the basis of wages previously reported or as provided by the unemployed worker. The UIA will also charge the employer for benefits paid to the unemployed worker. Once the UIA has paid benefits based on the information the employer provided or the unemployed worker reported, the law says we cannot credit the employer's account for any overpayments for weeks of benefits paid before we received the employer's information, if the information we used proves inaccurate. The unemployed worker is not required to repay the Agency for those overpayments. That's why it's so important that the UIA **receives** the employer's response to the monetary determination within 10 calendar days of the mailing date shown on the form if any information on it is incorrect.

Protest/Appeal Rights

If you, the employer, have responded to the Monetary Determination and provided information showing the wage or separation information indicated there is wrong, the UIA will issue a **Monetary Redetermination.** Or, perhaps you did not respond to the Monetary Determination because the information shown was correct, but you still believe the unemployed worker should not receive unemployment benefits. You can send in a written "protest" (a statement that you disagree with the Monetary Determination and explaining why) and the Agency will issue a **Monetary Redetermination.** Even if no benefits will be charged to your account, the UIA will still send you a **Charging Redetermination** advising you of that fact.

The Monetary Redetermination will either affirm, modify, or reverse the Monetary Determination. You may appeal the **Monetary Redetermination** and request a hearing before an Administrative Law Judge, if you continue to disagree.

The protest to the Monetary Determination or the appeal of the Monetary Redetermination must be in writing. It must be received by the UIA within 30 days of the date we mailed you the determination you disagree with. In counting the 30 days, every day is counted (even weekends and holidays) starting with the first date after the date of mailing. However, if the 30th day is a Saturday, Sunday, or legal holiday, then the protest or appeal is due by the end of business on the next day that is not a Saturday, Sunday, or legal holiday.

Explain in the protest or appeal the reasons you believe the benefit amount or duration is wrong, or why you believe the unemployed worker is not entitled to unemployment benefits. Both the unemployed worker and the employer have the right to protest or appeal the UIA's decision to pay benefits, or not to pay benefits, or the amount and duration of the benefits.

If a protest or appeal is received later than the 30th day but within 1 year of the original determination or redetermination in dispute, the UIA can still take further action on it if **good cause** can be shown for why the protest or appeal was received late. If the UIA believes there was not good cause for the lateness, the UIA will issue a **Denial.** The Denial can be appealed directly to an Administrative Law Judge. If the original, disputed document was issued more than 1 year prior to the protest or appeal, the Agency cannot reconsider it.

An Administrative Law Judge decision, likewise, can be appealed, in writing and within 30 days, to the Michigan Compensation Appellate Commission (MCAC). From the MCAC, an appeal can be pursued through the courts.

Paying Unemployment Benefits

What the law says about paying unemployment benefits

The *Michigan Employment Security Act* explains how unemployment benefits are paid in Michigan. The worker must be **unemployed,** have sufficient **qualifying wages,** and must be otherwise **eligible** for benefits. This Section of the *Employer Handbook* will explain the terms shown in this paragraph in bold letters. It will describe the provisions of the law that establish how unemployment benefits are paid in Michigan.

The unemployed worker must be unemployed and have had enough earnings since last claim

A worker may file a claim while "employed" but may not receive benefits until he or she becomes "unemployed." A worker is "unemployed" when he or she is working less than full-time in a week, as determined by the employer, and has earned less than 1.6 times his or her unemployment benefit amount during the week. If the unemployed worker had a previous claim, he or she must have earned, since the beginning of the previous claim, an amount equal to at least 5 times his or her weekly benefit amount on that claim, before he or she can establish a new claim.

The unemployed worker must have enough base period wages

Qualifying wages

When a worker files a new claim (that is, when he or she does not already have a claim in effect), the UIA must consider all the wages the worker received during the **base period** of the claim. The base period of the claim is usually the first 4 of the last 5 completed calendar quarters. However, if a worker lacks enough wages in that base period to qualify for a claim, then the Agency must consider an **alternate base period,** the most recent 4 completed calendar quarters**.**

The calendar quarters are 3-month periods that run as follows:

January 1 through March 31
April 1 through June 30
July 1 through September 30
October 1 through December 31

To set up a claim, the UIA must find the following in the base period:

- wages in at least 2 quarters
- wages in the "high quarter" of at least $2,871.00
- wages in the entire base period of at least 1.5 times the wages in the "high quarter"

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The "high quarter" is the calendar quarter in the base period in which the unemployed worker's wages are the highest dollar amount.

QTR 1	QTR 2	QTR 3	QTR 4	QTR 5	QTR 6
$500	$2900	$500	$500	LAG	FILING

In the diagram above, the claim is filed in Quarter 6. The wages considered by the UIA in determining the claimant's base period earnings are the wages found in quarters 1, 2, 3, and 4 of the claim (not necessarily corresponding to quarters 1, 2, 3, and 4 of the calendar year). The base period is shown in the bolded border. The 5th quarter is called the "lag quarter." It is the quarter for which wages are being processed and may not be in the UIA's wage database yet.

The claim in this case meets each of the three criteria for setting up the claim: there are at least 2 quarters of wages, the wages in the "high quarter" (that is, the quarter of the claimant's highest wages) are at least $2,871.00, and total base period wages are at least 1.5 times the high quarter wages.

If wages in the base period had failed to satisfy the "1.5 times high quarter" requirement, then the UIA would have considered the **alternate earnings qualifier (AEQ)** as applied to the same base period. To qualify using the AEQ, the unemployed worker must have had wages in at least 2 calendar quarters in the base period, and must have had wages in the "higher quarter" of at least $2,871.00, and total base period wages are at least 20 times the **state average weekly wage.** In 2013, the state average weekly wage is $886.56. Therefore, the unemployed worker could qualify using the AEQ if the unemployed worker had base period wages of at least $17,731.20 .

If the unemployed worker does not have sufficient wages to qualify for benefits in the regular base period using either the regular method of qualifying or the AEQ, then the UIA will apply, first, the regular method and then the AEQ method of qualifying to the **alternate base period.**

The alternate base period is the 4 most recently completed calendar quarters (shown, below, in the bolded border). There is no lag quarter:

QTR 1	QTR 2	QTR 3	QTR 4	QTR 5	QTR 6
$0	$2000	$500	$400	$600	FILING

If wages for the most recently completed quarter have not been received by the time the claim is filed, the claimant's statement of wages will be used. The employer will be informed of wages the unemployed worker reported, and will have the opportunity to respond.

Establishment of a Benefit Year

If a new claim can be established based on the claimant's base period wages, using any of the methods described above, then a 52-week period called the **benefit year** is set up for the unemployed worker. The unemployed worker will receive benefits (up to 20 weeks maximum), if entitled, on a weekly basis during that 52-week period. Even if an unemployed worker is employed, or disqualified from receiving benefits, or ineligible based on failing to seek work or being able to work and available for work, a benefit year will still be established if the claimant's base period wages so permit.

The unemployed worker can request that a previously established benefit year be cancelled, until the unemployed worker has actually cashed a benefit check and therefore received benefits on that benefit year. Once benefits are paid, the benefit year can no longer be cancelled.

Preservation of Benefit Entitlement

During or after a period of disability, an unemployed worker may request preservation of base period wages the worker could not previously use because of the disability. If the worker presents a doctor's statement verifying the disability, and the worker cannot otherwise establish a claim, the worker's benefit year may be extended, and unused base period wages may be used to pay benefits. However, benefits cannot be paid more than 156 weeks after the start of the original benefit year, or after the beginning of the disability. Since the benefit year is backdated to the beginning of the disability, the base period could go back several years.

"Excluded services" that are not counted as qualifying wages

Some types of work cannot be used in counting qualifying wages in the base period. The UIA calls these types of work **excluded services.** For example, the services of high school students under age 18 who work fewer hours than if they had not been students are excluded from employment. They will not be entitled to benefits based on that service and the employer will not be taxed on those wages.

The services of a student in a co-operative education program are also excluded as are services of military members of the National Guard, elected officials, legislators, judges, church workers, and others. A more complete listing of services excluded from coverage, and from the unemployment tax, is found in this *Handbook* under "Liability of Employers and Coverage of Employees."

In addition to services that are excluded from coverage for unemployment benefits, service by a self-employed person, or by an independent contractor, cannot be used as qualifying base period wages. Generally, an independent contractor is one who performs a specialized service that is not an integral part of the business (that is, the service is a support service but is not central to the overall function of the business).

For example, a mechanic is central to the business of an auto repair garage, so if a mechanic regularly worked for a garage, he or she would likely be considered an employee of the garage, rather than an independent contractor.

Although mechanics are central to the business of an auto repair garage, in some cases a particular mechanic may work freelance and make him- or herself available to work in many different garages. In that case, the mechanic would likely be considered an independent contractor.

Usually, the independent contractor makes him- or herself available to the employer community at large, and does not limit him- or herself to performing services for a single company. He or she usually brings his or her own "tools" to do the job. An independent contractor generally is not under the direction or control of the company.

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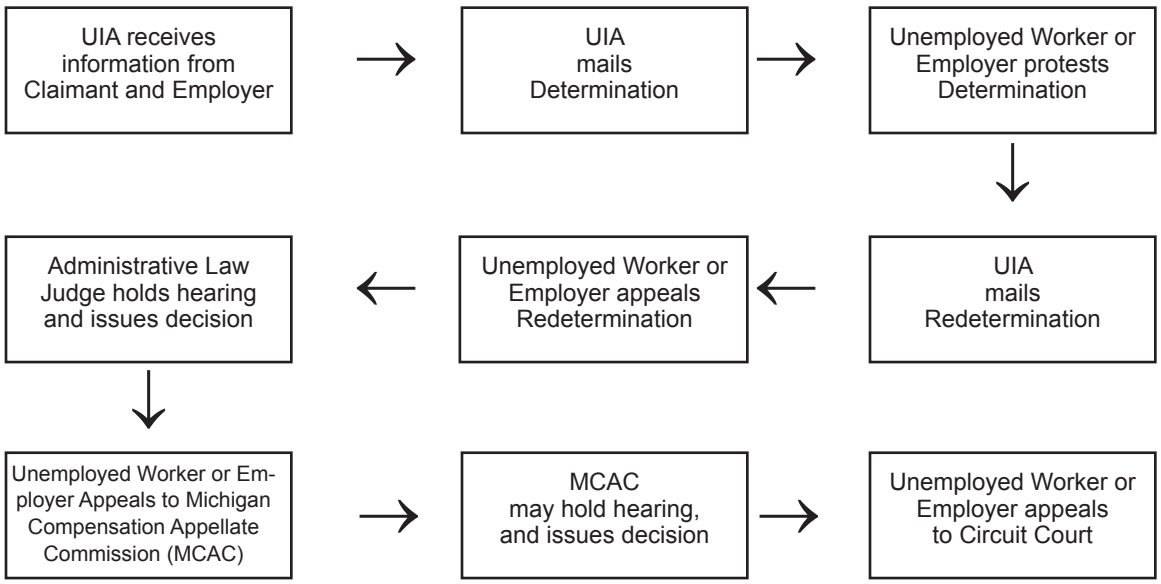
The Appeal Process



The Administrative Law Judge Hearing

If you or the unemployed worker have appealed a Redetermination to an Administrative Law Judge, a Notice of Hearing will be mailed to you and the unemployed worker. It tells you when and where the hearing will be held, and what issue or issues will be considered. If you believe another issue should be considered, you should raise that issue at the hearing.

You may have a lawyer or other representative with you at the hearing. You may also obtain subpoenas through the UIA office to require witnesses to appear. More information about what happens at an Administrative Law Hearing and about how to prepare for the hearing is available in the booklet, "A Guide to Unemployment Appeals Hearings." It is also reproduced in Section E of this Handbook. The Michigan Administrative Hearing System has also produced a video presentation about the administrative hearing process. It is available online at the UIA's Website: www.michigan.gov/uia and click on Webcasts: Go to "Employer Webcasts" and click on "A Guide to UIA Appeals Hearings." The most important thing to remember about an Administrative Law Hearing is that you should take the most knowledgeable witness(es) from your company to explain the reasons behind the claimant's separation from employment. The best witness is not necessarily the President of the company. The best witness is the one who saw and heard the events that resulted in the separation.

It is important to present all your evidence and witnesses at the Administrative Law Hearing, because even if the case is appealed further, it is unlikely that any further information will be allowed to be presented in the case, after the Administrative Law Hearing.

When an appeal is filed, either party can request the assistance of an Advocate (who is not a UIA employee) to discuss the appeal and to attend the hearing and represent the party before the Administrative Law Judge. This is a free service available to claimants and employers involving most separation issues, on request. However, the request for an Advocate must be made within certain time frames.

For more information about the Advocacy Program, call 1-800-638-3994, menu item "2".

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How the UIA figures the claimant's weekly benefit amount, the number of weeks of benefits, and how employers will be charged

Once we find that the claimant's base period wages are sufficient to establish a claim, we determine the amount per week the worker could receive in unemployment benefits, and the number of weeks benefits could be paid. Finally, we determine which employers' accounts will be charged for benefits, and how much those charges could be.

Figuring the claimant's weekly benefit rate

The UIA will find the calendar quarter in the claimant's base period in which the unemployed worker had the highest wages. That quarter is known as the **high quarter.** The UIA then multiplies the high quarter wages by 4.1% (.041) to determine the claimant's weekly benefit amount. The result is rounded down to the nearest dollar. However, the weekly benefit amount cannot exceed $362. The benefit rate, if not already at the maximum, will be increased by $6.00 per dependent, up to 5 dependents.

Generally, a dependent is an individual for whom the unemployed worker has provided over half the cost of support for at least the 90 days prior to filing the claim. A spouse, minor child (or some disabled children over 18, or students up to age 22), some elderly disabled parents, and some orphaned or disabled siblings can be counted as dependents. Once a dependent is allowed on a claim, the dependent will remain on the claim during the entire 52-week benefit year of the claim.

In the example below, the unemployed worker earned $2900 in his or her high quarter. Therefore, this unemployed worker would be entitled to a weekly benefit amount of $118.00 ($2,900 x .041)

QTR 1	QTR 2	QTR 3	QTR 4	QTR 5	QTR 6
$500	$2900	$500	$500	LAG	FILING

Figuring the number of weeks benefits can be paid

To determine the number of weeks benefits could be paid on a claim, the UIA takes 43% (.43) of the claimant's base period wages, and divides that product by the claimant's weekly benefit amount.

In the case of an unemployed worker with base period wages of $4,400, and a weekly benefit rate of $118.00, the calculation works this way:

- Take 43% of the claimant's base period wages:
  $4,400 x .43 = $1,892
- Divide the product of the above calculation by the claimant's weekly benefit amount:
  $1,892 ÷ $118 = 16.03

The result, 16.03, is rounded down to the nearest half-number. The unemployed worker in this example could receive benefits for 16 weeks.

Regardless of the result of the calculation, the minimum number of weeks of benefits payable is 14, and the maximum number is 20.

Shared-Work Plan

Beginning in 2013, an employer will be able to participate in a "Shared-Work Plan" if the employer meets the requirements to participate in a Plan and if the Plan has been approved by the UIA.

Under a Plan, a worker whose hours of employment have been reduced may be paid correspondingly reduced unemployment benefits, based on the percentage by which the worker's full-time hours and wages were reduced. For example, if a worker's hours and wages were reduced by 20%, and the worker's full weekly benefit amount was $300, then the worker could receive a reduced weekly benefit payment of $300 x 0.20 = $60.00

A Shared-Work Plan can be applied to any work unit operated by the employer and consisting of at least 2 employees, or to the employer's entire operation. To qualify to participate in a Shared-Work Plan, the employer must:

- be current in its payment of unemployment taxes;
- have a "positive reserve" balance in its account;
- have paid wages for at least the previous 12 quarters;
- not hire new employees into the affected work unit nor transfer employee into the unit during a Plan, nor reduce hours of work below the number permitted under a Plan; and
- certify that participation in a Plan is in lieu of the temporary layoffs of at least 15% of the workers in the affecteed unit.

A Plan will only be available for a work unit if the hours and wages of workers in that unit have been reduced by at least 15%, but not more than 45%. Benefits will be payable under a Plan for a 52-week period, but benefits for a worker will not exceed 20 times the worker's weekly unemployment benefit rate. The usual work search and refusal of work requirements will not apply to participants in a Plan, except with regard to the employer sponsoring the Plan. Employees participating in a Plan may participate in a training program approved by the UIA if provided by the employer or under the *Workforce Development Act of 1998.*

How employers will be charged for benefits

We now know how much the unemployed worker could receive in unemployment benefits, and for how many weeks those benefits could be payable.

The liability of the employer (that is, the benefit charges kept in the UIA employer's account and used to calculate the employer's tax rate) works like this:

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First 2 weeks of benefit payments

The entire benefit payment for each of the first 2 weeks of the claim will be charged to the claimant's most recent employer at the time the claim was filed if that employer is liable for paying unemployment taxes in Michigan. That employer, known as the **last employer,** may or may not also be a **base period employer.** However, if the unemployed worker did not earn, with the separating employer, an amount at least equal to at least $2,072, then the separating employer's account will not be charged the entire first 2 weeks of benefit payments. Instead, each week of benefits, beginning with the first week, will be charged, proportionally, to all base period employers.

Benefit payments after the first 2 weeks

Whether or not the last employer is charged the entire amount of the first 2 weeks of benefits, the base period employers are charged their proportional share of the claimant's weekly benefit payments beginning with the third week of benefits.

QTR 1	QTR 2	QTR 3	QTR 4	QTR 5	QTR 6
A=$350 B=$150	A=$500 B=$900 C=$1500	A=$250 B=$250	D=$500	LAG	FILING D= $2100

There are 4 different employers in the base period shown above. Total wages paid in the base period are $4,400. Of that amount, each base period employer paid the unemployed worker the following amounts in the base period:

Employer A paid a total of $1,100
($350, $500, and $250 in quarters 1, 2, and 3, respectively)
Employer B paid a total of $1,300
($150, $900, and $250 in quarters 1, 2, and 3, respectively).
Employer C paid a total of $1,500
(in quarter 2)
Employer D paid a total of $500
(in quarter 4)

Each base period employer's proportional share of total wages paid to the unemployed worker in the base period is as follows:

Employer A = $1,100 ÷ $4,400 = .25 = 25%

Employer B = $1,300 ÷ $4,400 = .295454 = 29.5454%, truncated to 29.545%, rounded to 29.55%

Employer C = $1500 ÷ $4,400 = .340909 = 34.0909%, truncated to 34.090%, rounded to 34.09%

Employer D = $500 ÷ $4,400 = .113636 = 11.3636%, truncated to 11.363%, rounded to 11.36%

These percentages represent each employer's proportional share of the claimant's base period wages. If the percentages do not total 100%, then the amount needed to bring the total to 100% will be added to the percentage share of the employer with the largest pro rata share of the benefit charge.

These are the same percentages that are multiplied against the claimant's weekly benefit amount to determine each employer's share of the charge for the claimant's weekly benefit payment. In this example, the unemployed worker has a weekly benefit amount of $118.00.

Employer A's account will be charged 25% of the weekly benefit charges.

.25 x $118 = $29.50

Employer B's account will be charged 29.55% of the weekly benefit charges.

.2955 x $118 = $34.87

Employer C's account will be charged 34.09% of the weekly benefit charges.

.3409 x $118 = $40.23

Employer D's account will be charged 11.36% of the weekly benefit charges.

.1136 x $118 = $13.40

If, after rounding, the benefit charges do not total the claimant's weekly benefit amount, the difference will be added to the charge of the employer with the largest charge.

The maximum possible liability each employer will have on this claim is as follows:

Emp A : $29.50 for 16 weeks = $472.00
Emp B: $34.87 for 16 weeks = $557.92
Emp C: $40.23 for 16 weeks = $643.68
Emp D: $13.40 for 16 weeks = $214.40

Since Employer D was the last employer, and Employer D paid wages greater than $2,072, Employer D will also be charged 100% of the first two weeks of benefits.

100% x $118 = $118

Emp D: $118 for 2 weeks = $236

Therefore, the total that could be charged to the account of Employer D is $214.40 (proportional share of base period wages) and $236 (100% of first 2 weeks of benefits), for a grand total of $450.40.

If an employer paid total wages to a worker of $200 or less, benefits will not be charged to that employer's account, but will instead be charged to the Nonchargeable Benefits Account.

Sometimes an employer hires a worker for part-time work, but the worker was also, concurrently, working for another employer, maybe even full-time. If the worker is laid off from that other job, he or she might qualify for benefits, and one of the chargeable employers in the base period of that claim will be the part-time employer. If the part-time employer is a "contributing" employer (pays a quarterly, calculated tax amount to UIA) and pays the part-time worker, in gross wages, as much as, or more than, the employer's benefit charge for that worker for that week, the employer can request to have its account "noncharged." Once that request is made, no more benefits will be charged to that employer for the claimant's benefits for the remainder of the benefit year. Starting in 2014, the claimant will have the ability to link the wages he/she reports in a week to a particular employer, whose account will then be automatically noncharged, if the conditions described above are met.

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What happens to the benefit charges when an unemployed worker is separated from work for reasons that would disqualify the unemployed worker from benefits?

When deciding whether the unemployed worker is entitled to unemployment benefits, the UIA will consider the reason given by the unemployed worker for each separation from work in the base period, as well as in the "lag" quarter and "filing" quarter.

- When the separation was either a discharge for misconduct or a voluntary leaving without good cause attributable to the employer, and the unemployed worker subsequently requalified by earning the "rework" amount, benefits will be paid without reduction.

  The account of the employer involved in that disqualifying separation, however, will not usually be charged for benefits if the claimant quit. If the claimant was discharged, the employer must respond to the monetary Determination by explaining the circumstances of the discharge. If the circumstances would disqualify the claimant for benefits, the employer's account will not be charged. If the employer's account is not charged, then a pooled account called the **Nonchargeable Benefits Account** will be charged.

  If the unemployed worker has not requalified by earning the "rework" amount, the unemployed worker will not be paid benefits until that rework amount is earned. The "rework" amount in the case of a "voluntary leaving" disqualification is 12 times the unemployed worker's weekly benefit amount; in the case of a "discharge" for misconduct, it is 17 times the unemployed worker's weekly benefit amount.

- When the unemployed worker was discharged for what the UIA concludes was assault and battery; theft; willful destruction of property; theft after notice of layoff or discharge; or possession or use of drugs, or failing or refusal to take a drug test, then the proportional amount of the unemployed worker 's weekly benefit amount otherwise attributable to that employer will not be paid to the unemployed worker. The claimant's benefits will be reduced by 13 weeks, and the unemployed worker will have to satisfy a 26-week period of requalification before receiving benefits.

Reductions in a Unemployed Worker's Weekly Benefit Payment

Earnings

Sometimes an unemployed worker will have some earnings while drawing unemployment benefits. If that happens, the unemployed worker may be able to continue drawing partial benefit payments. For every $1.00 the unemployed worker earns in a week while drawing unemployment benefits, the benefit payment is reduced by 40 cents. However, when the combination of the earnings and the unemployment benefits in a week exceeds 1.6 times the unemployed worker's unemployment benefit rate, then for every $1.00 the unemployed worker earns in excess of that amount, the benefit payment is reduced by $1.00. Starting October 1, 2015, benefits will be reduced 50 cents for every dollar earned, and the combination of benefits and wages will be limited to 1-1/2 times the claimant's weekly benefit rate.

When an unemployed worker receives <u>any</u> unemployment benefit payment in a week, even if the benefit amount is very low because benefits were reduced by the unemployed worker's earnings in the week, the unemployed worker's balance of weeks of benefit payments will still be reduced by 1 week. An unemployed worker may elect not to claim a week of benefits, rather than to receive a benefit payment for a very small amount.

The following calculation chart can be helpful in determining how earnings will affect a claimant's weekly unemployment benefits:

However, if an unemployed worker is working full-time in a week, the unemployed worker will not receive unemployment benefits for that week, regardless of the unemployed worker's earnings.

Sometimes a worker has earnings in 2 consecutive calendar weeks that would prevent the payment of benefits in each of those calendar weeks. However, if there is a period of 7 consecutive days within that 2-week period when the unemployed worker had no earnings, benefits can be paid for that 7-day period. That period is called a **flexible week**.

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WORKSHEET FOR CALCULATING WEEKLY BENEFITS WHEN UNEMPLOYED WORKER HAS EARNINGS IN THE WEEK

STEPS	INSTRUCTIONS FOR THIS STEP	NEW CALCULATION UNTIL 9/30/15
A	Enter the weekly unemployment benefit amount.	$120
B	Enter the amount of the gross earnings (before taxes) in the calendar week (Sunday through Saturday week). Round down to the nearest whole dollar.	$140
C	Multiply "**B**" by "0.4".	$ 56
D	Subtract **"C"** from **"A"**. Round down to the nearest whole dollar. If the result is zero or less than zero, enter "0" as your answer.	$ 64
E	Add together **"B"** and **"D".**	$204
F	Multiply **"A"** by 1.6.	$192
G	Subtract **"F"** from **"E"**. Round down your answer to the nearest whole dollar. If the result is zero or less than zero, enter "0" as your answer.	$ 12
H	Subtract **"G"** from **"D"**. Round down your answer to the nearest whole dollar. The answer you get will be the amount of the unemployed worker's unemployment benefit payment for the week.	$ 52

Retirement Benefits

If an unemployment worker is receiving benefits based on work with an employer who is also chargeable for some or all of the unemployed worker's unemployment benefits, then the unemployment benefits could be reduced. However, if the worker rolled over his or her retirement benefits into an Individual Retirement Account (IRA), with no income tax impact that year the worker is not considered to have "received" the retirement benefit when rolling it over and it will not affect the unemployment benefits.

If The Unemployed Worker Contribution To The Cost Of The Benefit Was:	The Weekly Unemployment Benefit Will Be:
Zero	Reduced by the full monthly retirement benefit, prorated to a weekly amount
More than Zero, but less than half	Reduced by half the monthly retirement benefit, prorated to a weekly amount
Half or more	Reduced by no amount (no reduction in unemployment benefits)

If the unemployed worker has the option to receive a retirement benefit either in lump sum, or on a monthly basis, the benefits will be reduced as shown above, even if the unemployed worker chose to receive the payment in lump sum. If there is no option and the unemployed worker received the payment in lump sum, the reduction will be made only in the week in which the lump sum was paid.

If an unemployed worker, at retirement, elects to roll over an employer retirement account into an IRA (Individual Retirement Account), the pension will not be considered “received” for unemployment benefit purposes, and will not be used to reduce the claimant’s unemployment benefits.

If a retirement benefit is converted at the time of retirement into an annuity, the annuity payments will be treated as retirement benefit payments and used to reduce unemployment benefits as described above.

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Lost Earnings

If an unemployed worker turns down work in a week with his or her employer, then whatever amount the unemployed worker would have earned by accepting that work may be considered to have been earned, and may be used to reduce the unemployment benefits in accordance with the table above. Also, the unemployed worker may be disqualified for refusing an offer of suitable work, without good cause (discussed later in this booklet). See Fact Sheet No. 144 for more details about what an employer should do if a worker turns down work (such as "to stay on unemployment").

Special Payments

Certain "special payments" made by an employer, such as vacation pay, holiday pay, severance pay, wage continuation pay, and payment in lieu of notice, can be used to reduce (even to zero) a claimant's right to unemployment benefits in a week to which these payments are either allocated or paid. The reduction can occur even if the period of allocation is after the unemployed worker is laid off, or quits, or is fired. A more complete explanation of these special payments can be found in the tables in Section B of this Handbook, on pages 4 through 13.

Restitution

Sometimes an unemployed worker is overpaid benefits. This can happen through an error by the UIA, or because the UIA was unaware of earnings the unemployed worker received in a week, or because the unemployed worker was later determined to be ineligible or disqualified for benefits.

If the UIA makes an incorrect benefit payment, a *Determination of Restitution* will be mailed to the unemployed worker and the employer, requiring repayment and usually crediting the employer's account. The employer's account will be credited as of the calendar quarter in which the Restitution Determination becomes final. However, if the overpayment was the result of missing or incorrect information from the employer, no restitution will be required of the unemployed worker, and no credit can be given to the employer for the period of the overpayment before the missing or corrected information was provided by the employer.

If the employer disagrees with the amount of restitution, or if the Determination finds the employer's account cannot be credited with the restitution and the employer disagrees, the employer can protest the Determination. The unemployed worker can also protest.

The Agency recoups restitution, plus interest and penalties, once the appeal period has expired, by cash payments, by deducting restitution from future benefit payments, by intercepting state and, under certain circumstances, federal income tax refunds due the unemployed worker, or pursuing administrative garnishments or a judgment for collection in the courts. The UIA can also intercept lottery prizes of $1,000 or more. The UIA can also levy a claimant's bank account or put a lien on property. If more than $3,500 was improperly paid to a claimant due to intentional misrepresentation, the claimant can be prosecuted for a felony.

Income Tax Withholding

The unemployed worker has the choice of having the Agency withhold 10% of the benefit check for federal income taxes, and of having approximately 4.35% withheld from his or her unemployment benefit check for state income taxes. If the unemployed worker elects to have any tax withheld, both taxes must be withheld.

When is an unemployed worker disqualified or ineligible for unemployment benefits?

Unemployment compensation is paid to workers who are unemployed through no fault of their own. If a worker becomes unemployed as a result of their own action, such as by quitting a job or being fired for misconduct, he or she will be disqualified from receiving benefits, unless he or she requalifies. If an unemployed worker remains unemployed because he or she fails to take reasonable action to become re-employed, he or she will be held ineligible for benefits for that week.

For example, a worker who fails to seek work, or be able to work, or be available for work, will not be eligible for benefits for a week of unemployment. This portion of the booklet will discuss disqualification and ineligibility in much further detail.

Disqualification

An unemployed worker is disqualified for benefits if he or she is separated from work under certain circumstances, or if he or she refuses an offer of suitable work without good cause.

Voluntary Leaving

The worker will be disqualified from receiving unemployment benefits if he or she quits a job without good cause attributable to the employer, unless the worker later requalifies for benefits. A complete explanation of requalification is found elsewhere in this booklet, under the heading, "Requalifying for Benefits, After Disqualification."

Good cause attributable to the employer includes reasons that would cause a reasonable person to leave his or her job, but does not include personal reasons such as babysitting problems. Good cause attributable to the employer could include such things as safety hazards on the job or job discrimination the employer allows to continue.

Before a worker quits a job, he or she must bring to the employer's attention the situation the worker feels needs correction, and the employer must be given adequate time to correct the problem. In most cases, an employee who quits a job without giving such an opportunity to the employer to correct the problem will be considered to have quit without good cause attributable to the employer.

However, if a worker quits a job after accepting permanent, full-time work with a new employer, and the worker actually goes to work for the new employer, then the worker will not be disqualified for leaving the former employer to accept the new work. **All of the wages earned with the former employer will transfer to the new employer and can be used to pay benefits charged to the new employer.** Also, if a worker accepts a recall to a former employer or a union hiring hall

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referral, the worker will not be disqualified and the unemployment liability will transfer to the recalling employer or the employer assigned by the hiring hall.

Also, if a worker tries a new job that would have been considered by the UIA to be unsuitable for that worker, but quits that job within a reasonable trial period (60 days for an unemployed worker with an established claim), the worker will not be disqualified from receiving unemployment benefits based on that quit and the employer's account will not be charged. In addition, if a worker is the spouse of a full-time member of the U.S. armed forces, and leaves a job due the reassignment of the spouse by the military to a different geographic area, then the worker will not be disqualified for unemployment benefits when he or she voluntarily leaves work to move with the spouse. The account of the employer will not be charged for those benefits; the nonchargeable benefits account will be charged instead.

A worker who negligently loses a requirement for the job, such as a driver license, will be disqualified for voluntarily leaving the job. The first thing that must be proved in a case involving voluntary leaving is that the unemployed worker left the job and was not fired. The employer must prove that. Then, the requirement to prove the case shifts to the unemployed worker. To avoid disqualification, the unemployed worker must show either that he/she left the job involuntarily, or that he/she left with good cause (that is, with good reason) attributable to the employer. A good personal reason for leaving a job will not prevent a disqualification. The claimant's good cause for leaving the job must, in some way, be attributable to the employer. To show that he/she left "involuntarily," the worker must provide medical documentation of a condition preventing him/her from continuing in that job, and must have unsuccessfully sought alternative employment from the employer and a leave of absence.

Misconduct

The Michigan Supreme Court has defined **misconduct** in an unemployment compensation case, in its decision in the case of Carter v Employment Security Agency, 364 Mich 538, 541 (1961):

"[Misconduct in an unemployment compensation case is] ... conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the [unemployment compensation] statute."

Misconduct for which a worker will be disqualified must therefore show an intentional disregard by the worker of the employer's interests, or must show gross negligence (that is, a high degree of carelessness) by the worker.

For example, acts of misconduct could include unexcused absence or tardiness, insubordination to a supervisor, competing against an employer, and other such actions contrary to the interests of the employer.

If a worker is discharged for either a single act of misconduct, or the last in a series of acts of misconduct connected with the work, the worker will be disqualified from receiving unemployment benefits. In the case of a discharge for a series of incidents, the final incident must show <u>some</u> degree of wrongdoing. In most cases, a worker must have been warned of the fact that his or her actions were unacceptable, before the worker can be disqualified. In some cases of gross misconduct, however, prior warnings are not necessary.

For example, a worker who is discharged for a serious incident of insubordination, such as arguing with the employer in front of customers, will probably be disqualified from receiving unemployment benefits. Even a single incident of something that is harmful to the employer is enough to show a substantial and intentional disregard of the interests of the employer.

In the case of absence or tardiness, each incident, taken separately, might not be serious enough to disqualify a worker from receiving unemployment benefits. However, if the employer counsels the worker and explains that the pattern of absence or tardiness, or both, is becoming a serious problem, and the worker continues the pattern and is discharged, the worker could be disqualified for misconduct. The fact that the employer gave the worker a warning and the worker continued to be absent or tardy shows that the worker knowingly violated the interests of the employer.

The worker will also be disqualified if he or she is discharged for intoxication at work. A worker who was informed at the time of hire how to contact the employer for an absence, and then is a 3-day no-call/no-show, will be disqualified for a discharge for misconduct.

Even if the employer fires a worker for misconduct, the employer also has to show that the act of misconduct happened in connection with the work in order for the worker to be disqualified from receiving unemployment benefits. For example, if a worker is fired because he

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had a fist fight with a co-worker after working hours, and off of the company property, and the fight was not related to the work, then the worker would not be disqualified. The reason is that the firing was not for an incident that occurred in connection with the work, even though it involved a co-worker.

If a worker is fired because he or she is unable to do the job (for example, the worker can't learn the job, or can't meet production standards), then the worker will not be disqualified from receiving unemployment benefits **even though the employer may have been perfectly justified in firing the worker.**

Whether the discharge is for misconduct connected with the work or for intoxication at work, the worker will not receive unemployment benefits, unless the worker later requalifies. A complete explanation of when requalification begins can be found elsewhere in this chapter, under the heading, *Requalifying for Benefits, After Disqualification*.

In responding, if necessary, to Form UIA 1575E , "Monetary Determination," or completing Form UIA 1713, *Fact Finding Report,* or Form UIA 1707, *Request for Information Relative to Possible Ineligibility or Disqualification*, if required, it is important for the employer to explain to the UIA what incident or series of incidents led to the claimant's discharge and why the employer should not be charged for benefits.

If warnings were given to the unemployed worker, you should tell the UIA the dates the warnings were given, and who gave the warnings to the unemployed worker. If they were written warnings, copies should be sent to the UIA. Also, the dates of the absences or tardinesses, or other incidents that led to the discharge, should be provided to the UIA. Copies of any warnings should also be taken to the Administrative Law Judge Hearing by a witness who can testify about them.

The courts have said that the **burden of proof** (that is, the responsibility to justify disqualification) is on the employer, when the employer discharges the employee. If an employer only tells the UIA, on the Form UIA 1575E, or Form UIA 1707 or UIA 1713, that the worker was fired for misconduct, without any description of the acts involved, or any details about warnings given to the employee, the UIA probably will not have enough information to disqualify the unemployed worker or to noncharge the employer's account.

REASON FOR DISQUALIFICATION

REASON FOR DISQUALIFICATION	REWORK	13 WEEK	26 WEEK
Voluntary leaving without good cause attributable to employer	X		
Discharge for misconduct connected with work, or intoxication at work, or suspension for misconduct	X		
Discharged for incarceration leading to conviction, except if on day parole, or if convicted for traffic offense causing absence from work of less than 10 days		X	
Discharged for assault and battery connected with work			X
Discharged for theft connected with work			X
Discharged for wilful destruction of property connected with work			X
Discharged for failing a drug test, refusing to take a drug test, or using or possessing a controlled substance at work			X
Discharged for work stoppage contrary to collective bargaining agreement (wildcat)		X	
Failed without good cause to apply for suitable work, when notified of the job		X	
Failed without good cause to report to former employer for job interview		X	
Failed without good cause to accept suitable work when offered		X	
Discharged for failing to report back to Temporary Help Firm within 7 days of leaving a work assignment, if notified of that requirement		X	
Unemployed due to labor dispute (strike or lockout)			
Committed theft before last day of work but after being notified of layoff or discharge			X
Conviction for theft within 2 years of discharge			X

1/Disqualification is for duration of unemployment, but labor dispute disqualification can be terminated by two weeks work with wages each week equal to the unemployed worker's benefit rate.

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Refusal of work, or of a job interview, or to apply for work

A worker will be disqualified if he or she fails, without good cause, to accept an offer of **suitable** work, or to go for a job interview for suitable work, or to apply diligently for suitable work of which the claimant was informed by the UIA, or fails to apply for work with employers that could reasonably be expected to have suitable work available.

To determine whether work is suitable, the UIA must consider such factors as risk to the worker's health, safety, and morals, the worker's physical fitness and prior training, work experience and prior earnings, the length of unemployment and prospects for finding a job in the area, and the distance of the job from the worker's residence. In order to be suitable the job cannot be vacant due to a labor dispute and must provide wages and hours consistent with other jobs in the area. Further, the job cannot require the worker to join a union, resign from a union, or refrain from joining a union.

Before a worker has received 50% of his/her benefits on a claim, a job that pays a worker at least 70% of the gross pay rate he or she received immediately before becoming unemployed will be regarded as suitable work at least with respect to wages. If a worker refuses an offer of such work, the worker could be disqualified from receiving unemployment benefits. After the claimant has received 50% of his/her benefits on a claim, the claimant must accept work that he or she has not necessarily performed in the past or been trained in, if it pays at least the state minimum wage ($7.40/hour), at least the average wage for that job in the locality, and at least 120% of the claimant's weekly benefit amount.

An employer should notify the UIA when a worker refuses an offer of work. The UIA will then determine whether the worker should be disqualified from receiving unemployment benefits. See Fact Sheet No. 144 for further details about how an employer should report a refusal of work to the UIA.

Labor disputes

If a worker goes on strike over wages, hours, or other terms and conditions of employment, or is locked out by the employer over those issues, the worker will be disqualified from receiving unemployment benefits for as long as the labor dispute continues. The disqualification will begin with the start of the week the unemployment began, and end at the end of the week when the labor dispute ended. In some cases, shut-down periods in anticipation of the labor dispute, and start-up periods following the labor dispute, are also included in the period of disqualification.

A worker who goes on a "sympathy strike" will be disqualified for unemployment benefits, as will a worker who is not on strike or locked out but who is still likely to benefit from the result of any settlement reached with the workers who are striking or are locked out.

Also, if a worker who is not on strike or locked out is laid off because of the labor dispute involving other workers for the same employer at the same **establishment** (generally, a worksite), the worker will still be disqualified for as long as the strike or lockout involving the other workers continues.

The disqualification of a worker who is on strike or is locked out will end, however, if that worker is permanently replaced. It will also end if the worker works for two consecutive weeks with another employer and earns as much as his or her potential weekly unemployment benefit rate in both of those weeks.

Other disqualifications

A worker will also be disqualified from receiving unemployment benefits if the worker is:

- discharged for theft connected with the work (a conviction within 2 years will reopen the UIA's decision).
- discharged for willful destruction of property connected with the work
- discharged for assault and battery connected with the work
- discharged for failing a drug test, for refusing to take a drug test, or for possessing or using a controlled substance at work
- discharged for failing to report back to a temporary help firm within 7 days of leaving a work assignment, if notified of that requirement by the temporary help firm
- placed on disciplinary layoff
- involved in a wildcat strike
- discharged for being in jail after conviction for a crime (other than a traffic conviction if the jail time is less than 10 days)
- discharged for a theft that occurs after a notice of layoff but before the last day of work.

Requalifying for benefits, after disqualification

There are two methods to requalify after a unemployed worker is disqualified from receiving benefits. The type of requalification required depends on the reason for disqualification.

Requalification by Rework

If a worker is disqualified for quitting a job, or being fired for misconduct, the worker can requalify for benefits by returning to work in covered (non-excluded) employment (this is called "rework") and earning

- 12 times the worker's weekly unemployment benefit rate in the case of a voluntary leaving, or
- 17 times the worker's weekly unemployment benefit rate in the case of a suspension or discharge for misconduct.

However, if the worker was disqualified for one of the reasons mentioned and requalifies by rework, any unemployment benefits the worker receives based on base period earnings paid by the employer the individual was disqualified from, will not be charged to the account of that employer in the case of a voluntary leaving. In the case of a discharge, the employer's account will not be charged **if the employer notifies the UIA that the employer's account should not be charged.**

Requalification by serving requalification period

Some disqualifications require a worker to satisfy a period of requalification. If a worker is disqualified and required to serve a requalification period of 13 or 26 weeks (such as for assault and battery, theft, or willful destruction of property, or refusal of suitable work), the worker

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can serve a week of requalification by either of the following methods:

- earn at least $220.00 in the week.
- certify to the UIA that he or she was able to work, available for work, and seeking work during the week.

If a worker is disqualified for 13 weeks and requalifies, he or she will lose benefits (but not more than 13 weeks). After that benefit reduction, any remaining benefits can be charged to the employer's account.

If a worker is disqualified for 26 weeks and requalifies, the worker's benefits will be reduced by up to 13 weeks. In addition, the worker will not receive the proportional share of weekly benefits chargeable to the employer involved in that separation.

The disqualifications for unemployment benefits, and the requalifications for each disqualification, are summarized in the table on the previous page.

Eligibility

Generally, an unemployed worker is **ineligible** for benefits for a week if an unemployed worker fails to take those reasonable actions that could result in his or her re-employment. An unemployed worker will be **ineligible**, therefore, to receive unemployment benefits for a week if the unemployed worker does not meet each of the weekly eligibility requirements:

- files the claim on time
- registers for work with The Michigan Works! Agency when the new claim is filed
- is able to work
- is available for full-time, suitable work
- is seeking work
- reports, as directed, to the UIA (typically by calling MARVIN, or in some cases by filing by mail, when authorized by the UIA)
- participates in re-employment activities required under the worker profiling system

An unemployed worker will remain ineligible for benefits for as many weeks as the unemployed worker fails to meet any of the weekly eligibility conditions.

Filing a claim on time

To be filed on time, a new claim must be filed on or before Friday of the week following the week containing the last day of work.

If an unemployed worker has good cause (that is, a good reason) for being late in filing a claim, a 14-day extension can be granted for filing the claim. Good cause reasons can include attendance at a funeral, working or reliance on a promise of work, or acts of God that prevent the filing of the claim.

Registration for work

In most cases, when an unemployed worker files a new claim for benefits, or renews a claim for benefits, the unemployed worker must go to the Michigan Works! Agency to register for work and seek assistance in finding a job. An unemployed worker does not have to register with the Michigan Works! Agency, however, if the unemployed worker indicates to the UIA that he/she is expected to return to their previous work within 120 days.

Ability to work

To be **able to work**, an unemployed worker must be able to do some kind of work he or she performed in the past, or was trained to perform. The work does not have to be the kind he or she most recently performed.

Availability for work

To be available for work, a worker must be willing to accept any full-time work that is suitable for the worker. Factors that determine suitability of work include the worker's prior earnings, experience, travel distance, prior training, physical fitness, and risk to the worker's health, safety, and morals. The worker must be available to perform the work, generally, on any day of the week and on any shift when the work is normally performed.

An unemployed worker does not have to be available for work, however, if the claimant's employer has asked the UIA to waive (set aside) this requirement when the worker will be on layoff for 45 days or less. The availability requirement can also be waived for a week in which a unemployed worker is attending vocational training.

An unemployed worker is also excused from being available for work on the day of the death of a close relative (such as a child, spouse, parent, brother, sister, and some other relatives), and for the next 4 days.

A claimant will be considered unavailable for work, and therefore ineligible for unemployment benefits, if the claimant (1) fails to keep an employer chargeable on the claim notified of his or her contact information, or (2) fails, without good cause, to respond within 14 days to a contact request from the UIA, or if (3) mail to the claimant is returned to the UIA as undeliverable and the claimant cannot be reached by telephone. Also, a claimant who fails to appear in person at a location selected by the UIA for an audit of his/her claim will be held "unavailable" for work.

Seeking work

To be seeking work**,** an unemployed worker must be actively engaged in looking for work in a way generally used by a worker in that occupation to find work. Although the most common way to seek work is to file applications with employers, there are other methods as well.

For example, a worker who normally receives work assignments through a union hiring hall, and who registers with the union hiring hall when he or she becomes unemployed, is satisfying the seeking work requirement by doing what he or she would normally do to find a job. Other workers who would normally send out applications or resumes are also effectively seeking work.

Under some circumstances, the seeking work requirements can be waived (set aside) by the UIA. If you, the employer, are expecting to recall the unemployed worker within 45 days, you can request the UIA, in writing, to waive the requirements that the unemployed worker must register for work and must seek work. You should make the request in writing to your nearest UIA branch resolution office before claimants start to receive any benefit payments.

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The seeking work requirement can also be waived by the UIA if the claimant's layoff is expected to be temporary (not more than 15 days), or when the state's unemployment rate reaches 8.5% and the unemployed worker does not work in a high demand occupation. Also, an unemployed worker who is attending training approved by the UIA is not required to be available for work or seeking work for any week when the unemployed worker is in such training. An unemployed worker is also excused from being available for work, and from the usual reporting day to claim benefits, on the day of the death of a close relative (such as a child, spouse, parent, brother, sister, and some other relatives), and for the next 4 days.

Beginning in 2013, to be considered "actively engaged" in seeking work, a claimant must conduct a "systematic and sustained" search for work, and must report the name of each employer where the claimant sought work, the physical or online address of the employer, and the date and method by which work was sought with the indicated employers. This work search will be subject to audit by the UIA. The claimant must report to the UIA these details of the work search either online, or in writing by mail or fax to the UIA, or by appearing at least monthly at a Michigan Works! Agency location.

Reporting, as directed, to claim benefits

After every completed two-week period of unemployment, an unemployed worker must report and certify to the UIA that they were satisfying each of the requirements of the law to be entitled to benefits (that is, the unemployed worker must be eligible and qualified for benefits during that period). Generally, the certification must be filed, by telephone, within 7 days after the end of the week being claimed.

An unemployed worker who has good cause for being late in reporting on a claim can be given a 14-day extension to file. Also, an unemployed worker can be excused from reporting to claim benefits on the day of the death of a close relative (such as a child, spouse, parent, brother, sister, and some other relatives), and for the next 4 days.

Most unemployed workers for unemployment benefits now report to the UIA by telephone or online, using an interactive voice response system known as MARVIN (**M**ichigan's **A**utomated **R**esponse **V**oice **I**nteractive **N**etwork). The number to call for telephone MARVIN is 1-866-638-3993. A schedule by social security number is followed Monday through Wednesday; on Thursday and Friday anyone can call the number from 8:00 a.m. until 7:00 p.m.

Using a scheduled appointment time, an unemployed worker responds, using the keypad of a touch-tone telephone (or by going on-line) to prompts from MARVIN, and reports to the UIA whether he or she has been satisfying each of the weekly eligibility requirements to be entitled to unemployment benefits. An unemployed worker also reports any earnings he or she has had during a week. New and re-opened claims for unemployment benefits may be filed by telephone at 1-866-500-0017, or on the internet at www.michigan.gov/uia. The UIA no longer maintains local branch offices where claims can be filed.

Participating in Profiling Activities

The UIA's profiling system uses a computer model to identify workers likely to exhaust unemployment benefits and to need re-employment services to find a job. Factors considered are the worker's education and training, the industry in which the individual last worked, and the type of job the unemployed worker performed.

A worker identified as needing such assistance must participate in re-employment and job search services. If the worker fails to participate in these services, the worker will be held ineligible for unemployment benefits in every week in which they fail to participate.

Denial Periods

The law provides for a **denial period** in which a worker cannot receive unemployment benefits, even if the worker is otherwise eligible and qualified for benefits.

A denial period applies to employees of public and non-profit schools, and to employees of charter schools and educational service agencies. It also applies to school crossing guards. The denial period applies between regular school terms or years and during school holiday periods. A denial period also applies, between terms, but not within terms, to employees of employers that contract with K-12 educational institutions or institutions of higher education to provide professional or non-professional employees to those educational institutions. There is also a denial period that applies to professional athletes between athletic seasons. A denial period only applies to these periods, however, if these workers have reasonable assurance of returning to work after the period between regular work seasons.

A denial period also applies to seasonal workers between work seasons, if the workers were hired primarily to perform services during regularly recurring periods of 26 or fewer weeks in a period of 52 consecutive weeks.

The worker must be notified that the employer has applied to the UIA for designation as seasonal, or has been determined by the UIA to be a seasonal employer. The worker must usually be notified at the beginning of the season that he/she is being hired as a seasonal worker.

At the end of the season, the worker must be given reasonable assurance of being rehired by the employer for the next season. If the worker is not actually rehired the next season, the worker can collect retroactive unemployment benefits for the period between seasons if the worker reported regularly to the UIA during the period between seasons.

The seasonal denial period does not apply to workers in the construction industry.

Which State's Law Will Be Used to Decide if a Claim is Paid?

In most cases, when an unemployed worker files a claim for unemployment benefits in Michigan, the Michigan unemployment insurance law applies to the claim. Sometimes, though, an unemployed worker has worked in one or more states in addition to Michigan. In those cases, the unemployed worker may be able to establish a claim under the law of Michigan alone, or under the law of one of those other states, alone. In some cases, though, the unemployed worker may not have enough weeks of work in any one state to establish a claim, but may have enough weeks of work in the combination of states to file a claim known as a **Combined Wage Claim (CWC)**. Generally, the law that applies to a Combined Wage Claim is the law of the state where the

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Combined Wage Claim is filed. Although this can be a little confusing, the following more detailed explanation is provided for those employers who wish to understand this kind of claim more thoroughly.

The following principles are used to determine which state's law applies to a claim:

- If an unemployed worker qualifies for benefits from only one state, he/she would be paid benefits under the law of that state, regardless of where he/she files the claim. If the claim is filed in a state other than the one where the unemployed worker qualifies for benefits, the claim will be an Interstate Benefit (IB) claim.
- If an unemployed worker qualifies for benefits from each of two different states, the unemployed worker can either choose which of those two states to file the claim against (and the law of that state would apply), or can opt to file a combined wage claim (CWC). The law of the state where the CWC claim is filed would apply (unless combining wages still does not qualify the unemployed worker for benefits under that state's law).
- If an unemployed worker does not qualify for benefits in either of the two states, the unemployed worker may still be able to combine the wages earned in the states to qualify for a combined wage claim (CWC). The law applicable to that CWC will be the law of the state in which the CWC claim is filed, (unless combining wages still does not qualify the unemployed worker for benefits under that state's law).

If benefits are otherwise chargeable to an employer's account solely on the basis of a combined wage claim, the benefits will not be charged to the employer's account, but will be charged instead to the Nonchargeable Benefits Account.

The chart below helps illustrate how these principles operate to determine which state's law applies to a claim. In the example used in the chart, the unemployed worker has worked in Michigan and Texas.

Notifications to Employer about Claims Status

Form UIA 1575E, Monetary Determination

As discussed earlier in this *Handbook*, when a new claim is filed, the UIA checks the wage database to determine whether the unemployed worker had sufficient wages in the base period, or the alternate base period, to qualify for benefits. The wage information also allows the UIA to calculate the claimant's weekly benefit amount and potential number of weeks of benefits. The wage data also allows calculation of the proportion of benefits that will be charged to each base period employer's account, if the unemployed worker receives a week of benefits.

In addition, we ask the unemployed worker for the reason he or she was separated from employment with the last employer (in the filing quarter), from any other employer in the filing quarter, from any lag quarter employers, and from any base period employers.

The UIA sends Form UIA 1575E to the last employer and to each base period employer, notifying them of the potential charges to their accounts, and of the separation reason given by the unemployed worker. If a base period employer believes the claimant's firing should have been disqualifying, the employer is requested to notify the UIA of that fact within 10 days. Otherwise, benefits will be paid in accordance with the information on the Form UIA 1575E. If the UIA concludes the claimant's reason for separation was disqualifying, the account of the employer will not be charged for any benefits paid the unemployed worker. In the case of a quit, the base period employer's account will automatically be noncharged.

	1	2	3	4	5	6	7
	Claimant qualifies only for, or opts for, Michigan claim	Claimant qualifies only for, or opts for, Texas claim	Claimant qualifies in both Texas and Michigan	Claimant qualifies in neither Texas nor Michigan	Claimant qualifies for, and opts for, combined MI-Tex claim	Claimant qualifies for both Michigan combined MI-Tex claim	Claimant qualifies for both Texas and combined MI-Tex claim
Files in Mich.	M	T	M/T-IB/CWC	CWC	M/CWC	M/CWC	T-IB/CWC
Files in Texas	M	T	T/M-IB/CWC	CWC	T/CWC	M-IB/CWC	T/CWC

M = Michigan law applies; T = Texas law applies; T-IB = The claim is filed in Michigan but is a Texas claim so Texas law applies; M-IB = The claim is filed in Texas but is a Michigan claim so Michigan law applies; CWC = The claim is a Combined Wage Claim which follows the law of the state in which it is filed, unless that state's law the unemployed worker still does not qualify for a claim even by combining wages, in which case the claim will be a CWC claim, filed on an interstate basis, and will follow the law of the other state; / = unemployed worker ha a choice between filing the alternative types of claims shown.

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Step-by-Step Look at Form UIA 1575E, "Monetary Determination"

The first thing to notice on this form is the **Mail Date** in the upper, right-hand side of the sheet, just under the location of the Agency office issuing the form. Most employers will not need to respond to this form, because they will agree with the reason shown for the claimant's separation from employment, and with the wage information shown.

However, if you, as an employer, do not agree with the wages as shown, or with the reason shown for the unemployed worker's separation from employment, or if you believe your account should not be charged in the case of a firing because the circumstances would have disqualified the worker from benefits, then your response must be **received** by the UIA within 10 calendar days after the mail date shown on the form. Day number 1 of the 10-day period is the day after the **Mail Date**. Information received after the 10-day period will generally only affect the claim in the future, and will not result in a credit to your unemployment experience account. However, if the separation from employment was a "voluntary leaving" or "quit," the employer has a 30-day period in which to provide a reason why their account should not be charged. Information needed in that period will be effective from the beginning of the claim. **Therefore, to protect your unemployment experience account, you must be certain that your response, if necessary, with new, additional, or corrected wage or separation information, is received by the UIA within the 10-day or 30-day period.**

You may respond by mail or by fax or through your EWAM (MiWAM) account. The address and fax number of the office to which the form should be mailed or faxed is shown at the top of the form.

Claim Information

The first major portion of the Form is labeled "Claim Information." It begins by giving the name and Social Security Number of the unemployed worker involved in the claim. Also shown are the dates the unemployed worker's **Benefit Year** begins and ends. This is the period during which any benefits allowed on this claim will be paid.

The item labeled "High Qtr. Wages Used to Calculate Benefits" shows a dollar amount. This is the amount of the wages paid to the unemployed worker during the calendar quarter of the base period of the claim in which the unemployed worker had the highest earnings. This amount, multiplied by 4.1% (.041), gives the unemployed worker's preliminary **Weekly Benefit Amount**. That amount can be increased by $6.00 per dependent, and up to 5 dependents can be claimed but cannot exceed $362.00.

Under "Dependents Claimed" you will find a figure indicating the number of dependents reported by the unemployed worker and used to calculate the benefit amount.

The box labeled "Weekly Benefit Amount" shows the unemployed worker's weekly benefit amount, calculated using the high quarter wages and the number of dependents claimed.

The box labeled "Benefit Weeks Allowed" is calculated by taking the total of the unemployed worker's **Base Period Wages** from each base period employer (shown later on the Form under the heading "Base Period Employer(s)". Forty-three percent of that number is calculated by multiplying base period wages by .43. The product is then divided by the unemployed worker's weekly benefit amount, and the result is rounded down to the nearest ½ number. The number resulting is shown in the "Benefit Weeks Allowed" Box. The minimum number of weeks, though, is 14 and the maximum is 20.

If a number is shown under the item "Reference Codes," you need to find the explanation corresponding with that number on the back of the Form. It will provide important additional information about the claim.

Last Employer

The next major portion of the Form is labeled "Last Employer."

The unemployed worker's **last employer** is the most recent employer the unemployed worker worked for before filing the new claim for benefits.

The item labeled "Unemployed Worker's Separation Reason" will show the reason the unemployed worker gave for being separated from employment with the last employer.

Under "Total Wages," the wages previously reported by the employer and stored in the Agency's database (or in some cases wage information reported by the unemployed worker) will be shown. It includes wages paid during the most recent period of employment with the last employer. The unemployed worker may be asked to supply wage information if the employer's information is unavailable.

If the unemployed worker earned $2,072 or more with the last employer, then the first 2 weeks of unemployment benefits will be charged to that employer. Under "Last Employer Charge for First 2 Benefit Weeks," the figure shown will be the unemployed worker's "Weekly Benefit Amount," multiplied by 2.

If the last employer disagrees with the reason for separation shown under "Unemployed Worker's Separation Reason," or with the amount shown under "Total Wages," the employer should provide corrected information to the Agency within 10 days (or within 30 days in the case of a "quit"). **Information received by the Agency after that period will only be effective thereafter, and the employer's account will generally not be credited for overpayments made up to that point**.

If the last employer provides information showing that the unemployed worker's separation from employment was for a reason other than "lack of work," the Agency will mail the employer Form UIA 1707, *Request for Separation Information*, or Form 1713, *Fact-Finding Form,* and may also telephone the employer with additional questions. The Agency will then issue Form UIA 1302, "*Nonmonetary Determination*" to the unemployed worker and the employer concerning whether the unemployed worker's reason for separation was disqualifying. Either party can protest that decision.

Certain additional information that is pertinent to the last employer may be referenced by means of the "Reference Codes" that correspond to numbered explanations on the back of the Form. Be sure to read the cited codes.

Base Period Employer(s)

The last major portion of the Form shows the beginning and ending dates of the base period of the claim. The base period is usually the first 4 of the last 5 completed calendar quarters, although in some cases it may be the 4 most recently completed calendar quarters.

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All the employers the unemployed worker reported for that period will be shown, along with the "Separation Reason" provided by the unemployed worker, and the "Base Period Wages" previously reported by the employer and stored in the Agency's wage database. If the employer has not supplied the wage information, the unemployed worker may be asked to provide it.

The item labeled "Maximum Charge" will show the maximum benefit amount that could be charged to each base period employer's account. It is calculated by taking the unemployed worker's weekly benefit amount and multiplying it by the potential number of weeks of benefits the unemployed worker could receive on the claim. We then calculate each base period employer's pro rata share of the benefits, based on that employer's share of the unemployed worker's total base period wages.

If an employer responds to Form UIA 1575E by explaining that the unemployed worker's separation from employment was for a disqualifying reason, that employer's share of the unemployed worker's unemployment benefits will likely be "noncharged" to that employer. The employer will be notified of the "noncharging" on Form UIA 1955, *Redetermination of Charges.* In the case of a "separating reason" shown on the Monetary Determination as a "quit," the quit will be presumed to be disqualifying and the employer need respond or request to be non-charged.

In some cases, though, the Form UIA 1955 may have been issued on a previous claim. If that happened, then the noncharged amount will be repeated in the item on Form UIA 1575E labeled "Non-charge Amount." When an employer is "noncharged" for benefits, it means that the employer is relieved of the liability for those benefit payments. This can occur if the unemployed worker has already requalified for benefits through earnings. Although benefits will be payable to the unemployed worker, they will be charged to the "Nonchargeable Benefits Account" rather than to the unemployment experience account of the employer.

Be sure to note any numbers under "Reference Code" which refer to numbered explanatory statements on the reverse of the Form.

Finally, the date information must be **received by the Agency** is shown on the Form. That date is 10 days after the Mail Date shown at the top of the Form. New, additional, or corrected information received within that time period will be used to correct the wage and separation information shown on the Form.

New, additional, or corrected wage information received after the 10 days (or 30 days, in the case of a "quit") will be used to reduce benefits paid beginning the week the information is received.

New, additional, or corrected separation information will be used to correct benefit payments effective the week the information is received. However, if the information is received after the "Protest Due Date" shown at the bottom of the Form (which is 30 days after the Mail Date), then it will only be taken into consideration if the employer provides "good cause" for being late in supplying the information.

Form UIA 1955, Redetermination of Charges

When a base period employer notifies the UIA of reasons why they should not be charged for benefits, they are sent this form. The form lets them know if they will be charged, the reasons for charging or not charging their account and the effective date of the decision. There are eight possible versions of this form to handle the various situations and issues.

Form UIA 1563, Notice to Chargeable Employer of Claim Renewal

When an unemployed worker returns to work, and then again becomes unemployed and resumes drawing benefits chargable against your account, we send you Form UIA 1563, *Notice to Chargeable Employer of Claim Renewal*.

This tells you that the unemployed worker is once again claiming benefits chargeable to you, and that you can expect to see new benefit charges against your account. If you have a reason to believe the unemployed worker may not be entitled to benefits, you should notify the UIA so we can further investigate the claimant's right to the benefits. Reasons you could provide for why the unemployed worker might not be entitled to benefits could include the fact that the unemployed worker is employed, or is not able to work or available for work.

Form UIA 1564-1, Notice of Claim Renewal

Sometimes an unemployed worker renews a claim after being employed and then becoming unemployed again. In those cases the UIA sends a notice of the claim renewal to the benefit year employer from which the unemployed worker just became unemployed (which will not necessarily be a base period employer currently chargeable for the unemployment benefits).

If the unemployed worker quit the job without good cause attributable to the employer, or was discharged for misconduct, or for any other reason that could disqualify the unemployed worker from receiving unemployment benefits, we ask the employer to tell us that information.

If the unemployed worker left that job under disqualifying circumstances, we disqualify the unemployed worker until the unemployed worker requalifies.

Form UIA 1136, Statement of Unemployment Benefits Charged or Credited to Employer's Account

Each week we send you a notice of any charges or credits made to your account. A charge to the account means a benefit check has been paid to a former worker who filed a claim for benefits. The statement identifies the unemployed worker by name and Social Security Number, the week for which the benefits were paid, and the amount paid.

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If you believe the unemployed worker was ineligible for benefits for any of the weeks for which we paid benefits, be sure to file a written protest to Form UIA 1136 within 30 days of the date it was mailed to you. Be specific as to your reason for believing the unemployed worker is not entitled to benefits for the week. For example, you may have information that the unemployed worker was employed during the week, or was on vacation and therefore not available for work or seeking work during the week, or left a job during the week and should be disqualified. Also, if the unemployed worker worked for you and earned more than the benefits charged to your account for that week, you must notify the UIA in writing so that your account can be credited. Once you notify the UIA of that fact, benefits will be noncharged to your account for the remainder of the claimant's benefit year. This only applies to "contributing" employers.

However, Form UIA 1136 cannot be used in place of a timely response to Form UIA 1575E, *Monetary Determination*, or in place of a protest to a *Nonmonetary Determination* (Form UIA 1302) with regard to the Agency's decision not to disqualify the unemployed worker based on his or her reason for separation from work.

Form UIA 1770, Summary of Statement of Benefit Charges and Credits

Each calendar quarter, we send you a statement summarizing the benefit charges to your account during the quarter. This statement includes all the information contained on the individual Form UIA 1136 we previously sent you during that calendar quarter.

Like the individual Form UIA 1136, this Form is a Determination of the unemployed worker's eligibility for benefits, and may be protested, in writing within 30 days of the date it was mailed to you. However, Form UIA 1770 can only be used to protest the calculation of charges to the employer's account. It cannot be used in place of a previously mailed nonmonetary determination or Form UIA 1136 to protest the Agency's decision not to disqualify an unemployed worker or not to hold the unemployed worker ineligible for benefits.

Form UIA 1301, Notice of Determination (Restitution Due)

As mentioned earlier, when the Agency determines that an unemployed worker owes **restitution** (repayment of improperly paid benefits), a Determination is mailed to the unemployed worker and employer, indicating the amount due. Unless the improper payment was due to the employer's failure to provide wage and separation information when requested, or to provide complete and accurate wage and separation information, the employer's account will be credited in the calendar quarter in which the Determination of Restitution becomes final, even if the Agency does not actually receive repayment from the unemployed worker.

Form UIA 1801, Notice of Hearing

As discussed earlier, when either the unemployed worker or employer appeals a Redetermination, the claim is transferred to the Michigan Administrative Hearing System. The unemployed worker and employer receive a Notice of Hearing showing the date, time, and place of the Hearing, and the issues to be discussed at the Hearing.

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Form UIA 1575E —
Notice of (Re)Determination (Monetary)

UIA 1575E (Rev. 05/12)

State of Michigan
Department of Licensing and Regulatory Affairs
Unemployment Insurance Agency
www.michigan.gov/uia

UIA Office:

Monetary Determination

UIA Account No:

Mail Date:

CLAIM INFORMATION

BENEFIT YEAR BEGINS:
BENEFIT YEAR ENDS:
HIGH QTR. WAGES USED TO CALCULATE BENEFITS

Reference Codes (See Back of Form)	DEPENDENTS CLAIMED	WEEKLY BENEFIT AMOUNT	BENEFIT WEEKS ALLOWED

LAST EMPLOYER

Employer	Reference Codes (See Back of Form)	Unemployed Worker's Separation Reason	Total Wages	Last Employer Charge for First 2 Benefit Weeks	Non-charge Amount

BASE PERIOD EMPLOYER(S)

BASE PERIOD BEGINS: AND ENDS:

Employer	Reference Codes (See Back of Form)	Separation Reason	Base Period Wages	Maximum Charge	Non-charge Amount

IMPORTANT NOTICE TO EMPLOYERS: YOUR ACCOUNT WILL BE CHARGED FOR BENEFITS UNLESS YOU NOTIFY THE UIA OF ANY POSSIBLE INELIGIBILITY/DISQUALIFICATION AND PROVIDE SPECIFIC DETAILS. BENEFITS PAID IN ACCORDANCE WITH THIS MONETARY DETERMINATION WILL BE CONSIDERED PROPERLY PAID AND WILL NOT BE CHANGED UNLESS THE UIA RECEIVES NEW, CORRECTED, OR ADDITIONAL INFORMATION FROM YOU, WITHIN 10 CALENDAR DAYS AFTER THE MAIL DATE SHOWN ABOVE OR 30 CALENDAR DAYS FOR A VOLUNTARY LEAVING SEPARATION (QUIT).

TO MEET THE 10 DAY DEADLINE, INFORMATION MUST BE RECEIVED NO LATER THAN

EMPLOYERS: IF YOU DISAGREE WITH THIS DETERMINATION AND PROVIDE INFORMATION SHOWING YOUR ACCOUNT SHOULD NOT BE CHARGED AFTER THE 10 DAY NOTICE PERIOD DESCRIBED ABOVE, BUT WITHIN 30 DAYS OF THE MAIL DATE, ANY REDETERMINATION OF CHARGEABILITY WILL BE EFFECTIVE WITH THE WEEK IN WHICH THE INFORMATION IS RECEIVED EXCEPT FOR A VOLUNTARY LEAVING SEPARATION. A REDETERMINATION OF CHARGEABILITY ON A VOLUNTARY LEAVING SEPARATION IS EFFECTIVE FROM THE BEGINNING OF THE CLAIM IF THE INFORMATION IS RECEIVED WITHIN 30 DAYS. IF YOUR REQUEST FOR A REDETERMINATION OF CHARGEABILITY IS RECEIVED AFTER THE 30-DAY PERIOD, IT WILL BE DENIED UNLESS YOU ESTABLISH GOOD CAUSE FOR FAILURE TO PROTEST WITHIN THE 30-DAY PERIOD. TO BE RECEIVED WITHIN THE 30-DAY PERIOD, YOUR PROTEST MUST BE RECEIVED NO LATER THAN

Protest Due Date:

The due date is 30 calendar days from the mail date shown above.

Protest rights are explained on the reverse side of this form.

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Form UIA 1575E — Reverse Side
Notice of (Re)Determination (Monetary)

UIA 1575E
(Rev. 05/12)
Reverse Side

IMPORTANT INFORMATION FOR ALL INTERESTED PARTIES

RETAIN THIS DOCUMENT FOR YOUR RECORDS

This determination is based on available information submitted by the unemployed worker and/or the involved employer(s).

This determination is issued under authority of MCL 421.1, et seq. Response is voluntary

EXPLANATION OF UIA REFERENCE CODES LISTED ON FRONT OF THIS FORM

(Reference numbers not reflected are reserved for future use)

1. Claim denied due to insufficient verified base period wages.
2. Claim denied as earnings do not equal at least 5 times the most recent weekly benefit amount on last claim.
3. Unemployed worker has filed for preservation of benefit entitlement.
4. Michigan claim denied as unemployed worker's wages are in another state. Unemployed worker should pursue an interstate claim.
5. Claim denied because unemployed worker has an existing claim. If in another state, unemployed worker should reopen the interstate claim.
6. Unemployed worker is eligible for greater benefits in another state. Unemployed worker should pursue an interstate claim.
7. This claim does not qualify as combined wage claim. Unemployed worker should pursue another type of claim.
8. Benefits are reduced based on a disqualifying determination.
9. Benefits changed per Administrative Law Judge decision.
10. Benefits changed per Michigan Compensation Appellate Commission decision.
11. Unemployed worker did not receive benefits and has withdrawn this claim.
12. Benefits for this benefit year have been redetermined.
13. The Emergency Unemployment Compensation Act of 2008 allows up to 50% of qualifying UI claim benefit payments for ex-service people. A reservist needs at least 90 continuous days of active service to qualify for UCX benefits.
14. The WBA will be reduced after 7 weeks of payments because one of your employers is a family employer.
15. Claim is denied due to correction of Social Secuity Number.
21. Unemployed worker to return to work with your company within 120 days; unemployed worker not required to use Michigan Works Agency placement services unless UIA notified otherwise.
22. No separating employer can be designated. First 2 weeks of benefits will be charged proportionally to the base period employer(s).
23. Earnings insufficient to charge separating employer. First 2 weeks charged proportionally to the base period employer(s).
24. The separation reason listed by the unemployed worker is other than lack of work; a determination is pending review of the unemployed worker's qualification for benefits under the law and will be sent under separate cover.
25. To figure your total maximum charge, add the charge for first 2 weeks to your maximum charge in the base period.
26. Employer will not be charged as liability pending. First 2 weeks of benefits will be charged to non-chargeable benefits account until liability is determined.
31. Wages cannot be used as they are either cancelled, not subject to the MES Act, or previously used.
32. Wage information provided by the unemployed worker cannot be used unless supporting documents are provided.
33. Unemployed worker is owner, or relative of owner(s) of majority interest of employer. Benefits limited to 7 weeks chargeable to this employer.
34. Wages earned with this federal agency are not assigned to Michigan.
35. These military wages cannot be used to establish a claim because you were discharged prior to completion of a first full term of service and the narrative reason or character of service for separation was not acceptable.
36. Your account is being charged due to a "leaving to accept" separation.

EMPLOYER NOTIFICATION OF POSSIBLE DISQUALIFICATION OR INELIGIBILITY FOR BENEFITS

To notify the UIA of any disqualifying circumstance(s), you may use the back of this form or submit your own request for a determination by mail or fax to the UIA office listed on the front of this form. If you submit your own written request, be sure to list unemployed worker's name, Social Security number, company and employer account number. You may send additional documentation to support your request.

UNEMPLOYED WORKER'S NAME	UNEMPLOYED WORKER'S SSN	COMPANY NAME	UIA ACCOUNT NO.

Special Payments AFTER Benefit Year Beginning Date	Gross Amount ($)	Period Covered (month/day) From	To	Date Paid (month/day/year)
Earnings				
Holiday/Vacation Pay				
Pay in Lieu of Notice				
Sick Pay				
Lost Earnings				
Sales Commission or Consultation fee				
Short Work Week or On Call Pay				
Other Compensation (Describe below)				

For A FAMILY OWNED FIRM check business type and list owner(s) below or attach additional sheet if more than 2 owners.
☐ Sole proprietor ☐ Partnership ☐ Corporation

Owner's Name	Percent (%) Ownership	Relationship to Unemployed Worker

As an involved employer, if you are paying the unemployed worker a **RETIREMENT pension**, complete the information below

Monthly amount $ _____

Effective Date: _____ Date Paid: _____

Check the Box (on right) that reflects the amount the unemployed worker contributed to his or her retirement

☐ Did not contribute
☐ Contributed less than 1/2 the cost
☐ Contributed 1/2 or more of cost

CHECK BOX THAT APPLIES IF YOU ARE NOTIFYING THE UIA OF A DISQUALIFYING SEPARATION AND DESCRIBE BELOW

☐ DISCHARGED/FIRED ☐ VOLUNTARY QUIT ☐ VOLUNTARY RETIREMENT ☐ LABOR DISPUTE ☐ OTHER

GIVE SPECIFIC DETAILS AS TO WHY UNEMPLOYED WORKER SHOULD BE DENIED BENEFITS (attach additional sheet if necessary)

LAST DATE UNEMPLOYED WORKER WORKED FOR YOU	CONTACT PERSON	DATE	PHONE NO.

PROTEST RIGHTS

If you disagree with this determination and wish to **protest**: Protests must be made in writing and submitted by mail, fax or your web account to the UIA office listed on the front of this form. When submitting a written protest, clearly state the reason for disagreeing with the determination. List the unemployed worker's name, Social Security number, company name, and UIA account number. You may supply supporting documentation to support your protest. This determination becomes final unless the UIA receives your protest no later than the "protest due date" listed on the front of this form. For assistance, call the Office of Employer Ombudsman at 1-855-484-2636 (TTY callers use 1-866-366-0004).

LARA is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

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Form UIA 1707 —
Request for Information Relative to Possible Ineligibility or Disqualification

UIA 1707
(Rev. 08-12)

State of Michigan
Department of Licensing and Regulatory Affairs
UNEMPLOYMENT INSURANCE AGENCY
www.michigan.gov/uia

REQUEST FOR INFORMATION RELATIVE TO POSSIBLE INELIGIBILITY OR DISQUALIFICATION

See "For Employers" at bottom of reverse side for non-compliance penalty.

BYB:
Unemployed Worker:

Case #:

RETURN FORM TO:
Unemployment Insurance Agency
PO Box 169
Grand Rapids, MI 49501-0169
Fax Number: 1-517-636-0427

Inquiry Line: 1-866-500-0017
TTY Customers Use: 1-866-366-0004

Employer Number:

To Whom It May Concern:

You are involved in a claim for unemployment benefits, either as the employer or as the unemployed worker. The Unemployment Insurance Agency (UIA) needs the information below in order to make a determination regarding eligibility or qualification for benefits.

Please answer of all the questions below. If additional space is needed, enter your answers on the back of this form or attach additional sheet(s) if necessary. If a question does not apply or you choose not to answer it, enter "n/a" (not applicable). When completing this form, provide specific details that you believe would be helpful to us. If a reply is not received by the UIA within 10 calendar days of the Mail Date shown below, a (re)determination will be made on the basis of the available information. Mail or fax your answers to the return location indicated on the top of this form. You should keep a copy of the completed form for your records.

Date Mailed: Month Day Year Interviewer

YOUR ANSWERS
If necessary, continue on reverse side.

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Form UIA 1302 —
Notice of (Re)Determination (Non-Monetary)

UIA 1302
(Rev. 04-12)

State of Michigan
Department of Licensing and Regulatory Affairs
UNEMPLOYMENT INSURANCE AGENCY
www.michigan.gov/uia

Authorized by
MCL 421.1, et seq.

DETERMINATION

P.O. Box 169
Grand Rapids, MI 49501-0169
Fax # 1-517-636-0427

FOR CLAIM OF: CASE #:
FILED: BYB: SEQ:

IF YOU DISAGREE WITH THIS DETERMINATION, REFER TO "RIGHT OF PROTEST OR APPEAL" ON THE REVERSE SIDE OF THIS FORM.

DATE NOTICE WAS MAILED OR PERSONALLY SERVED:

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Form UIA 1302 — Reverse Side
Notice of (Re)Determination (Non-Monetary)

UIA 1302
(Rev. 09-12)
Reverse Side

PROTEST RIGHTS and APPEAL RIGHTS

Any protest or appeal must be filed by mail, fax or web account and received within 30 calendar days from the mail date on front side of form. If the 30th day is a Saturday, Sunday, legal holiday, or Agency non-work day, the protest or appeal must be received by the Unemployment Insurance Agency (UIA) by the end of the next day which is neither a Saturday, Sunday, legal holiday, nor Agency non-work day.

If you disagree with a determination and want to protest:

- You may mail, fax, or submit an online response to the following: UIA, PO Box 169, Grand Rapids, MI 49501-0169, fax to: 1-517-636-0427, or through your web account at www.michigan.gov/uia.
- Protests must be **signed or verified** unless submitted through your online claim web account. However, the Agency may accept a protest that lacks a signature if the protest can be verified. The Agency will notify you.
- Attach copies of any documents, employer notices, correspondence, or other types of information that may clarify the issue you are protesting. Please retain the original documents for your files, as these documents will not be returned.
- All correspondence must have the unemployed worker's name and Social Security number, and the name of the employer (if applicable).
- If the 30-day protest period has already lapsed, your statement must indicate why your protest was not submitted on time.

If you disagree with a redetermination and want to appeal, request a hearing before an Administrative Law Judge:

- You may mail, fax, or submit an online response to the following: UIA, PO Box 124, Grand Rapids, MI 49501-0124, fax to:1-616-356-0739, or web account at www.michigan.gov/uia.
- All written appeals must be **signed or verified.** However, the Agency may accept a protest that lacks a signature if the protest can be verified. The Agency will notify you.
- All correspondence must have the unemployed worker's name and Social Security number, and the name of the employer.
- If the 30-day appeal period has already lapsed, your statement must indicate why your protest was not submitted on time.

IMPORTANT ADVOCACY INFORMATION: After you appeal your redetermination to the Administrative Law Judge, an Advocate may be able to assist you at the hearing. This service is free to unemployed workers and employers. If you are interested in using an Advocate, once you have received your *Notice of Hearing Before an ALJ,* call the Advocacy Program at 1-800-638-3994 and press Option 2. Provide the Advocate Representative with the Appeal Number from your *Notice of Hearing Before an ALJ* form. Some restrictions in service may apply.

TO THE UNEMPLOYED WORKER:

If you protest or appeal, protect your rights by continuing to certify for benefits. Report using MARVIN, either by telephone or via the Internet at http://www.michigan.gov/uia, and click on either heading, "UIA Online Services for Unemployed Workers", or "Certify With MARVIN Online" pending the redetermination or decision on your protest/appeal. If you go back to work, report this fact when you certify.

In accordance with the provisions of the Michigan Employment Security (MES) Act, benefits (re)determined payable in accordance with this (re)determination will be paid, even though a protest may be filed at a later date. **However, if a later redetermination or decision holds that you were not entitled to receive all or part of these benefits, you will be required to repay the benefits improperly received.**

If you have any questions, call the UIA at 1-866-500-0017 (TTY callers use 1-866-366-0004).

METHOD OF SATISFYING 13-WEEK AND 26-WEEK REQUALIFICATION:

Disqualifications imposed for a 13-week or 26-week requalification period will be terminated when you complete the required period. You will be credited with a week of requalification for each week in which you:

(1) Certify as directed and meet the same requirements that apply to claiming a benefit payment, or

(2) Earn at least 1/13th of the minimum high quarter earnings required to establish a benefit year, rounded down to a full dollar amount. For a benefit year beginning 1/4/2009 and after, the amount is $220.00.

To requalify by certifying, you must report using MARVIN, either by telephone **OR** via the Internet at http://www.michigan.gov/uia, and click on either heading "UIA Online Services for Unemployed Workers" or "Certify With MARVIN Online."

METHOD OF SATISFYING A REWORK REQUIREMENT:

A disqualification imposed for a voluntary quit can be terminated after you have worked and earned an amount equal to, or greater than, 12 times your weekly benefit amount. A disqualification imposed for a suspension or discharge for misconduct can be terminated after you have worked and earned an amount equal to, or greater than, 17 times your weekly benefit amount. The earnings must be with an employer liable under the Michigan Employment Security (MES) Act or the unemployment compensation law of another state.

ELIGIBILITY FOR BENEFITS AFTER COMPLETION OF REQUALIFICATION OR REWORK:

After the requalification or rework requirements are completed, the unemployed worker may be eligible for benefits. If wages earned with the employer involved in this (re)determination fall within the base period of the claim, benefits may be paid to the unemployed worker on the basis of such wages. However, if the requalification requirements are imposed due to a separation under Section 29(1)(h), (i), (j), (k), or (m) of the MES Act, the unemployed worker is not entitled to benefits based on wages earned with the involved employer before the weeks of disqualification.

INTEREST -Interest accrues at the rate of 1% per month (computed on a daily basis) Section 15(a) of the MES Act.

LARA is an equal opportunity employer/program. Auxiliary aids, service and other reasonable accommodations are available upon request to individuals with disabilities.

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Form UIA 1955 - Charging Redetermination

UIA 1955
(Rev. 11-11)

State of Michigan
Department of Licensing and Regulatory Affairs
UNEMPLOYMENT INSURANCE AGENCY
www.michigan.gov/uia
Telephone No. 1-855-484-2636
TTY No. 1-866-366-0004

Authorized by
MCL 421.1, et seq.

<<Name>>
<<Address>>

UIA ACCOUNT NO.
UNEMPLOYMENT INSURANCE AGENCY
P.O. BOX 169
GRAND RAPIDS, MI 49501-0169
FAX: 1-517-636-0427

REDETERMINATION OF CHARGES

Effective Date:

Unemployed Worker: SSN:

BYB: Separation Date: Notification Received:

RIGHT OF PROTEST OR APPEAL: Any protest or appeal from this redetermination must be in writing. Any protest or appeal from this redetermination must be filed by mail or faxed and received by the UIA within 30 calendar days from the date mailed shown above. If the 30th day is a Saturday, Sunday, legal holiday or Agency non-work day, the protest or appeal must be received by the next business day.

LARA is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available

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Form UIA 1563, Notice to Chargeable Employer of Claim Renewal

UIA1563
(Rev. 11-11)

Authorized by
MCL 421.1, et seq.

State of Michigan
Department of Licensing and Regulatory Affairs
UNEMPLOYMENT INSURANCE AGENCY
www.michigan.gov/uia

LARA

NOTICE TO CHARGEABLE EMPLOYER OF CLAIM RENEWAL

Mailing Date

ON THE UNEMPLOYED WORKER RENEWED HIS/HER CLAIM FOR UNEMPLOYMENT BENEFITS. HE/SHE WAS LAST SEPARATED FROM THE SEPARATING EMPLOYER INDICATED BELOW. HE/SHE HAS UNUSED BENEFIT ENTITLEMENT BASED ON EARNINGS WITH YOUR COMPANY. IF YOU RECEIVED A PREVIOUS NOTICE (ON FORM UIA 1575E, *MONETARY DETERMINATION,* OR ON FORM UIA 1955, *REDETERMINATION OF CHARGES)* THAT BENEFITS WOULD NOT BE CHARGED TO YOUR ACCOUNT. DO NOT RESPOND TO THIS NOTICE.

UNEMPLOYED WORKER SSN AND NAME

IF YOU BELIEVE THE UNEMPLOYED WORKER SHOULD BE DISQUALIFIED OR IS INELIGIBLE FOR BENEFITS, NOTIFY THE UNEMPLOYMENT INSURANCE AGENCY IN WRITING AT THE ADDRESS SHOWN WITHIN 10 DAYS FROM THE DATE OF MAILING.

SEPARATING EMPLOYER AND ADDRESS

IF YOU HAVE ANY QUESTIONS, CALL THE OFFICE OF EMPLOYER OMBUDSMAN AT 1-855-484-2636
(TTY CUSTOMERS USE 1-866-366-0004).

LARA IS AN EQUAL OPPORTUNITY EMPLOYER/PROGRAM. AUXILIARY AIDS, SERVICES AND OTHER REASONABLE ACCOMMODATIONS ARE AVAILABLE UPON REQUEST TO INDIVIDUALS WITH DISABILITIES

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Form UIA 1564-1, Notice of Claim Renewal

For Mailing – Use EN 72

UIA 1564-1
(Rev. 05-11)

Authorized by
MCL 421.1, et seq.

State of Michigan
Department of Licensing and Regulartory Affairs
UNEMPLOYMENT INSURANCE AGENCY
www.michigan.gov/uia

LARA
LICENSING AND REGULATORY AFFAIRS
CUSTOMER DRIVEN. BUSINESS MINDED.

NOTICE TO THE EMPLOYER OF CLAIM RENEWAL

Mail Date: mm/dd/yy

Unemployed Worker's Name:
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

SSN: XXXXXXX-XXX

Claim reopened on: mm/dd/yyyy

Last day worked: mm/dd/yyyy

Reason for separation:
(Put text here.)

The unemployed worker named on this form has renewed a claim for unemployment benefits and reported a separation from your company.

Any benefits paid as a result of this claim may be charged to your account in this benefit year or on a future claim.

If you believe the unemployed worker should be disqualified or is ineligible for benefits, you need to reply to the Unemployment Insurance Agency in writing within 10 days from the mailing date, by mail or fax to the address below.

Unemployment Insurance Agency
P.O. Box 169
Grand Rapids, MI 49501-0169

Fax: 1-517-636-0427

If you have any questions about this form, contact our Employer Customer Relations Hotline at 1-800-638-3994 (TTY customers use 1-866-366-0004).

LARA IS AN EQUAL OPPORTUNITY EMPLOYER/PROGRAM. AUXILIARY AIDS, SERVICES AND OTHER REASONABLE ACCOMMODATIONS ARE AVAILABLE UPON REQUEST TO INDIVIDUALS WITH DISABLITIES.

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Form UIA 1136 –
Statement of Unemployment Benefits Charged or Credited to Employer's Account

For Mailing – Use EN 72

UIA 1136
(12-11)

Authorized by
MCL 421.1, et seq.

State of Michigan
Department of Licensing and Regulatory Affairs
UNEMPLOYMENT INSURANCE AGENCY
P.O. Box 169
Grand Rapids, MI 49501-0169
INTERNET: www.michigan.gov/uia
Phone: 1-855-4-UIAOEO [1-855-484-2636]
Fax: 1-517-636-0427
TTY Customers: 1-866-366-0004

Statement of Unemployment Benefits Charged or Credited to Employer Account

Mail Date:

Employer Number:

The Unemployment Insurance Agency (UIA) is required under Section 421.21(a) of the Michigan Employment Security Act (MES Act) to provide employers with statements summarizing the total benefits charge and/or credit against an employer's account. Please see charges and credits listed below.

Unemployed Worker SSN	Unemployed Worker Name	Adjustment Date	AD TP	Earned Income Reported	Total Charge/Credit

TOTAL TO ACCOUNT # << >> << >>
FOR WEEK ENDING <<MM/DD/YY>>

ATTENTION CONTRIBUTING EMPLOYERS: If the wages you paid an unemployed worker for any of the week(s) listed above equal or exceed your charge, submit a UIA-1136-S, *Protest of Unemployment Benefits Charged to Employer's Account*, so your account may be credited.

THIS IS NOT A REQUEST FOR PAYMENT - SEE HOW TO PROTEST ON REVERSE SIDE

UIA1136

LARA IS AN EQUAL OPPORTUNITY EMPLOYER/PROGRAM. AUXILLARY AIDS, SERVICES AND OTHER REASONABLE ACCOMMODATIONS ARE AVAILABLE UPON REQUEST TO INDIVIDUALS WITH DISABILITIES.

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Form UIA 1770 —
Summary of Statement of Benefit Charges and Credits

UIA 1770
(Rev. 07-12)

State of Michigan
Department of Licensing and Regulatory Affairs
Unemployment Insurance Agency
www.michigan.gov/uia

LARA
LICENSING AND REGULATORY AFFAIRS
CUSTOMER DRIVEN. BUSINESS MINDED.

Authorized by
MCL 421.1 et seq.

SUMMARY OF STATEMENT OF BENEFIT CHARGES AND CREDITS
CALENDAR QUARTER ENDING << >>

<<Name and Address box>>

Mail Date: << >>
Employer number: << >>

Page: << >>

Operating Unit Number <<0000000 000>>
<<Name>> <<Employer bus Name>>

Unemployed Worker SSN	Unemployed Worker Name			LOC		Number of Items	Total
<<xxx-xx-xxxx	Lastname	Firstname	MI	xxx		xxxx	000000.00>>

Total for Operating Unit <<xxxxxxx xxx xxxx $0000000.00>>
For Quarter Ending <<xx/xx/xxxx>>

This is not a request for payment. See important information on reverse side.

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Form UIA 1301 —
Notice of Determination (Restitution Due) Page 1

UIA 1301

Rev. 8/12

STATE OF MICHIGAN UNEMPLOYMENT INSURANCE AGENCY PAGE 1 OF 2
PO BOX 169 GRAND RAPIDS MI 49501
NOTICE OF RESTITUTION DUE - UIA 1301

www.michigan.gov/uia
Fax No.: 1-517-636-0427

JOHN SMITH
0000 STREET NAME
DETROIT MI

EMPLOYER NAME
0000 STREET NAME
DETROIT MI

INVOLVED EMPLOYER: EMPLOYER NAME 9999999 000
FILING DATE: 05/08/2007 BYB: 05/06/2007 SEQ: 000 SSN: 999-99-9999
ISSUE(S) AND SECTION(S) OF MICHIGAN EMPLOYMENT SECURITY ACT INVOLVED:
AVAILABILITY 29

CREDIT TO EMPLOYER 20(A) IMPROPER PAYMENTS 62(A)

BASIS FOR DETERMINATION

THIS WILL BE THE FREE BASIS FOR OUR RESTITUTION 1301 NOTICE THAT WILL BE GENERATED. KENTUCKY WAS THE INVOLVED EMPLOYER BUT WE WILL ALSO ENTER A COUPLE INTERESTED PARTIES. WE ARE TRYING TO DETERMINE WHO OR TO WHAT ADDRESS THE NOTICE WILL BE MAILED TO.

CLAIMANT IS ELIGIBLE FOR BENEFITS DUE TO AVAILABILITY

CLAIMANT MUST PAY TO THE AGENCY, IN CASH OR DEDUCTION FROM BENEFITS, RESTITUTION IN THE AMOUNT OF $362.00 UNDER SECTION 62(A), AS ITEMIZED ON PAGE 2.

REASON FOR OVERPAYMENT DOES NOT COME WITHIN THE CRITERIA FOR WAIVER. IF REPAYMENT WILL CAUSE EXTRAORDINARY HARDSHIP, YOU MAY REQUEST A WAIVER DUE TO YOUR FINANCIAL STATUS BY FAX OR MAIL.
EMPLOYER IS ENTITLED TO CREDIT UNDER SECTION 20(A) OF THE M.E.S. ACT.

IF YOU DISAGREE WITH THIS DETERMINATION, REFER TO "PROTEST/APPEAL RIGHTS" ON THE BACK OF THIS FORM

DATE MAILED OR PERSONALLY SERVED : 06/05/2007
CLAIMS EXAMINER: ADJUD TASK FORCE A T

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Form UIA 1301 —
Notice of Determination (Restitution Due) Page 2

UIA 1301
(Rev. 08-12)
Reverse Side

PROTEST RIGHTS and APPEAL RIGHTS

Any protest or appeal must be filed by mail, fax or web account and received within 30 calendar days from the mail date on front side of form. If the 30th day is a Saturday, Sunday, legal holiday, or Agency non-work day, the protest or appeal must be received by the Unemployment Insurance Agency (UIA) by the end of the next day which is neither a Saturday, Sunday, legal holiday, nor Agency non-work day.

If you disagree with a determination and want to protest:

- You may mail, fax, or submit an online response to the following: UIA, PO Box 169, Grand Rapids, MI 49501-0169, fax to: 1-517-636-0427, or through your web account at www.michigan.gov/uia.
- Protests must be **sign or verified** unless submitted through your online claim web account. However, the Agency may accept a protest that lacks a signature if the protest can be verified. The Agency will notify you.
- Attach copies of any documents, employer notices, correspondence, or other types of information that may clarify the issue you are protesting. Please retain the originals documents for your files, as these documents will not be returned.
- All correspondence must have the unemployed worker's name and Social Security number, and the name of the employer (if applicable).
- If the 30-day protest period has already lapsed, your statement must indicate why your protest was not submitted on time.

I**f you disagree with a redetermination and want to appeal, request a hearing before an Administrative Law Judge:**

- You may mail, fax, or submit an online response to the following: UIA, P.O. Box 124, Grand Rapids, MI 49501-0124, fax to:1-616-356-0739, or web account at www.michigan.gov/uia.
- All written appeals must be **signed or verified.** However, the Agency may accept a protest that lacks a signature if the protest can be verified. The Agency will notify you.
- All correspondence must have the unemployed worker's name and Social Security number, and the name of the employer.
- If the 30-day appeal period has already lapsed, your statement must indicate why your protest was not submitted on time.

IMPORTANT ADVOCACY INFORMATION: After you appeal your redetermination to the Administrative Law Judge, an Advocate may be able to assist you at the hearing. This service is free to unemployed workers and employers. If you are interested in using an Advocate, once you have received your *Notice of Hearing Before an ALJ,* call the Advocacy Program at 1-800-638-3994 and press Option 2. Provide the Advocate Representative with the Appeal Number from your *Notice of Hearing Before an ALJ* form. Some restrictions in service may apply.

TO THE UNEMPLOYED WORKER:

If you protest or appeal, protect your rights by continuing to certify for benefits. Report using MARVIN, either by telephone or via the Internet at http://www.michigan.gov/uia, and click on either heading, "UIA Online Services for Unemployed Workers", or "Certify With MARVIN Online" pending the redetermination or decision on your protest/appeal. If you go back to work, report this fact when you certify.

In accordance with the provisions of the Michigan Employment Security (MES) Act, benefits (re)determined payable in accordance with this (re)determination will be paid, even though a protest may be filed at a later date. **However, if a later redetermination or decision holds that you were not entitled to receive all or part of these benefits, you will be required to repay the benefits improperly received.**

If you have any questions, call the UIA at 1-866-500-0017 (TTY callers use 1-866-366-0004).

METHOD OF SATISFYING 13-WEEK AND 26-WEEK REQUALIFICATION:

Disqualifications imposed for a 13-week or 26-week requalification period will be terminated when you complete the required period. You will be credited with a week of requalification for each week in which you:

(1) Certify as directed and meet the same requirements that apply to claiming a benefit payment, or

(2) Earn at least 1/13th of the minimum high quarter earnings required to establish a benefit year, rounded down to a full dollar amount. For a benefit year beginning 1/4/2009 and after, the amount is $220.00.

To requalify by certifying, you must report using MARVIN, either by telephone **OR** via the Internet at http://www.michigan.gov/uia, and click on either heading "UIA Online Services for Unemployed Workers" or "Certify With MARVIN Online."

METHOD OF SATISFYING A REWORK REQUIREMENT:

A disqualification imposed for a voluntary quit can be terminated after you have worked and earned an amount equal to, or greater than, 12 times your weekly benefit amount. A disqualification imposed for a suspension or discharge for misconduct can be terminated after you have worked and earned an amount equal to, or greater than, 17 times your weekly benefit amount. The earnings must be with an employer liable under the Michigan Employment Security (MES) Act or the unemployment compensation law of another state.

ELIGIBILITY FOR BENEFITS AFTER COMPLETION OF REQUALIFICATION OR REWORK:

After the requalification or rework requirements are completed, the unemployed worker may be eligible for benefits. If wages earned with the employer involved in this (re)determination fall within the base period of the claim, benefits may be paid to the unemployed worker on the basis of such wages. However, if the requalification requirements are imposed due to a separation under Section 29(1)(h), (i), (j), (k), or (m) of the MES Act, the unemployed worker is not entitled to benefits based on wages earned with the involved employer before the weeks of disqualification.

INTEREST -Interest accrues at the rate of 1% per month (computed on a daily basis) Section 15(a) of the MES Act.

LARA is an equal opportunity employer/program. Auxiliary aids, service and other reasonable accommodations are available upon request to individuals with disabilities.

LARA LICENSING AND REGULATORY AFFAIRS CUSTOMER DRIVEN. BUSINESS MINDED.

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Form UIA 1801 - Notice of Administrative Law Hearing

UIA 1801
(Rev. 12/11)

State of Michigan
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

Authorized by
MCL 4211, et seq.

Mailed or Personally Served On:

NOTICE OF HEARING

Appeal No:

NOTICE OF HEARING

PLEASE READ THE IMPORTANT INFORMATION ON THE BACK OF THIS NOTICE

Hearing Date: Time:

Place:

Issue(s) Involved In Dated

IMPORTANT

Please be on time for this hearing. You must be prepared to present your case. Postponements will only be granted at the discretion of the Judge, and if your request is timely.

OTHER IMPORTANT INFORMATION ON REVERSE SIDE OF THIS NOTICE. AUTHORITY AND JURISDICTION MCL 421.33

sample

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The best ways for employers to control their unemployment compensation costs

The following are some reminders to employers about how you can help the UIA assure proper benefit payments, and in that way reduce your unemployment insurance costs:

1. Take the opportunity to provide updated or corrected information in response to a request from the UIA, and do so within the prescribed time limits.

   For example, Form UIA 1575E, *Monetary Determination*, provides you with wage information found on our wage database. The form also asks you to respond with any correction as to the reason for the unemployed worker's separation from employment.

   When you receive Form UIA 1575E, be sure you understand the statements on it. If you do not understand the form, call the UIA's Office of Employer Ombudsman at **1-855-484-2636** (4-UIAOEO) or **313-456-2300,** or contact them by email at "**OEO@michigan.gov".** If you disagree with the wage or separation information shown on the form, provide corrected information within the 10 days (or 30 days, in the case of a "quit") allowed.

   Form UIA 1563, *Notice to Chargeable Employer of Claim Renewal*, is a notice to base period employers that an unemployed worker whose claim includes the employer in the base period is about to resume drawing benefits. This tells the base period employer that benefit charges might resume. It gives the employer the opportunity to notify the UIA if they have information showing that the unemployed worker might not be entitled to benefits. For example, the unemployed worker might be employed, or be on vacation and not available for work or seeking work.

   Form UIA 1564-1, *Notice of Claim Renewal*, asks a benefit year employer to notify the UIA if the unemployed worker's reason for separation from employment might result in disqualification. If that benefit year employer is later part of a base period on a new claim, notifying the UIA of a disqualifying separation in response to Form UIA 1564-1 could prevent charges for benefits.

2. Monitor the notices of benefit charges to your account as you receive the weekly notice on Form UIA 1136. If you have reason to believe the unemployed worker was not satisfying the weekly eligibility conditions to receive benefits, or was not receiving the correct amount per week, immediately protest in writing to the UIA.

3. Notify the UIA if a claimant refuses an offer of work, even if it only involves a few hours of work you, as a chargeable employer, have available for a worker collecting unemployment benefits. See Fact Sheet No. 144.

4. Keep accurate and complete records, especially about the attendance and disciplinary warnings you have given your employees. These records can be very helpful at an administrative law hearing on the issue of discharge for misconduct, especially when the witness who gave the warnings is present at the hearing to testify from those records.

5. If you decide to appeal to an Administrative Law Judge for a hearing, make sure you present your case as well as possible. It is especially important that the witnesses with first-hand knowledge of the events concerning the separation from employment appear at the hearing.

   Read the "Guide to UIA Administrative Law Hearings," Part E of this *Handbook*, before going to the hearing. It gives you further suggestions about how best to prepare for the hearing.

   Consider taking advantage of an Advocate available at no cost to you through the UIA's Advocacy Program. An Advocate can provide information, consultation, and representation at the hearing. An Advocate is not an employee of the UIA or of the State, but is familiar with the unemployment compensation law and procedures. Call the UIA's Advocacy Program at **1-800-638-3994,** menu item 2, to find out more about the Advocacy Program and to secure the services of an Advocate.

6. Of course, the best way to avoid charges to your account for unemployment benefits is to avoid, as far as possible, laying off workers.

Conclusion

The UIA appreciates the cooperation of the employer community in making sure that unemployment benefits are only paid to claimants who are eligible and qualified to receive them.

If you have further comments or questions about our service, we invite you to bring them to the attention of our Office of Employer Ombudsman, as mentioned above.

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Purpose of this chapter

The purpose of this chapter is to help you understand what happens at a hearing conducted by the Michigan Administrative Hearing System (MAHS). We'll also tell you how to prepare for the hearing, so you can make your best case to the Administrative Law Judge (ALJ). We hope that after you have read this chapter, you will understand whom and what to take to the hearing, what you must prove, and how to do so.

The information in this chapter is not legally binding, but is provided for informational purposes. There is also a video that may be viewed as a webcast on the UIA's website: www.michigan.gov/uia and click on webcasts. The video will further help you to understand what happens at a hearing.

Two groups of independent ADVOCATES are available to assist you in presenting your case before the Administrative Law Judges. THERE IS NO COST TO YOU FOR THE USE OF AN ADVOCATE. One group is available only to assist unemployed workers; the other group is available only to assist employers. The employer advocates will assist in both matters related to unemployment benefits and unemployment taxes. You can choose your own ADVOCATE from among those available in your area. They have all passed a comprehensive examination regarding their knowledge of the unemployment insurance law and procedures.

For more details about the ADVOCACY PROGRAM, call **1-800-638-3994**, menu item"2". If you wish to have an ADVOCATE represent you, call as soon as you have filed your appeal to the Administrative Law Judge or the MCAC.

This chapter has been prepared as part of a general guide to unemployment insurance hearings in the State of Michigan. It does not have the force or effect of law or regulation. It is written to assist in understanding the *Michigan Employment Security Act* which is the unemployment compensation law in Michigan.

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Introduction

Unemployment Insurance hearings are conducted by the Michigan Administrative Hearing System (MAHS) The purpose of this chapter is to help you understand what happens at an unemployment insurance hearing, so you can make your best case to the Administrative Law Judge (ALJ). We hope that after you have read this booklet, you will understand whom and what to take to the hearing, what you must prove, and how to do so.

The information in this chapter is not legally binding; it is provided for informational purposes only.

Free Representation

Independent **Advocates** may be available to assist you in presenting your case before the Administrative Law Judges. THERE IS NO COST TO YOU FOR THE SERVICES OF AN ADVOCATE.

One group of Advocates assists only unemployed workers; the other group assists only employers. The employer advocates will assist in both matters related to unemployment benefits and unemployment taxes.

You can choose your own **Advocate** from among those available in your area. They have all passed a comprehensive examination regarding their knowledge of the unemployment insurance law and procedures.

The Advocacy Program is operated by the Unemployment Insurance Agency (UIA). For more details about the Advocacy Program, call the UIA at **1-800-638-3994** and choose menu item #2. If you wish to have an Advocate represent you, call as soon as you have filed your appeal from the UIA's Redetermination with the MAHS.

Basic terms used at an Administrative Law hearing

We'll begin by explaining some of the terms used most often in a hearing.

An ALJ is an attorney who works for the Michigan Administrative Hearing System, hearing and deciding cases involving unemployment compensation. The ALJ's job is to hold a hearing to consider the evidence – oral and in writing – presented by all parties at the hearing. After this hearing, the ALJ issues a written decision making findings of fact and conclusions of law. The ALJ may also question the witness(es). The ALJ then decides how the law must be applied to those facts.

Parties are the people whose rights might be affected by the outcome of an unemployment compensation case. There may be three parties at a hearing: the unemployed worker (the individual seeking the unemployment benefits), the employer (the business that is, or may be, charged for the payment of benefits, or whose tax rate or liability for taxes is in question), and the Unemployment Insurance Agency (UIA).

If a case gets to the ALJ, it usually means that there is a disagreement about the previous UIA decision (Redetermination). An employer may feel that the unemployment benefits should not be paid, or that the employer should not have to pay unemployment taxes, or that his/her tax rate is wrong. An unemployed worker may feel that the UIA should not have denied his or her claim for benefits. The UIA may be at the hearing to support its previous rulings.

Evidence can be anything used by a party to convince the ALJ about the facts of the case.

The most common type of evidence is called **testimony**, which means statements made, under oath or affirmation, at the hearing, by a party or one of the party's witnesses, who has first-hand knowledge of the events.

Evidence can also be in written form, but there must be someone present at the hearing who can testify (give testimony) from their own knowledge about any documents. In reaching a decision later, the ALJ must decide how much importance to give to each statement or document admitted as evidence.

Witnesses are people who are brought or subpoenaed (ordered to appear) to the hearing by either party to give testimony about facts they personally know about. The ALJ may limit the number of witnesses testifying about the same facts.

These are the terms we'll need to get started. Throughout the rest of this chapter of the *Employer Handbook*, we'll be explaining some additional terms, as they come up.

Why is it important to attend the hearing?

There are several reasons why it is important for you to attend the hearing:

1. If you are the party who appealed the case and you do not appear at the hearing, the ALJ may dismiss the case (that is, cancel the appeal) for lack of prosecution (that is, failure to appear to carry forward the appeal). This means the UIA Redetermination is affirmed.

2. If you are the party required to "make the case," and you are not present at the hearing, then no one will be present at the hearing to "make the case." You will probably lose.

3. The ALJ attaches importance only to sworn testimony, and to documents supported by sworn testimony. For that reason, even though the UIA may have agreed with your point of view in the past, the ALJ must take a fresh look at the evidence, and cannot give much weight to the documents found in the file unless someone is at the hearing to testify about them.

4. The hearing is generally your last chance in the appeal process to present the facts of your case. Even though there are further steps available in the appeal process after the hearing, with rare exceptions the only evidence that will be taken into consideration during the rest of the appeal process is the evidence presented at the hearing.

Appeals to the Michigan Compensation Appellate Commission (MCAC) and the courts usually involve only arguments about the law, not about the evidence. For that reason, the administrative hearing is critical in the appeal process.

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What happens first?

The Agency first issues a decision called a Determination, which tells whether unemployment benefits will be paid, how much will be paid per week, and how many weeks will be paid. If either party disagrees with the Determination, they can protest, indicating their reasons for disagreeing. The Agency will review the case and issue a Redetermination. The Redetermination may affirm the Determination, or it may modify or reverse the Determination.

One of the parties (unemployed worker or employer) may disagree with the Redetermination. That party sends or delivers to the Agency a written appeal, asking for a hearing before an ALJ of the Michigan Administrative Hearing System (MAHS).

If the appeal is received on time, it is scheduled for a hearing. If the appeal is received late, the ALJ must dismiss the appeal. However, if a party withdraws the late appeal before the hearing, and the appealing party requests the UIA reconsider its last decision, then the Agency will determine whether the reason for the lateness of the appeal amounts to "good cause." If good cause is found the lateness of the protest or appeal will be excused. If the appealing party appeals an adverse UIA decision, the ALJ will issue an order either finding or not finding good cause, and will make a decision about the issue of the case.

After the appeal is filed, all parties will receive a Notice of Hearing, telling them where and when the hearing will take place. The hearing is held either at a regional hearing location or by telephone.

MAHS mails the Notice of Hearing at least 10 days before the scheduled hearing date (or 20 days in advance for a fraud case.) The back of the Notice of Hearing contains some very important information you need to review about the hearing. Be sure to read it carefully before the date of the hearing!

Preparation before the hearing

You are entitled to have an attorney, or an Advocate from the UIA's Advocacy Program, or other representation with you at the hearing, although representation is not required. If either party does not have an attorney, Advocate or representative at the hearing, the ALJ will ask questions. Each party should also be prepared to ask questions of all witnesses. If you or your attorney, Advocate, or representative, or a witness, are unable to attend the hearing, you may write or fax the ALJ and request an adjournment (postponement) of the hearing, giving the reasons for the request.

The ALJ will only grant adjournments for exceptionally good reasons. Generally, having another appointment which could be rescheduled is not a sufficient reason for an adjournment. In an emergency, call the ALJ's office before the hearing and explain the situation. Sometimes, if not all necessary witnesses are available, the hearing is held with the available witnesses, and the hearing is concluded on another day.

Even if you choose to represent yourself, you need to decide whether to have witnesses at the hearing. You should ask your witnesses to participate in the hearing well in advance of the hearing and tell them the date and time of the hearing.

Advise your witnesses to tell the truth about what happened, but do not tell them what to say or how to say it.

If a witness might not appear voluntarily, you may obtain a **subpoena** to require that person to appear. The subpoena may be obtained from the UIA or the ALJ's office. The party should give the witness the subpoena in a reasonable time before the scheduled hearing. The UIA will not deliver subpoenas for the party. After the hearing, a person who appears at a hearing under subpoena can receive a small fee for his or her time, as well as mileage. This fee will be paid and mailed by the Michigan Administrative Hearing System.

If the case involves a quit or a firing, the parties should bring as witnesses those persons who have personal knowledge of the details of the quit or firing, such as a supervisor or co-worker.

Since you will have an opportunity at the hearing to ask questions of the other party and their witnesses, you should consider asking the ALJ's office, in advance of the hearing, if you can look at the case file. From the file, you can see what statements the other party made to the UIA. Often, those are the same statements they will make at the hearing. Knowing what statements the other party will likely make may help you in deciding who your witnesses should be, and what questions you should ask the other party.

Before the hearing, it is a good idea to write down questions you wish to ask the other party, as well as important points you wish to make on your own behalf. Take your notes to the hearing; they will give you added confidence and allow the hearing to proceed more smoothly. However, because your notes can only be used to refresh your memory, your testimony cannot consist of reading your notes aloud.

Before the hearing, decide what documents (attendance records, employer policy statements, doctors' statements, check stubs) you will need to make your case. Also, be sure to take the witnesses who can testify as to their own knowledge of the documents. Doctors' statements and government records (such as safety inspection reports) may generally be admitted without the presence of a witness.

If you are hearing-impaired or have difficulty speaking or understanding English, you may request that a qualified interpreter attend the hearing to translate for you. If you need an interpreter, you should notify the ALJ's office as early as possible. If you take your own interpreter, the ALJ may postpone the hearing until the ALJ's office can schedule an independent interpreter.

Who and what should be taken to the hearing?

Naturally, the unemployed worker and employer should attend the hearing. Unemployed workers should attend because their right to benefits is in question. Employers should attend because the ALJ's decision may affect their liability or cause their accounts to be charged for benefits paid. (Sometimes, a representative of the UIA also attends the hearing.) The ALJ may also permit observers at the hearing.

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In deciding whom, if anyone, you should present as a witness, it is important to keep in mind that the hearing operates within the general requirements of the rules of evidence much like a court. The ALJ will not accept most **hearsay** testimony, that is, testimony not within the witness's own first-hand knowledge. For example, the ALJ cannot permit a party or witness to answer a question by saying "I don't know what happened, but from what Joe tells me...." If "Joe" knows what happened, then "Joe" should have appeared at the hearing. Nobody else can testify as to what "Joe" would have said had he been at the hearing. If, for example, a worker's attendance is at issue, the person with the most personal knowledge should appear as a witness to describe the worker's attendance and any warnings given by the employer to the worker.

In addition to presenting witnesses with personal knowledge of the facts, parties may wish to introduce documents to support the testimony of the witnesses. Documents include such things as attendance records, written warnings, dates of verbal warnings, layoff notices, and letters or other correspondence that bear on the case. The employer's keeper of business records should be present at the hearing to testify about them, and to testify that they are the actual records.

Another reason it is important to present witnesses, in addition to documents, is that only a person who is present at the hearing (in person or by phone) can be cross-examined by the other party. A notarized statement generally cannot, therefore, be used at the hearing in place of a witness.

What happens at the hearing?

When parties scheduled for an in-person hearing arrive at a regional location of MAHS, they should first notify the information clerk of their arrival and/or sign the sign-in sheet where their case is listed. It is located in the lobby area.

The parties (and their attorneys, representatives, Advocates, witnesses, and any others) should then be seated in the waiting area in the lobby. It is a good idea to arrive at the hearing location 10 or 15 minutes early.

The ALJ calls the case and decides who can enter the hearing room. The ALJ sits at a desk, or sometimes behind a judge's bench, and the parties and their witnesses and representatives usually sit at a table in front of the ALJ's desk. The ALJ will direct the parties and witnesses where to sit.

The ALJ begins by introducing him- or herself by name, making sure he or she has the names of all the parties, witnesses, representatives, Advocates and attorneys.

Hearings are recorded. If an appeal is later taken, the recording will be reviewed. A written "transcript" may be requested by the Michigan Compensation Appellate Commission. A party can request a transcript, but there is a charge. There is no charge for a downloaded recording. Call MAHS at (313) 456-0423. If the recording is very long, a CD will be required, for which there is a charge of $25.00. A transcript currently costs $3.25 per page, and can be ordered directly from the vendor, which is currently Regency Court Reporting. Call them at 248-360-2145 to arrange for purchase of a transcript.

It is important for everyone to speak loudly and slowly, and not rustle papers or interrupt others, so that a clear recording can be made. The recording (and transcript, if prepared) and the documents which are accepted as exhibits become the "record" of the hearing that is reviewed at higher levels of appeal.

At the hearing, the ALJ asks the parties and witnesses to raise their right hands, and then administers an oath or affirmation to each of the parties and witnesses, asking them to swear or affirm that they will tell the truth, the whole truth, and nothing but the truth.

The ALJ then identifies each of the participants in the hearing for the record, and summarizes the issue being appealed and the UIA's Redetermination.

Often, the ALJ requests that the witnesses be **sequestered**, that is, asked to sit outside the hearing room while the other witnesses are testifying, so that the witnesses are not influenced by each other's testimony. An ALJ may also determine that the testimony of the witnesses is "cumulative," that is, that they will all be testifying to the same set of facts. In that case, the ALJ may accept the testimony of only one of the witnesses, and not permit the party's other witnesses to testify.

The ALJ usually asks the party with the burden of proof to present his or her case first. There is a more complete discussion of who has the burden of proof, and what that means, on page 5-E.

If the party with the burden of proof has a representative, Advocate, or attorney, that person usually asks the party and the witnesses questions. This process is called **direct examination**. If the party with the burden of proof does not have a representative, Advocate, or attorney, the ALJ may ask the questions. Even if the party has a representative, Advocate, or attorney, the ALJ may ask additional questions to clarify testimony. The ALJ will also give the party with the burden of proof an opportunity to present his or her case in narrative fashion.

After the party with the burden of proof presents testimony, the other party has the opportunity to ask questions of each witness. This is called **cross-examination**. If the party has a representative, Advocate, or attorney, that person conducts the cross-examination; if the party does not have a representative, Advocate, or attorney, the ALJ conducts the cross-examination, or may ask the party to do so. Next, the other party presents direct testimony, and that party's witnesses may be cross-examined.

Sometimes during a hearing, an issue comes up that was not originally part of the case, and was not indicated on the Notice of Hearing. In that situation, the ALJ permits an adjournment to allow the parties to prepare for that issue. If they feel prepared to give evidence on the new issue, the parties can agree to give up their right to an adjournment, and continue with the hearing.

The ALJ is responsible for getting all of the information needed to fully understand the facts of the case. An important function of the ALJ is **fact-finding**. In some cases, this may mean that the ALJ takes over the function of direct-or cross-examination, and that the ALJ will exclude the testimony of some witnesses.

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The ALJ is also responsible for ensuring that the rules of evidence are generally followed throughout the hearing. For that reason, the ALJ may rule that certain testimony is hearsay or is not relevant to the case and cannot be allowed, or that certain documents cannot be accepted, or that the testimony of certain witnesses will not be permitted.

The ALJ is responsible for directing the progress of the hearing. When the ALJ attempts to closely control the hearing, he or she is not being rude. Rather, the ALJ is ensuring that the hearing is not prolonged by testimony unrelated to the issues.

At the conclusion of the hearing, the ALJ may give the parties an opportunity to make closing statements, summarizing their positions on the issues in the case if the ALJ believes such statements will assist him or her in deciding the facts of the case.

The procedures followed at in-person hearings are also followed for hearings held by telephone, as much as possible. However, when a hearing is going to be held by telephone, each party must mail to the ALJ and the other party, a copy of any documents expected to be discussed at the hearing. These documents should be mailed in time to reach the ALJ and other party at least 3 days before the scheduled hearing.

What happens after the hearing?

After the hearing, the ALJ reviews the testimony of the parties, some of which may conflict as to the facts. The ALJ may also take into account the demeanor of the parties and their witnesses, that is, the manner in which they presented testimony and answered questions and the consistency of a witness's testimony. This may help the ALJ determine the credibility (believability) of the parties and witnesses.

Based on these factors, the ALJ makes "findings of fact," that are included in the ALJ's written decision. In addition, the ALJ decides how the unemployment compensation law applies to the facts of the case, and makes conclusions of law. The most important factor the ALJ uses in making his or her decision is this: HAS THE PARTY WITH THE BURDEN OF PROOF SUCCESSFULLY MET THAT BURDEN?

The ALJ will usually issue a decision within 60 days of the date of the hearing. Any losing party may appeal the decision to the Michigan Compensation Appellate Commission (MCAC). The last page of the decision includes information about how to appeal. It is also possible to request a rehearing before the ALJ, but this will be granted only at the discretion of the ALJ, based upon the reason stated in the request for rehearing.

The ALJ cannot talk about the case with a party, before or after the hearing, because this would be unfair to the absent party. Thus, the ALJ cannot take a party's telephone call. The ALJ's office personnel can answer questions about the scheduling of the case or issuance of the decision.

BURDEN OF PROOF:

The Key to Making Your Best Case

In every hearing, the ALJ's attention is focused on one primary issue: Has the party with the burden of proof carried that burden by substantial evidence, with first-hand testimony, and other admissible evidence?

Misconduct Cases

In a misconduct case, the burden is always on the employer to prove:

(1) That the unemployed worker engaged in misconduct, and

(2) That the misconduct occurred in connection with the work.

In unemployment compensation cases, the Michigan Supreme Court has defined "misconduct" as a willful or wanton disregard of the employer's interest, or negligence of such seriousness as to imply disregard of the employer's interest.

However, the mere inability to do the job, or a good faith error in judgment, is not considered misconduct. In some cases, the employer may have a perfectly good and valid reason to discharge an employee, but that reason still might not amount to misconduct for purposes of the unemployment compensation law.

The exact wording of the Michigan Supreme Court definition of misconduct is found on page 6-E.

The employer may need to show, through testimony and, if possible, documents, that (1) the employer had a policy on the particular conduct involved; (2) the employer applied the policy equally to all employees; and (3) the employer had not previously condoned the actions that resulted in the discharge. In some cases, it is useful for the employer to show that the unemployed worker had received warnings about infractions, but that the unemployed worker continued in the misconduct after the warnings.

However, where the employee's misconduct is a serious offense, the employer need not warn the employee prior to discharge.

Voluntary Leaving Cases

In a voluntary leaving case, the burden is on the unemployed worker to prove:

(1) That the leaving was **voluntary but with good cause attributable to the employer**, or

(2) That the leaving was **involuntary** (for example, due to personal health reasons).

To show that a leaving was with good cause attributable to the employer, the unemployed worker must prove that some condition existed that would have made continued employment unacceptable to a reasonable person. This condition must have been brought to the employer's attention and the employer failed to correct it.

Unsafe working conditions, failure to pay wages when due, or failure to provide promised benefits or promotions (things over which the employer has control but fails to correct) are examples of situations that could amount to good cause attributable to the employer for the worker to voluntarily leave a job.

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To prove that a leaving was involuntary, the unemployed worker may, for example, prove that a health reason, verified by a doctor, prevented the worker from continuing to do the job, that the worker informed the employer of this fact and unsuccessfully tried to find another job with the same employer, and that the worker unsuccessfully tried to be placed on a leave of absence from that employer. (However, a person who is unable to do any work he or she has done in the past, or work he or she was trained to do, is no longer part of the labor force, and would not be eligible for unemployment benefits until again able to work.)

Refusal of Suitable Work Cases

In a refusal of suitable work case, the burden of proof is on the **employer** to show:

(1) That an **offer of work was made** to the unemployed worker;
(2) That the work offered was **suitable**;
(3) That the offer was **for a job that really existed**;
(4) That the offer was **specific**; and
(5) That the unemployed worker **refused the offer**.

Elements of suitability of a job include, for example, wages, distance from claimant's residence, length of unemployment, and risk to claimant's health, safety, or morals.

The burden then shifts to the unemployed worker to show that he or she had **good cause** for refusal of the suitable work.

Eligibility For Benefits

In an eligibility case, the burden of proof is always on the **unemployed worker** to prove that he or she filed a claim and, for every week he or she is claiming benefits, he or she was:

(1) Able to work;
(2) Available for full-time, suitable work;
(3) Actively seeking work, unless this requirement has been excused; and
(4) Reporting for benefits as directed by UIA, or had good cause for not reporting or filing as directed.

It is a good idea for the unemployed worker to keep notes about where he/she looked for work each week, and to take these notes to the hearing.

Liability/Tax Issues

An employer's liability/tax issues may include, but are not limited to, the following:

- The employer believes that he/she should not have been determined liable to pay unemployment taxes.
- The employer believes that he/she should not have been determined a successor of another employer's business
- The employer disagrees with the tax rate.

If appealing these issues, the employer must bring supporting documents to the hearing, as well as appropriate witnesses.

Telephonic Hearings

In some parts of the state, Administrative Law hearings are generally held by telephone, and parties are notified, in the Notice of Hearing, if their hearing will be held that way. However, either party in a hearing has the right to request that the hearing be held in person. If such a request is made, the hearing will be held in person, although that may somewhat delay the scheduling of the hearing so as to accommodate the Administrative Law Judge's travel schedule.

The Notice of Hearing indicates which parties will testify over the telephone, and the telephone number at which each will be contacted. The Administrative Law Judge will telephone each party and their witnesses at the time shown on the Notice of Hearing. If the telephone number shown is not appropriate, the Administrative Law Judge should be notified immediately. The employer should notify the Judge's office of the appropriate contact person and phone number. Your attorney, Advocate, or other representatives may appear in person at the same telephone number where a party is being called for testimony.

If you wish to offer any papers or records relevant to the case, it is necessary to send them to the Administrative Law Judge and to the other party in advance of the hearing. Such documents must be received by the Administrative Law Judge and the other party at least three days before the hearing date. Be sure to allow for possible mail delays.

A witness would typically be present at the same location as the party requesting the presence of that witness. However, if that is not practical or perhaps, in the case of a witness appearing by subpoena, not desirable, a witness may appear at the location where the Administrative Law Judge is located, or at another site the witness arranges, with the approval of the Administrative Law Judge.

Although it is desirable to have parties, their representatives, their witnesses, and the Administrative Law Judge present at as few different sites as possible, it is possible through telephone conferencing to include as many different sites as necessary in the telephone hearing. However, it is solely within the discretion of the Administrative Law Judge, and the limits of available technology, as to how many remote locations will be included telephonically in the hearing.

The following is the definition of **misconduct** adopted by the Michigan Supreme Court in the case of **Carter** v **Employment Security Agency,** 364 Mich 538, 541 (1961):

"[Misconduct in an unemployment compensation case is] ... conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute."

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If a party requests the presence of a witness, either voluntarily or by subpoena, it is the responsibility of that party to inform the Administrative Law Judge before the hearing, of the telephone number where that witness may be contacted on the date and at the time of the hearing, if the witness will be at a location different from the party's location. Likewise, it is the responsibility of the party to notify the Administrative Law Judge, in advance, of the telephone number of any attorney or agent.

It remains the discretion of the Administrative Law Judge whether the hearing will be conducted in person or by telephone.

Some final words

The best advice for parties appearing before an Administrative Law Judge is to be prepared for the hearing:

1. Know what the issue (question) before the Administrative Law Judge will be. It is indicated in the Notice of Hearing. Also, read the important information on the back of the Notice of Hearing.
2. Know who has the burden of proof.
3. Know what has to be proved in order to carry that burden of proof.
4. Review the file in advance, so that you can plan the major points you wish to make, and can plan the questions you wish to ask the other party.
5. Take to the hearing the necessary papers and witnesses. Make sure that the witnesses are persons who can offer testimony of their own knowledge.
6. Arrive at the hearing on time.

If the decision of the ALJ is not in your favor, you may either request a rehearing before the ALJ (for example, if you have additional facts that were not available to you at the time of the original hearing), or you may appeal the ALJ's decision to the **Michigan Compensation Appellate Commission (MCAC),** which is a separate agency from the UIA and from the portion of the Michigan Administrative Hearing System that holds ALJ hearings. The 30-day time limits for filing either a request for **rehearing** before the ALJ, or an **appea**l to the MCAC, will be on the last page of the ALJ's decision.

You must file within the time limits given. If your request for a rehearing is late but within one year of the ALJ's decision, your request will be considered to be a request for a **reopening** of the case before the ALJ, who will then have to decide whether you have "good cause" for requesting a reopening.

When it receives an appeal, the MCAC reviews the recording of the ALJ hearing, or may request a written transcript of that hearing. The MCAC will then decide whether the ALJ properly weighed the facts presented at the hearing and properly applied the law to the facts. Occasionally, if requested by the parties, the MCAC will allow parties to appear in person before the Commission to present oral arguments.

We believe that if you follow the suggestions made in this booklet, you will be able to make your best case. We hope that by reading this booklet, you will know how to prepare for the hearing and what to expect, and will feel more at ease when attending the hearing.

In addition, the Michigan Administrative Hearing System welcomes your comments about your hearing and about this chapter (what should be added, what needs clarification, etc.). Please direct your comments, in writing, to the Director, Michigan Administrative Hearing System, 611 W. Ottawa, 2nd Floor, Lansing, Michigan 48933.

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Voluntary Leaving
(Quit)

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What the law says: This issue is covered by Section 29(1)(a) of the *Michigan Employment Security Act*. The law provides that if a worker quits a job without having a good cause "attributable to the employer" (that is, the worker quits and the employer is not at fault for the quit), then the worker will be "disqualified" from receiving unemployment benefits. The worker must then get another job and have earnings with that employer to "requalify" for benefits. But the employer from whom the worker quits will not be charged for the benefits, even if the worker re-qualifies and draws benefits.

Cases where a worker will likely be disqualified. If, at the time of hire, a worker was informed how to contact the employer in the event of an absence, and the worker is absent for 3 days or more without contacting the employer, the worker will be considered to have voluntarily left the work without good cause attributable to the employer.

If, at the time of hire, a worker was informed that holding a certain license, for example, was a requirement for obtaining the job and remaining employed in the job, and then as a result of his or her negligence the worker loses the requirement and therefore the job, the worker will be considered to have voluntarily left work without good cause attributable to the employer.

Cases where a worker will likely not be disqualified. In some cases, a worker's medical condition prevents him or her from continuing to work and the worker must "involuntarily" leave employment and will not be disqualified for quitting. But before quitting, the worker must first have (1) obtained a statement from a medical professional showing that continuing in the current job would be harmful to the worker's physical or mental health; (2) unsuccessfully requested alternative work from the employer within the worker's capabilities, and (3) unsuccessfuly requested a leave of absence until the worker is again able to do the job.

If a worker quits a part-time job to continue working another concurrent job, the worker will not be disqualified if he or she then loses the remaining job through no fault of his or her own. Benefits will not be charged to the employer's account.

Often a worker leaves one job to accept full-time work with another employer. Section 29(5) and pertinent case law say that a worker will not be disqualified if an individual leaves work with a liable Michigan employer to accept permanent full-time work with another liable Michigan employer or to accept a recall from a previous employer or a referral to another employer from the individual's union hiring hall, and performs services for that employer. If this situation is found to be the case, the wages earned with the employer the worker left will be transferred to the new employer.

What court cases have said: Unemployment compensation cases say that before quitting, the worker must first tell the employer about the problem and must give the employer a chance to correct it. If the problem continues, and the worker quits the job, he or she would not be disqualified from receiving unemployment benefits [assuming the Unemployment Insurance Agency (UIA) agreed that the employer's conduct provided the worker with an acceptable reason for leaving]. The worker must show that he or she left the job for a reason that would cause a reasonable person, under similar conditions, to leave the job.

However, the worker must still be able to work at a job he or she is qualified to do, by past experience or training, to be eligible for benefits.

Examples: If a worker quits a job because his or her spouse was transferred, the worker had a good personal reason to quit the job, but since there is no fault by the employer, the worker would be disqualified from receiving unemployment benefits. However, if the worker's spouse was a full-time member of the United States armed forces and the leaving is due to the military duty reassignment to a different geographic location, the leaving will not be disqualifying, The employer's account will not be charged for those benefits.

As another example, if a worker first notifies his or her employer that certain safety conditions at the worksite pose a safety hazard, and the employer does not, or cannot, correct the problem, then the worker would not be disqualified if he or she quits the job.

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Proof at the Hearing: If either the employer or the unemployed worker appeals the case to an Administrative Law Judge, the employer must first prove that the worker quit the job. The worker must then prove that the employer was at fault for the quit because of something the employer did, or allowed to happen, in the workplace.

A statement at the hearing by either party is a form of proof. The statements at the hearing of witnesses may also be helpful in proving a case, since they give added weight to the statements of the worker or employer. Documents supported by testimony at the hearing may also be used as proof.

For Further Help: The UIA Advocacy Program can provide assistance to employers and unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.

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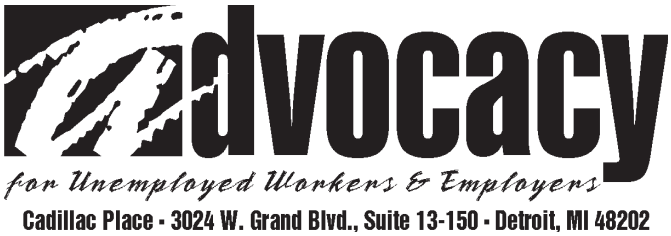

Discharge for Misconduct

(Firing)

What the law says: This issue is covered by Section 29(1)(b) of the *Michigan Employment Security Act*. The Act provides that if a worker is fired from a job due to misconduct that occurred in connection with the work, then the worker will be "disqualified" from benefits. The worker must then get another job and have earnings with that employer to "requalify" for benefits. But the employer from whom the worker was fired will not be charged for the benefits, even if the worker requalifies and draws benefits.

What court cases have said: Unemployment 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.

However, if the actions by the worker show merely the worker's inability to do the job correctly, or show an isolated case of bad judgment or negligence, then the worker will not be disqualified from receiving unemployment benefits. (This does not necessarily mean the employer did not have a good reason for firing the worker.) Acts committed by the worker that have no connection with the work will not result in disqualification if the employer fires the worker for them.

Examples: If a worker is consistently 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 cooperative worker, that worker will probably not be disqualified from receiving unemployment benefits.

Proof at the Hearing: If either the employer or the unemployed worker appeals the case to an Administrative Law Judge, then the employer must prove that the worker engaged in misconduct and that the misconduct occurred in connection with the work. Except in the most serious offenses, the employer must also prove that the worker was aware of the employer's work rules and that the actions of the worker were harmful to the employer.

A statement at the hearing by either party is a form of proof. The statements at the hearing of witnesses may also be helpful in proving a case, since they give added weight to the statements of the worker or employer. Documents supported by testimony at the hearing may also be used as proof.

For Further Help: The Unemployment Insurance Agency Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing on this issue. Call 1-800-638-3994, Item 2.

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Labor Dispute

(Strikes & Lockouts)

What the law says: This issue is covered by Section 29(8) of the *Michigan Employment Security Act*, and by UIA Administrative Rule 251. The law says that if a worker is unemployed due to a labor dispute involving the worker's employer, and the worker is "directly involved" or "directly interested" in the labor dispute, the worker must be disqualified from receiving unemployment benefits.

The law says a worker will be considered "directly involved" in a labor dispute if the worker (1) voluntarily stops working while a labor dispute is in progress at the workplace; or (2) voluntarily stops working in sympathy with workers involved in a labor dispute at another workplace; or (3) becomes unemployed when any group of workers in the work establishment are involved in a labor dispute, even if the worker is not a part of that labor union. A worker will be considered "directly interested" in a labor dispute if the worker is helping to finance a labor dispute (other than through the payment of regular union dues), or if the worker would benefit from the settlement of the labor dispute, such as by higher wages, better hours, or other improvement in conditions of employment.

The disqualification will be ended if a worker finds work with another employer, works at least two consecutive weeks with that employer, and earns each week at least what the worker would have received each week in unemployment benefits.

What court cases have said: Court cases have said that the disqualification must be imposed whether the labor dispute is in the form of a strike by the workers, or (with some exceptions) a lockout by the employer. Cases have also said that the disqualification ends when a worker is permanently replaced, because at that point the worker's unemployment is due to the replacement and not to the labor dispute. However, if a replaced worker is then offered a specific job by the employer, and the union has also been notified by the employer of the vacancy, then the worker who refuses the job would once again become subject to the labor dispute disqualification.

***Examples**:* A worker who becomes unemployed when his or her union goes on strike against the employer is disqualified from receiving unemployment benefits. A worker who works in a plant's office is disqualified when other workers at the plant, such as production workers, go on strike and cause the plant to shut down, because the office worker is considered "directly involved" in the labor dispute even though the office worker is not a member of the striking union. Likewise, a worker who cannot work because the employer has locked out the workers in the same work establishment, must be disqualified.

Proof at the Hearing: If either the employer or the unemployed worker appeals the case to an Administrative Law Judge, then the employer must prove that a labor dispute existed at the work establishment. The workers must prove either that there was no labor dispute, or that their unemployment was not due to the labor dispute (for example, that they had been permanently replaced).

For Further Help: The Unemployment Insurance Agency Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing on this issue. Call 1-800-638-3994, Item 2.

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Good Cause
(Late Protest or Appeal)

What the law says: This issue is covered by Sections 32a, 33, and 34 of the *Michigan Employment Security Act*, Unemployment Insurance Agency (UIA) Administrative Rule 270, and the Michigan Compensation Appellate Commission's Administrative Rule 109.

When the UIA issues a "determination," either the unemployed worker or the employer (whichever party disagrees with the determination) may "protest" the determination and request a redetermination. Also, when the UIA issues a "redetermination," either party may "appeal" the redetermination to a hearing before an Administrative Law Judge.

To be received "timely" (on time), the signed or verified protest or appeal must be received by the UIA not later than the end of the 30th day after the date of mailing of the determination or redetermination. In counting the 30 days, every day of the week is counted beginning with the day after the determination or redetermination is mailed. Even weekend days and holidays are counted. But if the 30th day is a Saturday, Sunday, legal holiday, or Agency non-work day, then the protest or appeal period ends at the end of the next day that is not a Saturday, Sunday, legal holiday, or Agency non-work day.

Late Protest of a Determination

If an unemployed worker or employer is late in filing the protest, the UIA must first determine whether there was "good cause" for filing late. Good cause can include inability to file due to illness, or having new information that was not available when the determination or redetermination was issued. If the UIA finds there was good cause for late filing, the UIA will issue a redetermination. If the UIA finds there was not good cause, the UIA will issue a "Denial." The Denial can be appealed directly to an Administrative Law Judge.

Late Appeal of a Redetermination

If an unemployed worker or employer is late in filing an appeal to an Administrative Law Judge, the case cannot be considered by the Administrative Law Judge. The Administrative Law Judge lacks legal authority to hold a hearing when an appeal is filed late. The unemployed worker or employer may wish to withdraw (cancel) the appeal and request the UIA to reconsider the matter. The UIA must then find out whether there was "good cause" for the late filing of the appeal. If the UIA finds there was good cause for the late filing, the Agency will issue a redetermination. The redetermination can then be appealed (on time!) to the Administrative Law Judge. If the UIA finds there was not good cause, the office will issue a "denial." The denial can be appealed (on time!) directly to an Administrative Law Judge.

What Happens When A Denial Is Before the Administrative Law Judge

When a "denial" is before the Administrative Law Judge, the Administrative Law Judge must first decide whether the UIA was correct in issuing the Denial. (Again, the Denial says that there was not good cause for the lateness of the protest or request for reconsideration.) The Administrative Law Judge will probably want to hear details about the late filing and about the main issue in the case. If the Administrative Law Judge decides the UIA was right to issue the Denial, the Administrative Law Judge will issue a decision so stating. If the Administrative Law Judge decides there was good cause for the late filing, the Administrative Law Judge will issue a decision saying that and also deciding the main issue of the case. Either decision can be appealed to the Michigan Compensation Appellate Commission.

What court cases have said: Court cases have said that to be "filed" on time, the written and signed protest or appeal must be received by the UIA, the Michigan Compensation Appellate Commission or another employment security agency, by the end of the 30th day from the date the determination or redetermination was mailed or personally served. Mailing the protest or appeal is not enough. It must be received by the UIA by the 30th day.

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Examples: The employer mailed an appeal to the UIA on Sunday, a day when mail is not collected. The following day, Monday, was the 30th day of the appeal period. Because the appeal was received late by the UIA, the employer will have to withdraw the appeal and request reconsideration by the UIA and explain why the appeal was late. Then the UIA must decide whether the employer had good cause for the late filing of the appeal.

Suppose the employer says he or she did not mail the appeal until the 29th day because the employer's regular bookkeeper had been out of town for two weeks. This will generally not be good cause for late filing of an appeal because the employer is still responsible for the actions of its employees.

Proof at the Hearing: If either the employer or the unemployed worker has been found to lack "good cause" for being "untimely" (late) in protesting a determination or appealing a redetermination to an Administrative Law Judge, then that party must show what the good cause was.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing on this issue. Call 1-800-638-3994, Item 2.

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Refusal of Work

What the law says: This issue is covered by Sections 29(1)(e), 29(6), and 29(7) of the *Michigan Employment Security Act*. The law says that if an unemployed worker collecting unemployment benefits refuses an offer of suitable work, without good cause, the unemployed worker must be disqualified from receiving unemployment benefits. The claimant's unemployment benefits will be reduced by up to 13 weeks.

To requalify, the unemployed worker must do at least one of the following in each of the 13 weeks:

(1) meet all of the weekly eligibility requirements of the law (that is, be able to work, be available for work, be seeking work, and so certify to MARVIN); or

(2) have earnings of at least $220.00.

The unemployed worker will not be disqualified unless the job the unemployed worker refuses was "suitable," based on the claimant's prior earnings, length of unemployment, prior training and experience, distance of the job to the claimant's home, and safety risks. Also, the offered work will not be suitable if it is available because of a labor dispute, or if it pays less than the usual wage in the area for that type of work, or if the worker would be required to join, or to resign from, or to refrain from joining, a union.

If an individual refuses an offer of otherwise suitable work, the individual will be disqualified from receiving unemployment benefits if it pays at least 70% of the worker's last gross wage.

However, once a claimant has received 1/2 of his/her state unemployment benefits on a claim, the claimant must take a job that is not necessarily one the claimant performed before or was trained in. Also, at that point the claimant must accept a wage that is at least the State's minimum hourly wage of $7.40, and that is at least the average wage for the offered job in that locality, and that pays at least 120% of that claimant's weekly benefit amount.

Even though the work may be suitable, the unemployed worker will not be disqualified for refusing the work if the unemployed worker has a "good cause" for refusing it.

What court cases have said: Courts 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.

Refusal of an offer of future work will not result in disqualification. The offered work must be currently available.

Examples: If an employer posts a notice offering certain jobs to all workers who sign up, a particular unemployed worker will not be disqualified for failing to sign up, because the offer was not personally made to that particular worker.

If a worker who is unemployed and lives 10 miles from his or her old job, moves 60 miles from his or her old job and is then offered his or her old job back, the old job would likely be unsuitable now because of the distance from the worker's current home. In deciding whether a distance is too great, travel time, road and traffic conditions in the area are considered. There is no definite number of miles that is suitable or unsuitable.

If a worker has babysitting problems and cannot accept an offer of suitable work, the worker would not be disqualified for the refusal because he or she had "good cause" for refusing the offer. However, the babysitting problems may make the worker ineligible for unemployment benefits, because the worker may be unavailable for full-time, suitable work, as required to receive unemployment benefits.

Proof at the Hearing: The employer must prove that a specific offer of work was made to the unemployed worker, and that it was suitable, and that the worker refused it. The unemployed worker may show that the offer was not received, or may show why it was not suitable, or may explain that he or she had good cause for refusing the work.

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Eligibility (Ability, Availability, Seeking Work, Reporting, Participating in Profiling, Appearing at UIA Location for Eligibility Evaluation)

What the law says: This issue is covered by Section 28 of the *Michigan Employment Security Act*, and Administrative Rules 208, 210, and 216. The law says that to receive a benefit payment in any week, an unemployed worker must be able to work; available for full-time, suitable work; and must be **actively engaged** in seeking work and reporting to the Unemployment Insurance Agency (UIA) in person or by mail, as required. Also, a worker must participate in a "profiling" session at a Michigan Works! Agency location if so notified, and must appear at a UIA location for an in-person eligibility evaluation, if so notified.

To be **able** to work, an unemployed worker must be able to do a kind of work he or she performed in the past, or was trained to perform. The work does not have to be the kind he or she most recently performed.

To be **available** for work, an unemployed worker must be willing to accept any full-time work that is suitable for the worker. Factors that determine whether a job is suitable for a worker include the worker's prior earnings, experience, travel distance, prior training, physical fitness, and risk posed to the worker's health, safety and morals. The worker must be available to perform the work generally on any day of the week and on any shift when the work is normally performed, to receive a benefit payment for the week. An exception is when a close relative dies; the availability requirement is suspended for five days. Also, an individual in training approved by the UIA is not required to be available for work. To be **seeking work**, an unemployed worker must be looking for work in a way generally used by a worker in that occupation to find work. An active search for work is required. Under certain conditions, such as for short-term layoffs, or during periods of high unemployment, or while in UIA-approved training, the seeking work requirement may be suspended by the UIA.

An individual will become ineligible for benefits if during a benefit year he/she fails to notify or update a chargeable employer with contact information. Also, an individual must respond to the Agency within 14 days of the later of the mailing of a notice to the address of record or of a telephone message requiring the individual to contact the Agency, or show good cause for not doing so. If mail is returned to the Agency as undeliverable and the telephone number is no longer useful in contacting the claimant, he/she will no longer meet the availability requirement unless good cause can be shown.

For benefit years beginning on or after January 1, 2013, to be actively engaged in seeking work, an individual must conduct a weekly systematic and sustained search for work and report the name and location of the employer, where and when work was sought, and the method work was sought. The report must be provided to the Agency by any of the following methods:

1. At monthly intervals using the Agency's online reporting system; or
2. A written report at monthly intervals by mail or fax; or
3. By appearing at least monthly at a Michigan Works! Agency office.

To be **reporting** to the Unemployment Insurance Agency (UIA) on time, an unemployed worker must report by telephone using "MARVIN," the UIA's telephone reporting system, or by MARVIN on-line, according to instructions given by the UIA. For "good cause," an additional 14 days can be given for reporting. Good cause includes a family death; attendance at a funeral; working; reliance on a promise of work; incapacity of the unemployed worker or a dependent; a storm; or seeking work out-of-state. Other circumstances may also qualify as good cause for late reporting. For more details about **reporting** on time, see the Advocacy Fact Sheet entitled "Filing Requirements for Initial and Continued Claims".

To be **participating in profiling activities**, a worker identified as needing such assistance and notified to participate must participate in re-employment and job search services. If the worker fails to participate in these services, the worker will be held ineligible for unemployment benefits in every week in which he/she fails to participate.

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UIA's profiling system uses a computer model to identify workers likely to exhaust unemployment benefits and to need re-employment services to find a job. Factors considered are the worker's education and training, the industry in which the individual last worked, and the type of job the unemployed worker performed.

To be **registered for work**, an unemployed worker must report to an office of the Michigan Works! Agency and enter his or her résumé on-line. In most cases, though, if an unemployed worker is expected to return to his or her regular employer within 120 days of his/her layoff date, the unemployed worker's application for benefits serves as the registration, and the unemployed worker is not required to report in that case to the Michigan Works! Agency.

What court cases have said: The courts have said an unemployed worker must actively remain part of the labor force, in order to receive unemployment benefits. However, a worker disabled from one kind of work may still be able to do other work he or she is qualified to do, and may still be eligible for benefits. A worker must be willing to work any shift his or her work is performed, and must be willing and able to rearrange things like school classes or babysitting services to accept work on any shift.

***Examples**:* A worker receiving workers' disability compensation may still be eligible for unemployment benefits if he or she can do some kind of work for which he or she is qualified by past experience or training. A student may be available for work and eligible for benefits if he or she would be willing to drop out of school, or would be willing and able to change class times if offered work. A worker who just reads the newspaper to find a job would not be actively seeking work, and probably would not be eligible for unemployment benefits. A worker who fails to call MARVIN or report to MARVIN on-line during the required week will probably not be eligible for benefits for the weeks not properly reported.

Proof at the Hearing: The unemployed worker has the burden of proving that he or she was eligible for unemployment benefits.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.

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School Denial Period

What the law says: This issue is covered by Section 27(i) of the *Michigan Employment Security Act*. The law says that if an unemployed worker for unemployment benefits had worked in any job for a school, then benefits will not be payable based on work for the school during a school holiday or recess period, or a period between school years, if the worker has reasonable assurance from a school of a similar job following the period of unemployment.

This applies to one who works for a school district, a community college district, a college or university, a school run by the state, a charter school, and to a school that is a non-profit organization. It also applies to a person who works for an "educational service agency" such as an intermediate school district. The denial period between terms (but not within a term) also applies to employees of a company that contracts with a school district, community college district, or educational service agency or non-private school, college, or university to provide such employees. It applies as well to school crossing guards. It does not apply to a person who works for a private school.

Unemployment benefits must be denied to such a worker during a school vacation period (in most cases) or during a period between school years or terms if the person has reasonable assurance from a school of returning to a similar job following the denial period.

If a school worker (other than a teacher, researcher, or administrator) is given reasonable assurance of a similar job for the next school year or term, and then is not actually offered the work when school resumes, the worker can receive back benefits if the worker originally filed a claim and reported regularly to the Unemployment Insurance Agency (UIA) during the period between terms.

A school worker may be able to receive unemployment benefits during a denial period if there is another, non-school employer in the worker's recent work history (that is, in the base period of the claim).

***Examples**:* If a school teacher worked in the summer of 2011 as a construction worker and then returns to school, the teacher could be entitled to unemployment benefits during the summer denial period in 2012 based on the construction work, even though benefits would be denied based on the school teaching job.

If a school janitor is assured of work in the fall and then the job does not materialize, he or she could receive back unemployment benefits for the whole summer, if he or she filed a claim with the UIA at the beginning of the summer and continued to report to claim benefits, as required by the UIA.

If the start of the school year in the fall is delayed by a labor dispute, the denial period ends when the school year was scheduled to have resumed (although benefits would probably be denied thereafter due to the labor dispute).

If the school or the school contractor gave reasonable assurance, but the assurance was given at a time when a worker's rehire depended on the result of a millage election, the assurance could be regarded as not reasonable, and benefits could be payable during the school recess period, depending on how likely it is that the millage will pass.

Proof at the Hearing: The employer must prove that it notified the unemployed worker of reasonable assurance. It may have to show the basis upon which the assurance was given.

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Remuneration and "Underemployed"

(Earnings)

What the law says: This issue is covered by Section 48 of the *Michigan Employment Security Act* and Unemployment Insurance Agency (UIA) Administrative Rules 112, 113, and 302. The law says that to be entitled to unemployment benefits for a week, the worker must be either "unemployed" or "underemployed".

An "unemployed" worker is one who has no earnings in a week; an "underemployed" worker is one who has some earnings in a week but is still entitled to some unemployment benefits for that week.

However, a person who is working full-time in a week is not unemployed or underemployed and therefore cannot receive unemployment benefits for that week.

"Earnings" can include: a payment of a wage; of room, board or other living expenses; of vacation or holiday pay; or a payment made by an employer to a separated worker in lieu of notice of a discharge or layoff.

If an unemployed worker has earnings in a week while drawing unemployment benefits, the unemployed worker may be able to continue drawing partial benefit payments. The formula is that for every $1.00 the unemployed worker earns in a week while drawing unemployment benefits, the benefit payment is reduced by 40 cents.

WORKSHEET FOR CALCULATING WEEKLY BENEFITS
WHEN UNEMPLOYED WORKER HAS EARNINGS IN THE WEEK

STEPS	INSTRUCTIONS FOR THIS STEP	EXAMPLE
A	Enter the unemployed worker's weekly unemployment benefit amount.	$120
B	Enter the amount of the unemployed worker's gross earnings (before taxes) in the calendar week (Sunday through Saturday week). Round down to the nearest whole dollar.	$140
C	Multiply "B" by "0.4".	$56
D	Subtract "C" from "A". Round down to the nearest whole dollar. If the result is zero or less than zero, enter "0" as your answer.	$64
E	Add together "B" and "D".	$204
F	Multiply "A" by 1.6.	$192
G	Subtract "F" from "E". Round down your answer to the nearest whole dollar. If the result is zero or less than zero, enter "0" as your answer.	$12
H	Subtract "G" from "D". Round down your answer to the nearest whole dollar. The answer you get will be the amount of the unemployed worker's unemployment benefit payment for the week.	$52

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However, when the combination of the earnings and the unemployment benefits in a week exceeds 1.6 times the claimant's weekly unemployment benefit rate, then for every $1.00 the unemployed worker earns, the benefit payment is reduced by $1.00.

The calculation chart can be helpful in determining how earnings will affect a claimant's weekly unemployment benefits.

If the reason a person is unemployed or underemployed in a week is that he or she turned down work an employer offered, the amount the person would have received is counted as if it were actually received in order to determine whether the person was unemployed or underemployed, that is, whether a reduced benefit is payable.

***Examples**:* If an unemployed worker for unemployment benefits gets a weekly unemployment payment of $200.00, and he or she earns $125.00 for work done in the week, the unemployed worker would be underemployed and could receive a benefit payment of $150.00.

If an unemployed worker for gets a weekly unemployment payment of $200.00, and he or she earns $210.00 for work done in the week, the unemployed worker could receive a benefit payment of $116.00.

If an unemployed worker for unemployment benefits gets a weekly unemployment payment of $200.00, and he or she earns $90.00 for work done in the week, but turned down other work for the week that would have paid $50.00 more, the unemployed worker would be regarded as having earned $140.00 for the week ($90.00 + $50.00 = $140.00), and would be entitled to a benefit payment of $144.00.

If the unemployed worker does not tell UIA about the actual earnings, or offered work, for a week, and benefits are overpaid for the week, repayment (restitution) will be required, and fraud penalties will be imposed if it is determined that the unemployed worker intentionally failed to tell UIA about the earnings.

Proof at the Hearing: The employer or the Agency would have to prove that earnings were received for a week that should have resulted in a lower benefit payment for the week. The unemployed worker may have to prove that the Agency or employer records are wrong. To prove fraud, intention to misrepresent information or to conceal information must be proven.

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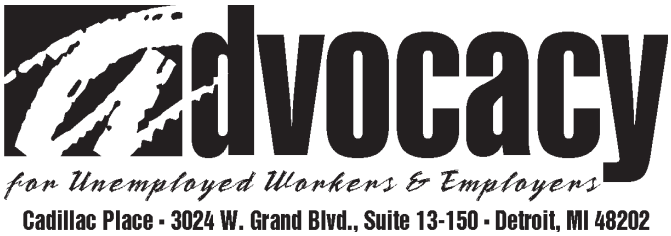

Restitution

(Repayment of Improperly Paid Benefits)

What the law says: This issue is covered by Section 62(a) of the *Michigan Employment Security Act*. The law says that if an unemployed worker receives a benefit payment to which he or she is not entitled, the unemployed worker must repay to the Unemployment Insurance Agency (UIA) the improperly paid amount, plus interest and possibly penalties.

The restitution, or repayment, may be paid to the Agency in cash, or it can be deducted from future benefit payments, but not more than 50% of any benefit payment can be used to pay back restitution and interest. If the improper payment involved fraud, though, then up to 100% of future benefit payments may be taken in order to collect the restitution. The restitution can also be collected by intercepting the claimant's state income tax refund and, in some cases, the claimant's federal income tax refund.

However, the UIA cannot collect restitution more than three years after finality of the Determination, Redetermination, or Decision establishing the restitution. The Agency must issue a Determination requiring restitution within 3 years of the date benefits were first paid in the involved benefit year, or within 6 years, if intentional misrepresentation was at issue.

The law gives the Agency authority to forgive restitution under certain circumstances, where requiring restitution would be contrary to equity and good conscience and the improper payment was not the fault of the unemployed worker. However, if the repayment of restitution is waived, any restitution repaid before the waiver is granted will not be refunded.

What Agency Guidelines say: The Agency can forgive repayment of restitution when the incorrect payment was due to the Agency's clerical error in calculating the benefit payment; or when the error occurred because the employer failed to provide the Agency with requested information or provided incorrect information; or when the unemployed worker has a low household income and repaying the amount would cause the unemployed worker extreme financial hardship.

***Examples**:* The unemployed worker gets confused and reports earnings to the Agency for the wrong week. As a result, the unemployed worker is paid benefits for a week when he or she actually had earnings, and reports earnings for a week when the unemployed worker had no earnings and would have been entitled to benefits. Restitution must be set up for the week of the incorrect payment, and up to 50% of future benefit checks will be used to pay off the restitution, unless the unemployed worker voluntarily pays the full amount of the restitution in one payment.

In another example, the Agency requests information from the employer about a claimant's wages, and the employer does not provide the information before benefit payments begin. The unemployed worker is paid unemployment benefits of $200.00 per week, based on the unemployed worker's statement of wages to UIA. Later, the employer provides the correct wage information. In this case, the unemployed worker will not be required to repay the overpayments (unless the unemployed worker committed fraud), and the employer's account with the UIA will be charged for the overpayments.

If the Agency decides that a worker who quit a job should <u>not</u> be disqualified for benefits, and then a later Redetermination or Decision says that the worker <u>should</u> have been disqualified and that benefits should not have been paid, the worker will generally have to repay the benefits to UIA.

Proof at the Hearing: The Agency would have to prove that benefits were overpaid. The unemployed worker could deny the payments were overpayments, or could disagree with the Agency's refusal to forgive repayment (that is, could prove that the UIA abused its discretion when it denied forgiveness of collection of restitution).

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Retirement Benefits

What the law says: This issue is covered by Section 27(f) of the *Michigan Employment Security Act*. The law says that a "retirement benefit" is a payment made by an employer under a plan, or annuity, or pension that is paid based on a worker's age, or years of service, or disability.

Generally, if a worker is receiving a retirement benefit while also receiving unemployment benefits, then the retirement benefit could be used to reduce the unemployment benefit. This would occur only when the employer paying the retirement benefit was also an employer in the "base period" (usually the first 4 of the last 5 completed calendar quarters before the quarter in which the new claim is filed) of the unemployment claim. Also, the reduction would only occur if the employer paid part of the cost of the retirement benefit and only if work performed in the base period of the claim affected the worker's pension.

If the unemployed worker made no contributions (usually by payroll deduction) to the cost of the retirement benefit, then the full monthly amount of the retirement benefit would be divided between each week of the month, and that amount would be subtracted from the unemployment benefit payable for that week. The result could be zero.

If the unemployed worker made some contribution to the cost of the retirement benefit, but less than half, then half of the monthly amount of the retirement benefit would be divided between each week of the month, and that amount would be subtracted from the unemployment benefit payable for that week. The result could be zero.

If the unemployed worker paid half or more of the cost of the retirement benefit, then the retirement benefit would not be used at all to reduce the unemployment benefit.

What interpretations have said: Unemployment benefits will only be reduced in the week in which a retirement benefit is received. If an unemployed worker elects not to receive a retirement benefit for a week or weeks, unemployment benefits will not be reduced for the week or weeks, even if the retirement benefit is later paid retroactive to the week or weeks.

If an unemployed worker receives a lump sum payment of a retirement benefit, but could have received the retirement benefit as a periodic payment (such as once a month), the payment will be considered to have been paid periodically for purposes of reducing unemployment compensation. The periodic payment will be prorated to a weekly basis and used to reduce the weekly unemployment benefit, dollar-for-dollar.

If a worker retires and elects to roll over the proceeds of his or her retirement benefit account into an Individual Retirement Account (IRA), with no income tax impact, the worker will not be considered to have "received" the retirement benefit for unemployment compensation purposes, and the retirement benefit will not be used to reduce unemployment benefits as described in this Fact Sheet.

***Examples**:* An unemployed worker worked for an employer in the base period of the unemployment compensation claim, and that employer contributed the entire amount to the worker's pension. The worker made no contribution. The monthly amount of the pension is $400.00, and the weekly unemployment benefit amount is $275. The full amount of the $400.00 pension is divided between 4-1/3 weeks in a month, which equals $92.38 per week. The entire $92.38 is subtracted from the $275.00 weekly unemployment benefit rate. The resulting weekly unemployment benefit check will be $182.62, rounded down to $182.00 as required by law.

If, instead, the worker made some contribution to the pension, but less than half, then half of the $400.00 monthly pension, or $200.00, would be divided by 4-1/3 weeks in a month. The result is $46.19, and that amount is subtracted from the claimant's weekly unemployment benefit rate of $275, resulting in a weekly unemployment benefit payment of $228.81, rounded down to $228.00 as required by law.

Proof at the Hearing: The employer has the burden to prove that unemployment benefits should be reduced based on receipt by the unemployed worker of a pension, and also of proving the amount of the employer's share of the cost of the benefit.

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Special Payments

(Vacation Pay, Holiday Pay, Severance Pay, Separation Pay, Wage Continuation Payment, Payment in Lieu of Notice, Bonus)

What the law says: This issue is covered by Sections 48(2), 27(c), and 50(c)(4) of the *Michigan Employment Security Act*, and the Unemployment Insurance Agency (UIA) Administrative Rule 302. The law says that if the unemployed worker is entitled to vacation pay, holiday pay, severance pay, or any of the other payments mentioned in the title of this Fact Sheet, these kinds of payments may be used to reduce a worker's unemployment benefits. However, to reduce an unemployed worker's unemployment benefits, the employer must "allocate" (assign) the vacation pay, holiday pay, severance pay, or any other payments mentioned, to a specific period, or the employment contract must do so. See the Fact Sheet "The Effect of Severance Pay on Unemployment Benefits" for more information about severance pay.

If an employer gives no notice to a worker before layoff, but gives the worker payment instead ("in lieu" of the notice), then that payment would reduce the worker's unemployment benefits.

A Supplemental Unemployment Benefit (SUB) payment by the employer will not be used to reduce unemployment benefits. However, a bonus, and a severance, separation, or wage continuation payment will be used to reduce unemployment benefits in the week paid, or over a series of weeks if so allocated by the employer. Severance, separation, and wage continuation payments, as well as holiday pay, vacation pay, bonuses and payments in lieu of notice, will also be used as qualifying wages in determining monetary eligibility for benefits.

What the Attorney General and the Courts have said: The Attorney General has said that if a worker receives a vacation payment but has the choice and does not choose to take a vacation, then the vacation pay will be considered a bonus. If the employee did not take vacation, but did not have the choice of receiving the vacation payment, then the vacation pay would reduce unemployment benefits if the employer allocates the pay to a week or weeks.

Courts have said that if a worker has the right to receive vacation pay, and the worker actually takes vacation time off of work, then unless otherwise specified by the contract the employer can assign the vacation pay to any future period of time. However, the employer must notify the worker in writing, and the worker's union representative, if any, of the designation.

***Examples**:* If a worker becomes entitled to three weeks of vacation pay on his or her anniversary date on March 1, the worker does not have the option of receiving the payment without taking vacation, and the employer has a plant shutdown scheduled for three weeks in July, the employer can designate the vacation pay to the period in July (unless the contract specifies otherwise), regardless of when the vacation payment is actually paid to the worker (unless the contract specifies otherwise). However, the written notice required under Administrative Rule 302 must be given in advance of the plant shutdown.

The designation in this way will likely prevent unemployment benefits from being payable to the worker for the period of the plant shutdown.

Proof at the Hearing: The employer has the burden to prove that a particular kind of special payment was made, and that the payment meets the requirements of the law and the Administrative Rule, in order to reduce unemployment benefits.

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The Effect of Severance Pay on Unemployment Benefits

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What the law says: This issue is covered by Sections 48 and 27(c) of the *Michigan Employment Security Act*. The law says that severance pay, wage continuation pay, and any other similar payment made by an employer as continuing wages or other monetary consideration as the result of a worker's separation from employment, except for Supplemental Unemployment Benefits (SUB), is "remuneration" which must be used in determining whether the worker is an "unemployed person" and must also be used to reduce the worker's unemployment benefits. Severance payments are also used as qualifying wages to establish a claim for benefits.

Allocation of Severance Pay by the Employer:

The law provides that the severance payment may be allocated by the employer to a week or weeks (regardless of when in the past the severance payment was actually made). This period to which the payment may be allocated can be specified by a contract or collective bargaining agreement. If there is no contract or agreement specifying the period of allocation, then the employer may designate any period to which the severance payment may be allocated, and is not required to notify workers of the allocation or impact on benefits.

How Allocated Severance Pay Reduces UI Benefits:

The severance payment, like any other kind of "remuneration," will reduce unemployment benefits otherwise payable in the weeks to which the severance payment is allocated. If there is no allocation by contract or by the employer, then the reduction in unemployment benefits will occur only in the week in which the severance payment is actually made. The amount benefits will be reduced by the severance payment is determined in the following way:

- If the severance payment attributed to a week equals or exceeds 1.6 times the claimant's weekly benefit amount, then the unemployed worker is entitled to no unemployment benefits for the week.
- If the claimant's earnings are less than 1.6 times the claimant's weekly benefit amount but greater than the claimant's weekly benefit amount, then the full amount of the severance payment is subtracted from 1.6 times the claimant's weekly benefit amount (and the claimant's balance of weeks of benefits will be reduced by 1 week, if he/she claims benefits for that week).
- If the severance payment is equal to, or less than, the claimant's weekly benefit amount, then 0.4 of the severance payment is subtracted from the claimant's weekly benefit amount (and the balance of weeks of benefits will be reduced by 1 week if he/she claims benefits that week).

Lump Sum Versus Continuing Payments:

If the employer makes a lump sum severance payment to a worker at the time the worker is separated from employment, and allocates that severance payment to a week or weeks other than the week in which the payment is made, then the worker's unemployment benefits otherwise payable for that week will be reduced by the severance payment allocated to that week. The amount unemployment benefits will be reduced in a week depends upon how much of the severance payment is allocated by the employer to that week.

If the employer makes a lump sum severance payment to a worker at the time the worker is separated from employment, but does not allocate that severance payment to a week or weeks, then the severance payment will reduce the unemployment benefits only in the week in which the lump sum severance payment is made.

If the employer makes weekly or monthly payments of severance pay (sometimes referred to as salary or wage continuation payments), that severance payment will be used to reduce unemployment benefits in the week in which it is paid, unless the employer otherwise allocates the severance payments to other weeks.

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Example 1:

The unemployed worker becomes unemployed after working full-time during week ending September 8, 2012. The employer pays the unemployed worker $5,000 in severance payment in that week and does not allocate the severance payment to any period. The unemployed worker files a new claim the following week. The claimant's benefits are not reduced, as the severance payment was paid prior to the start of the claim, and was not allocated to any period for which the unemployed worker was claiming benefits. The severance pay could be used as wages for establishing a future claim.

Example 2:

Same facts as in Example 1, except that the employer allocates the lump sum severance payment made the last week of employment to the next 6 weeks. Unless the employer specifies how much will be allocated per week, the Agency will equally allocate the payment over the 6 weeks, and reduce benefits in accordance with the formula explained above. The allocated payment could be used for benefit payment purposes on a later claim.

Example 3:

If the employer were to make wage continuation payments weekly, for the 1-year period following separation, benefits would be reduced accordingly in each week. Those payments could be used as "wages" for a later benefit claim.

Proof at the Hearing:

The employer is in the best position to know whether severance pay was allocated, and the amount that was allocated to each week of unemployment, and the burden is therefore on the employer to provide that information.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.

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Independent Contractors

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What the law says: This issue is covered under Section 42(5) of the *Michigan Employment Security Act*. The law says that if a person performs service under the "direction and control" of another person, then there is an "employer-employee" relationship. Under those circumstances, the worker is "covered" by the Michigan Employment Security Act and will probably be entitled to unemployment benefits chargeable to that employer (if other eligibility factors are met).

On the other hand, if a person is an "independent contractor," he or she will be considered to be self-employed. A self-employed person is not entitled to unemployment benefits.

What court cases have said: The fact that both the employer and the employee state that there is an independent contractor relationship, or the fact that there is actually a written contract, is not binding. The Unemployment Insurance Agency (UIA) must look to the "reality" of the situation and determine if the relationship is really that of independent contractor, or that of an employer-employee.

The courts have developed a test called the "economic reality test" to determine if a person is an independent contractor, or is actually an employee, even though he or she may be considered by the employer to be an independent contractor. Below are the indicators of the economic reality test. The test must result in a preponderance of evidence. No one indicator is weighed more heavily over another.

1. Whether the employer will incur liability if the relationship terminates at will;
2. Whether the work performed is an integral part of the employer's business;
3. Whether the employee depends upon the wages for living expenses;
4. Whether the employee furnishes equipment and materials;
5. Whether the employee holds himself or herself out to the public as able to perform the same tasks;
6. Whether the work involved is customarily performed by an independent contractor;
7. The factors of control, payment of wages, maintenance of discipline, and the right to hire and fire employees;
8. Weighing those factors which will most favorably effectuate the purposes of the Michigan Employment Security Act.

Examples: A worker performs services as a painter. He/she advertises in the local newspaper in order to get jobs; maintains his/her own brushes, ladders, and dropcloths, and buys his/her own paint; and maintains his or her own business hours. He/She is paid by the job. This worker would be an independent contractor and would not be covered for unemployment benefits. The "employer"/contractor would not be taxed for the remuneration paid to the worker.

Another worker, also a painter, comes to work every day at the same company, which maintains a large office building. The company provides the paint, brushes, ladders, and other materials to do the painting. The company also sets the worker's hours, and the worker does not do any painting work for anyone else because the job is full-time. This painter is an employee of the company. This would be true even if the company and the worker consider the worker to be an independent contractor, and even if they have a written "contract."

Proof at the Hearing: The employer will have to show that, based on the economic reality test, the worker satisfies most of the criteria to be regarded as an independent contractor.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.

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How UIA Figures Weekly Benefit Rate and Number of Weeks of Benefits Paid

What the law says: This issue is covered by Sections 45, 46(b), 27(b)(1), 27(b)(4), and 27(d) of the *Michigan Employment Security Act*. It says that when a worker becomes unemployed and files a new claim for unemployment benefits, the Agency must take a look at any wages the individual earned in the first 4, of the last 5 completed calendar quarters. That period is called the "base period."

Base Period

There are four calendar quarters in a year. A calendar quarter is a period of 3 months, ending March 31, June 30, September 30 and December 31. The **standard** base period is the first 4, of the last 5 completed calendar quarters.

Suppose a worker filed a new claim for unemployment benefits on July 15, 2011. The quarter in which the claim is filed is called the "Filing Quarter." The quarter before the Filing Quarter is called the "Lag Quarter." It is the quarter in which employers send in wage information for the previously completed quarter and in which that wage information is entered into the UIA computer.

Looking at the diagram below, for a claim filed on July 15, 2011, the base period is shown with the bold border. It is the first 4 of the last 5 completed calendar quarters, so it is the period that began March 1, 2010 and ended March 31, 2011.

QTR 1	QTR 2	QTR 3	QTR 4	QTR 5	QTR 6
3/1/10 to 6/30/10	7/1/10 to 9/30/10	10/1/10 to 12/31/10	1/1/11 to 3/31/11	4/1/11 to 6/30/11	7/1/11 to 9/30/11
$500	$2900	$500	$500	LAG	FILING

To set up a claim, the UIA must find the following in the base period:

- wages in at least 2 quarters
- wages in the "high quarter" of at least $2,871
- wages in the entire base period of at least 1.5 times the wages in the "high quarter"

In this case, the worker had earnings in at least 2 quarters, had earnings of $2900 in the "high quarter" (that is, the quarter with the highest earnings), and had earnings in the entire 4 quarters of the base period of at least 1.5 times $2900 because total base period wages were $4,400. This worker would qualify for a claim. If this worker had not qualified for a claim using the method described, the UIA would have applied the following alternate earnings qualifier:

- wages in at least 2 quarters
- wages in the entire base period of at least 20 times the state average weekly wage.

Twenty times the current (2013) state average week of $886.56 is $17,731.20.

If neither the regular method of qualifying, nor the alternate earnings qualifier, entitles the worker to a claim, then those same two tests will be applied to an alternate base period. The alternate base period is the last 4 completed calendar quarters. There will be no Lag Quarter. The unemployed worker will be asked to supply any missing wage information and will also be asked to present documentary evidence supporting the worker's statement of wages. The evidence can include tax records or pay stubs. The employer will be notified of the wage information provided by the worker and will be able to respond to any discrepancies.

QTR 1	QTR 2	QTR 3	QTR 4	QTR 5	QTR 6
3/1/10 to 6/30/10	7/1/10 to 9/30/10	10/1/10 to 12/31/10	1/1/11 to 3/31/11	4/1/11 to 6/30/11	7/1/11 to 9/30/11
$500	$2,900	$500	$500	$600	FILING

Form UIA 1982-M

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Benefit Year

If the UIA determines that the worker had enough wages to set up a claim, then benefits on that claim are payable during the 52-week period that usually begins the week the worker files the claim.

Weekly Benefit Amount

The UIA will find the calendar quarter in the base period in which the worker had the highest wages. This wage amount is then multiplied by 4.1% (.041). To that result, $6 will be added for each dependent allowed, up to 5 dependents. The result will be the worker's weekly benefit amount. However, the result may not exceed $362.

For example, if the worker had $2,900 in earnings in the high quarter of the base period, and 2 dependents were claimed and allowed, then the worker's weekly benefit rate would be:

$2,900 x .041 = $118.90

$6 x 2 dependents = $12

Weekly Benefit Amount = $130.90 rounded down to = $130

Number of Weeks of Benefits Paid

The UIA takes 43% (.43) of the worker's base period wages and divides the product by the worker's weekly benefit amount. The result is rounded down to the nearest half-number.

For a worker with total base period wages of $4,350, and a weekly benefit amount of $130, the calculation is as follows:

$4,350 x .43 = $1,870.50

$1,870.50 ÷ $130 = 14.39 = 14 (rounded down to the nearest ½ week)

The minimum number of weeks of benefit cannot be less than 14 and the maximum cannot be more than 20. The worker in this example would receive 14 weeks of benefits.

Proof at the Hearing: If the issue at an Administrative Law hearing is the amount of wages or the time period in which work was performed, the employer will initially be asked to supply the information, but the claimant can disagree with the employer and provide evidence to disprove the employer's testimony.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994; Item 2.

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Coverage of Services

What the law says: This issue is discussed in Sections 41(5)(a), 41(6), and 43 of the *Michigan Employment Security Act*. Generally, if a worker is an employee of another person or of a business, the worker will be "covered" for unemployment benefits, chargeable to the Unemployment Insurance Agency (UIA) account of that employer.

However, certain services are excluded from coverage for unemployment compensation. The most common exclusions include services performed by the following categories of workers:

1. Agricultural (farm) workers, unless the employer has a payroll, in cash, of at least $20,000 in a calendar quarter or employed at least 10 workers in each of 20 different weeks in a year.
2. Domestic (household) workers, unless the employer has a payroll, in cash, of at least $1,000 in a calendar quarter.
3. The parent or spouse of the business owner, or the child of the business owner if the child is under age 18. If the business is a corporation, benefits are payable, but only on a limited basis if the services are "covered," and the claimant, alone or in combination with a child or spouse, owns more than 50% of the stock in the company. If the parent(s) of an unemployed worker under the age of 18 own over 50% of the stock, then the claimant's benefits will be limited.
4. Real estate salespersons, sales representatives of investment companies, and insurance agents or solicitors, paid wholly or mainly on commission.
5. College students working for the school they attend, if they are primarily students. Also, the spouses of students at the college, if notified the employment is not covered for unemployment compensation.
6. Students under age 22 who work as part of a co-operative or distributive education program. Also high school students under age 18 who work for a private employer during restricted hours, or during school vacations following which they return to school, or who work as part of a co-operative or distributive education program. Finally, college students of any age who work for a private employer as part of a co-operative or distributive education program.
7. Workers for a religious organization (although some religious organizations have voluntarily elected to cover their workers.)
8. Elected officials and government officials in major policymaking positions.
9. Workers in work-training or work-relief programs, or in the Michigan Youth Corps, or in Americorps, if the worker received the full, guaranteed stipend.
10. Some home improvement and home remodeling salespersons.
11. Services performed by independent contractors (see Fact sheet on "Independent Contractor")

Examples: If a person performs services in one of the above categories, then that service cannot be used to establish or pay a claim for unemployment benefits. However, if, in the base period of the claim, the worker performed both excluded work and other work that is not excluded, the worker might still be able establish a claim based on the non-excluded work.

In general, state unemployment taxes are not due on workers performing these excluded services, except for minor, high school students described in item 6, above.

Proof at the Hearing: The burden of proof is on the employer to show that the claimant's services should be excluded. The unemployed worker can then disagree with the employer's testimony.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.

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Trade Readjustment Allowances (TRA)

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What the law says: This federal program was created under the Trade Act of 1974 and is found in federal law in Volume 19 of the *U.S. Code* beginning at Section 2271 (19 USC 2271, *et seq.*). In addition, federal regulations on this program are found in Volume 20 of the *Code of Federal Regulations* beginning at Part 617 (20 CFR 617), Volume 29 of the *Code of Federal Regulations* beginning at Part 91 (29 CFR 91), and 20 CFR 618.

TRA Certification

To qualify for TRA, you must have been laid off due to lack of work. A company, group of workers, union, Michigan Works! Agency or State agency staff, or other authorized representative, must apply to the federal government for certification of the impact of foreign trade on the business. The government must then decide whether imports or a shift in production was the major reason for the job cutbacks at a work place. If so, the government issues a "certification" of that fact and indicates the period during which total or partial separations will be covered by the certification.

Applying for TRA

A worker may apply for TRA at any time. However, if the company is not certified, the application will be held pending the U.S. Department of Labor's determination on the petition. The worker must be laid off for lack of work on or after the "impact date" of the certification and before its expiration or termination date. This is called the "certification" or "window" period.

In order to be timely, the worker must apply for TRA within a year of exhausting regular unemployment benefits (including extended benefits) or within one year of the petition certification, whichever is later.

Other Benefits Available Under the Trade Act

In addition to TRA weekly benefits, other benefits are available: training benefits, transportation allowances to get to training, subsistence allowances, job search allowances, relocation allowances, and a wage subsidy if the worker finds a new job paying less.

Qualifying for TRA

To qualify for TRA, a worker must have been laid off due to lack of work, and the layoff must have occurred after the "impact date" (that is, the effective date) of the certification, and before its expiration date. The worker must also have had enough qualifying employment with the affected employer. The worker must have worked at least 26 weeks, with weekly wages of at least $30.00, during the 52 weeks ending with the last separation from the job affected by foreign trade. In some cases, up to 7 weeks of employer-authorized leave may be counted as part of the 26 qualifying weeks. Also, up to 26 weeks of disability benefits paid under a state or federal law can be used to qualify for TRA as well as 26 weeks of being a member of the reserve called up to active duty in the military.

TRA Training Requirement

To qualify for TRA, a worker must either be participating in or enrolled in training, or must have received a waiver of this training requirement. "Enrolled" means the worker will begin training approved under the Trade Act within 30 days. Depending on the amendment under which the worker may apply for benefits, he or she must enroll within eight weeks after the petition certification date or within 16 weeks after the worker's last qualifying separation; or, the worker must enroll within 26 weeks of the petition certification date or last qualifying separation. The enrollment requirement may be waived for certain specific reasons. For a training program to be approved for a worker, it must usually be available in the area of the worker's residence, although an expansion of this area is sometimes permitted; the program must be suitable for the worker and one from which the worker would benefit; the worker must show an aptitude for the training; it must be a reasonable cost; there must be a reasonable expectation that jobs will be available in the subject area of the training; and it must be shown there is no other suitable employment for the worker unless he or she receives the training.

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Waiver of Training

During the first 26 weeks of TRA payments (known as "basic TRA"), the worker must be in a training program unless that requirement is waived (set aside). The requirement that a worker must be in training in order to receive basic TRA may be waived for certain specific reasons. To receive any additional weeks of TRA, the worker must be receiving training and that requirement cannot be waived. The same is true for weeks of completion TRA, which is available under the 2011 amendments to the Trade Act.

Eligibility Period

A worker will only be eligible to receive TRA when he/she runs out of regular (and extended) unemployment benefits. Once he or she becomes entitled to TRA, the unemployed worker will have a period of 104 weeks in which to receive the basic TRA. Depending on the amendment under which a person may apply for benefits, the period to collect basic TRA might be extended to 130 weeks if training includes remedial education or prerequisite classes. However, if the worker had a later qualifying separation for TRA, the 104- or 130-week period will be extended to run from that later layoff.

The eligibility period for additional TRA begins after the eligibility period for basic TRA has expired or after the worker has exhausted entitlement to basic TRA. However, the worker must be participating in training approved under the Trade Act. Depending on the amendment under which the worker may apply for benefits, this period might be for 52 consecutive weeks or the end of approved training, whichever occurs first. The eligibility period might be more than 52 weeks.

The eligibility period for completion TRA is 20 weeks.

Amount of Benefits Payable

The unemployed worker is entitled to 52 weeks of basic TRA at the same weekly benefit rate that applied to the regular benefits paid based on the benefit rate in effect when the worker was first laid off due to imports. However, any unemployment benefits paid when the worker became unemployed due to imports will be deducted from the total amount of TRA payable. For example, if a person was entitled to 20 weeks of regular unemployment benefits and 10 weeks of Extended Benefits (EB), that person could receive 22 weeks of basic TRA.

Depending on the amendment under which the worker may apply for benefits, up to 52 weeks of additional TRA at the same weekly benefit rate might be payable if the worker is participating in training approved under the Trade Act. The amount of additional TRA might be 78 weeks that can be drawn within a 91-week eligibility period; or 65 weeks that can be drawn within a 78-week eligibility period.

Completion TRA is a maximum of 13 weeks, payable within a 20-week eligibility period.

Weekly Eligibility

All the filing requirements and eligibility requirements that apply to collecting regular unemployment benefits apply to TRA also. A worker who is not in approved training and who is claiming basic TRA must list 2 places each week where he or she sought employment. The requirement that a worker must seek work cannot be waived under TRA, unless the individual is in training.

Examples: The federal government issued a certification on June 1, 2012, certifying that workers at ABC Company were laid off due to foreign imports. The impact date for the certification is April 1, 2011. The certification expires after two years from the date it is issued, on June 1, 2014. John Jones was laid off on September 25, 2011, which falls within the period mentioned in the certification.

When he became unemployed, he filed a claim with UIA for regular unemployment benefits and collected 26 weeks of benefits at $230.00 per week. He now applies for TRA for that period. From his total of 52 weeks of TRA, the 26 weeks of regular unemployment benefits Mr. Jones received will be subtracted, leaving him 26 weeks of basic TRA at $230.00 per week. The weekly TRA benefit amount would be the same as the weekly amount of unemployment benefits paid in the benefit period of the regular claim in effect at the time of the claimant's first qualifying separation for TRA, or the first regular claim established afterwards, even if the worker later received regular state unemployment benefits at a higher weekly amount.

Additional TRA, and possibly completion TRA, at the same weekly benefit amount, might be payable if the worker is participating in training approved under the Trade Act.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.

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The Administrative Law Appeal Process

What the law says: This issue is covered by Sections 32a, 33, and 34 of the *Michigan Employment Security Act*, and by Rules R 421.1101 to R 421.1317 of the *Michigan Administrative Code*.

When the UIA makes a decision about how much money an unemployed worker will receive in unemployment benefits, or whether a worker is eligible or qualified for benefits, or whether an employer is liable for the payment of unemployment taxes and the amount of the tax, UIA issues a "determination" to both the worker and the employer in a case involving benefits, or to the employer in a case involving employer taxes. In general, the determination will be "in favor" of one party or the other. The party the determination does not favor may "protest" the determination and request a "redetermination." The request must be made in writing, must be signed by the protesting party (worker or employer or their agent or attorney), and must be filed within 30 days of the date when the determination was issued.

Generally, another UIA employee will then review the case, may ask one or both parties for additional information, and will issue a "redetermination" either affirming (agreeing with), modifying (changing slightly but giving the same result as), or reversing (giving the opposite result from) the determination. The party that disagrees with a redetermination may "appeal" to a hearings officer called an "Administrative Law Judge." The appeal must be filed with UIA within the 30-day appeal period. It must be signed or verified. An Administrative Law hearing will then be scheduled. At the hearing, the information in the UIA file will be of little value to prove a party's case; both parties to the case must come prepared to offer fresh, sworn testimony, or other evidence, which can then be questioned by the other party (the process known as "cross examination").

One of the parties at the hearing will initially have the "burden of proof." To disqualify a worker, the employer must prove that the worker should be disqualified; the worker can then disagree with the employer's testimony and present contrary evidence. In a case involving a worker's efforts to seek work, or the worker's ability to work or availability for work, the worker has the burden of proof to show he/she should receive benefits, and the employer can disagree and present contrary testimony. (For information on which party has the "burden of proof" for a particular issue, see the individual Fact Sheet on that issue.)

Appeal from the Administrative Law Judge's decision may be made to the Michigan Compensation Appellate Commission, a separate entity within the Michigan Administrative Hearing System of the State of Michigan. The appeal period is 30 days. See the Fact Sheet on the "Michigan Compensation Appellate Commission Appeals Process" for further information on that subject.

What court cases have said: Courts have said that when a case goes to a hearing before an Administrative Law Judge, the Notice of the Hearing must tell the parties every issue that the Administrative Law Judge will consider. If the Administrative Law Judge decides at the hearing that another issue must be considered, the Administrative Law Judge must give both parties a chance to come back for a new hearing on a different date after preparing to discuss the new issue.

Often, the Administrative Law Judge must determine the facts from a number of inconsistent (not necessarily untruthful) statements made by the parties. It is up to the Administrative Law Judge to make a finding of facts based on his or her best judgment of where the truth actually lies. Courts have also said that once the Administrative Law Judge has made the decision, the Michigan Compensation Appellate Commission may review and reverse the Administrative Law Judge's decision based on the facts presented at the Administrative Law hearing.

If a hearing before an Administrative Law Judge is scheduled to be held by telephone, the Notice of Hearing will say that, and will give contact telephone numbers for the parties. It will also give special instructions about sending documents **in advance** to the other party and to the Judge.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2. In addition, the Michigan Administrative Hearing System publishes a booklet entitled "A Guide to UIA Administrative Law Hearings" (Form MHR 1800) that explains in detail how to prepare for an Administrative Law hearing. There is also a 20 minute webcast available on the UIA's website that explains how the hearing works and how to prepare for it.

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General Penalty Provisions, Including for Intentional Misrepresentation (Fraud)

What the law says: This issue is covered by Sections 54, 54a, 54b, 54c, and 62(b) of the *Michigan Employment Security Act*. The law provides the following penalties as to workers, employers, UIA employees, and third parties for the various kinds of failures or intentional misrepresentations described below:

I. INTENTIONAL FAILURE TO COMPLY -- Section 54(a)(ii)

If an amount is either obtained by a worker or withheld by an employer or is obtained or withheld by an Agency employee as a result of an intentional failure to comply with the law, and if there is no other penalty provided in the MES Act, the penalty will be as follows:

A. Repayment of the amount obtained or withheld, plus damages of 3 times that amount; or

B. The UIA may refer the matter to the prosecuting attorney. If the UIA has not made its own determination whether the claimant or employer willfully violated the Act or intentionally failed to comply with the criminal penalties can include the penalty described above, plus the following:

1. The amount obtained plus damages of 3 times that amount, and one or more of the following penalties:

a. For amounts less than $25,000:

1.) Up to 1 year imprisonment; or

2.) Community service of up to 1 year, but not more than 2,080 hours; or

3.) A combination of the above, not exceeding 1 year.

b. For amounts of $25,000, but less than $100,000:

1.) Up to 2 years imprisonment; or

2.) Community service of up to 2 years, but not more than 4,160 hours; or

3.) A combination of the above, not exceeding 2 years.

c. For amounts over $100,000:

1.) Up to 5 years imprisonment; or

2.) Community service of up to 5 years, but not more than 10,400 hours; or

3.) A combination of the above, not exceeding 5 years.

In addition, for an amount involving an overpayment or withheld information exceeding $3,500, the matter can be referred for prosecution as a felony.

II. KNOWING VIOLATION OF THE LAW-- Section 54(a)(iv)

If an amount has been obtained or withheld as a result of a knowing violation of the law, the Agency may require:

A. Repayment of the amount obtained or withheld, plus damages of 3 times that amount; or

B. If no determination has been made by the Agency, then the matter may be referred to the county prosecuting attorney for criminal prosecution.

The criminal penalties can include one or more of the following:

a. If the amount obtained or withheld knowingly was $100,000 or less:

1.) Up to 1 year imprisonment; or

2.) Community service of up to 1 year, but not more than 2,080 hours; or

3.) A combination of the above, not exceeding 1 year.

b. If the amount obtained or withheld knowingly was over $100,000:

1.) Up to 2 years imprisonment; or

2.) Community service of up to 2 years, but not more than 4,160 hours; or

3.) A combination of the above, not exceeding 2 years.

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III. MAKING FALSE STATEMENT OR REPRESENTATION -- Section 54b

If the Agency determines that a worker, employer, UIA employee, or other person has made a false statement or representation knowing it to be false, or fraudulently failed to disclose a material fact, intending to increase benefits or reduce benefits or taxes, the UIA may recover the following amounts:

A. If the amount involved is less than $500, the UIA may recover the amount involved, plus damages equal to 2 times that amount, or 4 times that amount for a second or subsequent offense.

B. If the amount involved is over $500, the UIA may recover the amount involved, plus damages equal to 4 times that amount.

C. If the UIA has not made a determination in the matter, the UIA may refer the matter for prosecution. If so referred, then one of the following remedies may be sought by the prosecutor:

1. Repayment of the amount obtained or withheld, plus damages of 3 times that amount; or one or more of the following penalties:

a. For benefit amounts of at least $1,000 but less than $25,000:

1.) Up to 1 year imprisonment; or

2.) Community service of up to 1 year, but not more than 2,080 hours; or

3.) A combination of the above, not exceeding 1 year.

b. For benefit amounts of $25,000 or more:

1.) Up to 2 years imprisonment; or

2.) Community service of up to 2 years, but not more than 4,160 hours; or

3.) A combination of the above, not exceeding 2 years.

c. For benefit amounts that do not result in a loss to the Agency. The penalty sought by the prosecutor will be 3 times the amount of benefits that would have been obtained, but not less than $1,000, and one of the following:

1.) Up to 2 years imprisonment; or

2.) Community service of up to 2 years, but not more than 4,160 hours; or

3.) A combination of the above, not exceeding 2 years.

Amounts obtained or withheld exceeding $3,500 as a result of one knowingly making a false statement or the knowing or the willful failure to disclose a material fact may be referred for prosecution as a felony.

IV. REQUIRING EMPLOYEE/CLAIMANT TO MAKE FALSE STATEMENT -- Section 54a

If the UIA determines that an employer, a UIA employee, or a third party, has required a worker for benefits, as a condition of employment, to make a knowingly false statement or representation to obtain or increase benefits, or avoid or reduce a tax payment, the UIA may recover the following amounts:

A. The amount involved, plus an amount equal to 3 times that amount, but not less than $5,000.

B. If the UIA has not made its own determination, the UIA may refer the matter for prosecution. If so referred, then one of the following remedies may be sought by the prosecutor:

1. Repayment of the amount obtained or withheld, plus an amount equal to 3 times that amount, but not less than $5,000, plus a fine of not less than $5,000 and one or more of the following penalties:

a. Up to 10 years imprisonment; or

b. Community service of up to 10 years, but not more than 20,800 hours; or

c. A combination of the above, not exceeding 10 years.

V. CONSPIRACY -- Section 54b

If the UIA determines that an employer, unemployed worker, UIA employee, or third party conspired with another or others to violate the Michigan Employment Security Act, the UIA may recover the following amounts:

A. An amount involved as a result of the illegal act, plus damages equal to 3 times that amount.

B. If the UIA has made a determination in the matter, then the matter may be referred for prosecution. The prosecutor may seek:

1. Repayment of the amount involved, plus damages of 3 times that amount; plus

a. For amounts obtained of 25,000 or less:

1.) Up to 2 years imprisonment; or

2.) Community service of up to 2 years, but not more than 4,160 hours; or

3.) A combination of the above, not exceeding 2 years.

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b. For amounts obtained greater than 25,000:

1.) Up to 5 years imprisonment; or

2.) Community service of up to 5 years, but not more than 10,400 hours; or

3.) A combination of the above, not exceeding 5 years.

c. For benefit amounts that do not result in a loss to the Agency. The penalty sought by the prosecutor will be 3 times the amount of benefits that would have been obtained, but not less than $1,000, and one of the following:

1.) Up to 2 years imprisonment; or

2.) Community service of up to 2 years, but not more than 4,160 hours; or

3.) A combination of the above, not exceeding 2 years.

VI. EMBEZZLEMENT -- Section 54c

If an employer, worker, UIA employee, or third party knowingly or willfully appropriates or converts to his or her own use money to be used for the payment of benefits or unemployment tax money, the person is guilty of embezzlement, and one of the following amounts may be recovered:

A. The amount involved as a result of the illegal act, plus damages equal to 2 times that amount if the amount is less than $500, or 3 times that amount if the amount is $500 or more.

B. If the UIA has not made an administrative determination as to penalty, the matter may be referred for prosecution. The prosecutor may seek the amounts described above for administrative penalties, plus one of the following criminal penalties:

a. For amounts of $1,000 or more but less than $25,000:

1.) Up to 1 year imprisonment; or

2.) Community service of up to 1 year, but not more than 2,080 hours; or

3.) A combination of the above, not exceeding 1 year.

b. For amounts of $25,000 or more but less than $100,000:

1.) Up to 2 years imprisonment; or

2.) Community service of up to 2 years, but not more than 4,160 hours; or

3.) A combination of the above, not exceeding 2 years.

c. For amounts over $100,000:

1.) Up to 5 years imprisonment; or

2.) Community service of up to 5 years, but not more than 10,400 hours; or

3.) A combination of the above, not exceeding 2 years.

d. For benefit amounts that do not result in a loss to the Agency. The penalty sought by the prosecutor will be 3 times the amount of benefits that would have been obtained, but not less than $1,000, and one of the following:

1.) Up to 2 years imprisonment; or

2.) Community service of up to 2 years, but not more than 4,160 hours; or

3.) A combination of the above, not exceeding 2 years.

VII. ADDITIONAL PENALTY FOR CLAIMANT INVOLVED IN BENEFIT FRAUD

In addition to the penalties described above, the benefit year of a worker who is found to have intentionally made a false statement or misrepresentation, or to have concealed material information to obtain benefits, will be canceled and any right to benefits for that benefit year will also be cancelled. If the individual files a claim for benefits within 4 years of the cancellation of the rights to benefits, the individual must repay all restitution and administrative penalties before further benefits can be paid.

Example 1: An unemployed worker failed to report earnings in weeks for which he/she was paid unemployment compensation, indicating he/she had no earnings for those weeks. If reported, the earnings would have made the unemployed worker ineligible for benefits for those weeks. The unemployed worker **intentionally made a false statement or representation** and thereby received $1,400.00 in unemployment benefits.

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The unemployed worker will be required to repay the $1,400.00, his/her current claim will be canceled, and any remaining benefits on that claim will be forfeited. If the worker wants to file a new claim in the next four years, he/she will have to first repay the $1,400.00 and will have to pay a penalty of $4,200.00 before benefits would be payable on the new claim. However, if the UIA instead refers the matter to the prosecutor who agrees to prosecute, then the penalties could be imprisonment for up to a year, or community service of up to 2,080 hours, or both but not exceeding 1 year, in addition to the administrative penalty.

Example 2: An employer failed to properly report a worker's full wages, in an effort to reduce the unemployed worker's benefit entitlement. The unemployed worker was entitled to $2,600.00 in unemployment benefits based on the unemployed worker's work with that employer, but because of the employer's fraud, only $1,400.00 was paid to the unemployed worker. The employer **made a false statement or representation**.

The employer will be required to pay $1,200.00 (the difference between the $1,400.00 benefit amount the unemployed worker received as a result of the employer's incorrect wage information and the $2,600.00 benefit amount the unemployed worker should have received), and will also be required to pay a penalty of $3,600.00, triple the $1,200.00 amount involved in the misrepresentation. However, if the UIA instead refers the matter to the prosecutor who agrees to prosecute, then the penalties could be imprisonment for up to a year, or community service of up to 2,080 hours, or both but not exceeding 1 year.

Proof at the Hearing: The UIA will have the initial obligation to show that a party committed fraud (intentional misrepresentation) in connection with a claim. Then, the party may present evidence proving the UIA wrong.

For Further Help: The Unemployment Insurance Agency (UIA) Advocacy Program can provide assistance to employers and unemployed workers in preparing for Administrative Law Judge hearings on these issues. Call 1-800-638-3994, Item 2.

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Liability of an Employer

What the law says: This issue is covered under Section 41 of the *Michigan Employment Security Act*. It says that, in general, there are three ways that an "employing unit" in Michigan can become an "employer," "liable" (that is, responsible under the law) for paying unemployment insurance "contributions" (taxes) to UIA:

1. If the employing unit employs one or more persons in any 20 different calendar weeks (Sunday through Saturday) in a calendar year (January 1 through December 31); or
2. If the employing unit pays (or owes payment of) total wages of $1,000.00 or more in a calendar year.
3. If the employing unit acquires the organization, trade, or business, or 75% or more of the assets of a company that was already an employer liable for the payment of unemployment taxes. Becoming an employer in this way is known as "successorship." (For more information on successorship, see the separate Factsheet on the "Transfer of Business" issue.)

In addition, an employing unit (such as a homeowner) can become a "domestic employer" (liable for the payment of unemployment taxes on the wages of household workers) if the employer pays $1,000.00 or more in cash wages to a domestic worker in any calendar quarter.

An employing unit can become an "agricultural employer" (liable for the payment of unemployment taxes on the wages of agricultural workers) if the employer pays $20,000.00 or more in cash wages to an agricultural worker in any calendar quarter, or employs 10 workers in 20 different weeks in a year.

Examples: The ABC Company began its business on April 3, 2012 with two employees. The first employee the manager hired was paid $600.00 a week: the second, an assistant, was paid $300.00 a week. The employer reached $1,000.00 in payroll on April 17, 2012. Therefore, as of April 17 the employing unit became an "employer" liable for the payment of unemployment taxes.

The employer should file Form 518, "Registration Report to Determine Liability" immediately after April 17, 2012 in this example. The employer will be required to file a tax report (Form UIA 1020) and a wage report (Form UIA 1017) for the quarter ending June 30, 2012. The reports are due July 25, 2012, and all reports thereafter are due on the 25th day of the month following the end of the quarter to which the reports apply.

In another example, the DEF Company began its business on April 3, 2012 with two part-time employees. Twenty weeks later, on August 18, the company had employed at least one of those workers in 20 different weeks (the weeks do not necessarily have to be consecutive weeks) in calendar year 2012 (though it had not yet paid $1,000.00 in payroll). Therefore, as of August 18, the employing unit became an "employer" liable for the payment of unemployment taxes.

The employer should file Form 518, "Registration Report to Determine Liability" immediately after August 18, 2012 in this example. Also, the employer should file a tax report (Form UIA 1020) and a wage report (Form UIA 1017) for the completed quarter ending June 30. The tax report and payment are due 15 days after the employer became liable (in this case, 15 days after August 18, which is September 2). Beginning for the 3rd quarter of 2012, the employer should file a new Form UIA 1028, replacing the other two quarterly forms.

Finally, XYZ company bought the ABC company, an employer already determined by UIA to be a liable employer. UIA determined the XYZ company to be the "successor" to the ABC company. By being the successor to a liable employer, the XYZ company itself became a liable employer as of the date of the transfer of the business.

Proof at the Hearing: The UIA has the burden of proving that the employing unit is an "employer" under the law, liable for the payment of unemployment compensation. The employer can present evidence to the contrary.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.

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Transfer of Business

(Successorship)

What the law says: Section 41(2) of the *Michigan Employment Security Act* covers how an employer (whether private or non-profit) becomes a "liable" employer, responsible for making unemployment tax payments; Sections 22 and 22b cover the transfer of experience account factors from a former (predecessor) employer to a new (successor) owner; Section 15(g) covers the related issue of the transfer of the former business owner's liability for state unemployment taxes and interest owed to the new owner of the business. A transfer of business can occur by various means such as sale, foreclosure, lease, bankruptcy, or merger.

Mandatory Transfers

The law says that there will be a mandatory "transfer of business" for UIA purposes if:

1. The new owner was already an "employer" liable for the payment of unemployment taxes, becomes an "employer" on the date of the transfer, or elects to become liable; **and**
2. There was a transfer of 75% or more of the assets of the former business to the new owner, **and** either
3. The new owner has used the trade name or good will of the former business, **or** has continued all or part of the business of the former owner, or within 12 months of the transfer resumes all or part of the business of the former owner.

However, regardless of whether any of the above conditions is met, a "transfer" of business occurs if the new business has substantially the same ownership, control, or management as the former business.

Voluntary Transfers

The law says that if less than 75% of the assets of the former business are transferred, then there can still be a transfer of business if the following two conditions are met:

1. The UIA must be notified of the transfer of assets within 30 days after the end of the calendar quarter in which the transfer occurred, **and**
2. The UIA must receive a written agreement from both the former and new business owners requesting the transfer of the UIA account.

A buyer of a business might benefit from a voluntary transfer if it results in a lower tax rate.

100% and Partial Transfers of UIA Account

When there is a 100% transfer of business assets, all of the former employer's experience account transfers to the new employer. This means that all of the former employer's unemployment tax payments and all benefit charges attributable to the former employer transfer as part of the UIA "experience account" to the new owner.

When the Agency determines there is a partial "transfer of business," the amount of the former employer's account that will transfer to the new employer depends on the percentage of the former employer's payroll (paid for the four completed quarters before the transfer) attributable to the assets that were transferred to the new owner. If the payroll associated with these transferred assets is less than 100%, then the transfer of experience is a "partial transfer."

Examples: A portion of a business was transferred to a new owner and the UIA account of the previous owner was also transferred. The previous owner had operated an office supply division and a secretarial services division. Only the assets of the office supply division were transferred to the new owner. Eighty percent of the payroll the previous owner had paid had been paid to employees of the office supply division. In this example, 80% of the benefit charges would carry over from the UIA account of the former owner, as would 80% of the tax payments from the former employer, and 80% of the wages.

Proof at the Hearing: The Agency has the initial burden of proving that a transfer of business occurred; the new owner has the opportunity to produce business records that could prove the Agency was wrong.

For Further Help: The Unemployment Insurance Agency (UIA) Advocacy Program can provide assistance to employers in preparing for Administrative Law Judge hearings on these issues. Call 1-800-638-3994; select option #2.

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Assessments

What the law says: This issue is covered in Section 15(b) of the *Michigan Employment Security Act*. The law requires the Unemployment Insurance Agency (UIA) to bill an employer, claimant, or third party for delinquent unemployment taxes or restitution of benefit overpayments, interest, and penalties.

The determination that an employer, claimant, or third party owes such amounts to the Agency is called an "assessment." An assessed party can disagree with the amount of the assessment, and can protest and appeal the assessment determination.

The law authorizes the UIA to collect assessments through a variety of methods, including placing a tax lien on the employer's property, seizing the employer's assets, and filing a law suit. The UIA may also seek a warrant to seize the bank accounts of the claimant or employer for amounts owing, or may administratively garnish an employee's wages.

When an employer makes a payment to the UIA, except when fraud has been determined, the payment is applied first to the oldest calendar quarter for which any payment is owed to the UIA, then to the next oldest, and so on. Within a calendar quarter, the UIA first applies a payment to the interest on the Obligation Assessment, then to the principal amount of the Obligation Assessment, then to penalties, interest, and finally to the remaining tax owed. If fraud is found against a claimant, the payment is first applied to the unemployment compensation trust fund, then in the order described above.

Examples: An employer receives an assessment saying that the employer owes a certain amount to the UIA for unpaid taxes, interest, and penalties. However, the employer believes that he/she made the payments to cover the amount the UIA says is owing. The employer can protest or appeal this determination. The employer must then provide the UIA with copies of the cancelled checks to show that they paid the UIA the amount in question. If an assessment redetermination is issued and the employer is still dissatisfied, he or she can appeal the assessment amount to an Administrative Law Judge.

Sometimes, though, an employer will protest or appeal an assessment because the employer believes the business should not be considered a "successor" to the former business or should not become responsible for the unemployment tax rate of the prior owner. The disagreement here is not actually with the amount of the assessment, but rather with the "successorship" issue. Therefore, protesting the assessment will not change the amount of the assessment. In this example, it is the determination of successorship that should have been protested, not the determination of assessment. (But usually, by the time the determination of assessment is issued, it is too late to protest the determination of successorship.)

Proof at the Hearing: The UIA has the burden of proving the accuracy of the amount of the assessment. The employer can bring business records to show that the amount of the assessment is wrong (but not to show that the employer should not have been considered a liable or a successor employer, or that the tax rate was incorrect).

For Further Help: The Unemployment Insurance Agency (UIA) Advocacy Program can provide assistance to employers and unemployed workers in preparing for Administrative Law Judge hearings on these issues. Call 1-800-638-3994; select option #2.

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Penalties and Interest on Claimants and Employers

What the law says: This issue is covered in Sections 15(a), 15(b), 15(i) 15(h), and 54(c) of the M*ichigan Employment Security Act*. The law says that the following penalties and interest apply for late filings of tax returns or late tax payments:

Interest for Overdue Tax Payment and Unpaid Benefit Overpayments – Section 15(a)

Interest accrues on unpaid taxes and unpaid benefit overpayments at the rate of 1.0% a month, computed daily, but not more than 50% of tax owed for the quarter. This means that for every day during a month when there is a tax payment owing, additional interest accrues. A new (successor) business owner can inherit the interest charges due from the previous (predecessor) business owner.

Penalty for Failing to File a Tax Report – Section 15(i) and Section 54(c)

In addition to the interest for a late tax payment, a separate penalty applies when the employing unit, or an owner, director, officer, or agent of the employing unit fails to file a quarterly tax report (Form UIA 1020). The penalty is 10% of the contributions due on the un-filed report. (The penalty is applied once the report is filed and the amount of contributions due is determined. However, the UIA may also make an estimate of the amount of taxes due, and assess a penalty, and interest, accordingly. See the Factsheet on "Willful Neglect.") The minimum penalty is $5.00 and the maximum is $25.00 for each tax report the employer failed to file.

Negligence Penalty - Section 15(h)

If part of a missing tax payment is due to an employer's negligence or disregard of the UIA's rules, but is not due to fraud, the employer will be assessed a penalty of 5% of the total amount owed, in addition to any other interest or penalties already owed.

Fraud Penalty – 54(b)

If it is determined that some or all of a missing payment is due to an employer's fraudulent attempt to avoid tax payments, the penalty will then vary, depending on the amount of tax withheld. The penalty may be two times the amount fraudulently withheld if the amount withheld is under $500 and up to four times the amount if $500 or more, plus imprisonment up to 5 years, or community service of up to 10,400 hours, or a combination of both. In addition, a person who obtains or withholds an amount of benefits or payments exceeding $3,500 but less than $25,000 as a result of a knowing false statement or willful failure to disclose a material fact, may be prosecuted for a felony and be subject to fraud penalties. For detailed information on fraud penalties, please refer to the Fact Sheet on *General Penalty Provisions, Including for Intentional Misrepresentation (Fraud)*.

Examples: An employer hires a new bookkeeper in February of 2010, and the bookkeeper does not file a UIA report for the first calendar quarter of 2010 until August 8, 2011. The bookkeeper filed reports for the second and third calendar quarters on time. However, he does not make a tax payment on any of the calendar quarters until November 1, 2011. That payment is for the first, second, and third quarters.

Because the tax report for the first quarter was late, a 10% penalty applies, with a maximum of $25.00. Because the tax payments for the first and second quarters were late, interest accrues for overdue payments from each of those quarters at the rate of 1.0% per month on the entire tax amount owed.

The payment made on November 1 will be applied in the following order: (1) penalty for the late tax report for the first quarter; (2) interest for the first quarter; (3) principal for the first quarter; (4) interest for the second quarter; (5) principal for the second quarter (6) principal for the third quarter.

If an employee fails to file a quarterly wage report, a penalty of $50 applies, and an additional $250 penalty applies for each additional quarter the report is late. A report corrected within 14 days of Notice from the UIA of an error will incur no penalty.

Proof at the Hearing: The UIA has the burden of proving the amount of the interest and penalties. The employer can bring business records to prove the UIA was wrong. The employer's evidence could include, for example, cancelled checks to prove that UIA received a payment but failed to credit the employer, or received the payment on time but recorded it as being received late. The employer could also produce a certified mail receipt showing that the item was mailed.

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Willful Neglect

What the law says: This issue is covered by Section 15(i) of the *Michigan Employment Security Act*. The law says that if an employer fails to file a Form UIA 1020, Employer's Quarterly Tax Report, and the tax return is late by more than 30 days, and UIA makes a determination that the failure to file the reports is willful, the UIA may assess the principal amount due, as well as interest and penalties. This is called a "willful neglect" determination.

Example: The employer has not filed a tax report (Form UC 1020) for the calendar quarter ending March 31. The tax report was due by the 25th day of the month following the end of the calendar quarter; therefore, the report was due April 25, 2011 As of May 26, the report is more than 30 days overdue. After making a determination that the default of the employer to file the report was willful, the UIA may estimate taxes due and impose whatever interest and penalties would apply to that estimated amount of taxes due.

Proof at the Hearing: The Unemployment Insurance Agenc has the burden of proving that the employer failed to file the tax return and that the failure to file was willful. The employer can bring business records to disprove the UIA.

For Further Help: The Unemployment Insurance Agency (UIA) Advocacy Program: The UIA Advocacy Program can provide assistance to employers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, option #2.

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Unemployment Tax Rate

What the law says: This issue is covered by Section 19 of the *Michigan Employment Security Act.* The law provides that all private for-profit employers, and all non-profit employers except those choosing to pay "reimbursements" (dollar-for-dollar payments to the UIA for benefits paid out) will pay unemployment taxes based on a tax rate calculated by the UIA. There are three "components" of the unemployment contribution (tax) rate: the Chargeable Benefits Component (CBC), the Account Building Component (ABC), and the Nonchargeable Benefits Component (NBC). In addition, beginning with the 2012 tax rate, each employer's tax rate Determination will include an Obligation Assessment (OA). This assessment is intended to pay off the bonds that were taken out to pay off Michigan's debt plus interest to the federal government for loans to pay unemployment benefits. The OA will be assessed until the bonds are paid off.

The law says that if an employer is a "contributing employer" (responsible for the payment of a quarterly unemployment tax), and if the employer becomes newly liable beginning in 2013 (that is, is not a successor to an existing business) then the employer's unemployment tax rates will be as follows:

1. For the first year of liability = 2.7% + 1/3 CBC + OA
2. For the second year of liability = 2.7% + 2/3 CBC + OA
3. For the third year of liability = CBC + ABC + NBC + OA.

The "year of liability" is determined by when the business first operated under the original owner.

For an employer in the construction industry, the rate for the first year is the average construction rate + 1/3 CBC + OA; for the second year it is the average construction rate +2/3 of the CBC + OA. For the third year and over, CBC+ABC+NBC+OA.

The three tax rate components plus obligation assessment are calculated as follows:

Chargeable Benefits Component (CBC)

$$\frac{\text{36 months of taxable payroll}}{\text{36 months of benefits paid}}$$

Each 36-month period ends the previous June 30.

Account Building Component (ABC)

$$\frac{[(\text{Required Reserve}) \text{ minus } (\text{Actual Reserve})] \times 0.5}{\text{Total payroll for 12 months ending last June 30}}$$

The Required Reserve is figured by taking total payroll for the 12 months ending the last June 30th and multiplying it by 0.0375, which is called the "cost criterion." The Actual Reserve is figured by taking all tax payments (except the portion applied to the Nonchargeable Benefits Component) since the business began, and subtracting from that, all benefit payments since the business began. The result could be a negative number. If so, the Actual Reserve must be added to the Required Reserve, in the formula given above.

Nonchargeable Benefits Component (NBC)

This component is the only one of the three components of the unemployment tax rate that does not reflect an employer's own experience. This component is generally a flat 1.0% for all contributing employers with four or more years in business. However, for employers that go for many years without benefit charges, the NBC can be lower than the standard 1.0%. The following reductions apply:

• The NBC is 0.1% if the employer had no benefit charges in the 5 years ending the prior June 30 or 0.5% if the employer has a CBC under 0.2%

• The NBC is 0.09% if the employer had no benefit charges in the 6 years ending the prior June 30.

• The NBC is 0.08% if the employer had no benefit charges in the 7 years ending the prior June 30.

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• The NBC is 0.07% if the employer had no benefit charges in the 8 years ending the prior June 30.

The NBC is 0.06% if the employer had no benefit charges in the 9 years ending the prior June 30.

Obligation Assessment Rate

While Michigan is paying off the bonds used to retire its debt to the federal government, the Obligation Assessment Rate will be added to each employer's tax rate. It is calculated using the following formula:

[**Current Tax Rate x OA ratio]+[base assess.÷ taxable wage base**]

Each component of the OA is described below:

• Current Tax Rate – The employer's tax rate for the current year.

• Obligation Assessment Ratio (OA Ratio) – The OA Ratio is used to calculate the experience based cost of the OA Rate. In 2013, it is 0.145015.

• Base Assessment – The flat rate that is assessed to all covered employees. In 2013, it is $63.00.

• Taxable Wage Base – The maximum amount of wages paid to an employee that are subject to unemployment insurance taxes. In 2013, it is $9,500.

The Obligation Assessment Ratio and Base Assessment will be calculated yearly until all the bonds have been retired.

Amount of Quarterly Tax Payment

The tax rate applicable to an employer in a calendar year is multiplied against the first $9,500 of each covered employee's gross wages paid in the calendar year. This $9,500 amount is called the "taxable wage base."

Example: Form UIA 1771, Tax Rate Determination for Calendar Year 2013 provides all the information the employer needs to calculate the unemployment tax rate. Let's say Employer A's Form UIA 1771 shows the following figures:

ACTUAL RESERVE: $41,532.00

TOTAL PAYROLL (12 Months): $2,428,871.34

REQUIRED RESERVE: $91,082.68

TAXABLE PAYROLL (36 Months): $2,972,332.91

BENEFIT CHARGES (36 Months): $32,869.00

Chargeable Benefits Component:

The calculation is done this way:

$$\frac{\text{36 months of taxable payroll}}{\text{36 months of benefit charges}}$$

Taking the sample numbers from above:

$$\frac{32{,}869.00}{2{,}972{,}332.91} = .0110 = 1.1\%$$

The result is rounded to the next higher 0.1%. (In this example, the fourth decimal place was a "zero," and no rounding was done.)

Account Building Component:

The calculation is done this way:

$$\frac{\text{(Required Reserve) - (Actual Reserve) X 0.50}}{\text{12 months of total payroll}}$$

Taking the sample numbers from above:

$$\frac{(91{,}082.68 - 42{,}532.00) \times 0.50}{2{,}428{,}871.34} = .0102$$

If there is any remainder (as there is here with the "2" in the fourth place to the right of the decimal), the result is rounded up to the next higher 0.1%, making the result 1.1%.

Nonchargeable Benefits Component:

This component is 1.0% for all contributing employers, but can be as low as 0.06% for employers with no benefit charges against their account for 9 years.

Obligation Assessment:

[2.4 x 0.145015] = 0.003480

[63 ÷ 9500] = 0.0066316

0.003480 + 0.0066316 = 0.010116 x 100 = 1.011%

Round up to 1.02%, because the 4th decimal place is greater than zero.

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Unemployment Tax Rate:

For an employer with four or more years of business experience (in 2012), and three or more thereafter, the unemployment tax rate is computed by adding together the three components plus the obligation assessment.

- Chargeable Benefits Component: 1.1%
- Account Building Component 1.1%
- Nonchargeable Benefits Component: 1.0%
  (or as low as 0.06%, if appropriate)
- Obligation Assessment: 0.8%

Total Computed Tax Rate: 4.0%.

The tax rate is mailed to employers yearly on Form UIA 1771. This is a determination and can be protested/appealed like any other determination. The time period for filing a protest or appeal from a rate determination or redetermination is 30 days from the date of mailing, the same as for all other determinations and redeterminations.

Proof at the Hearing: The UIA has the burden of proving the accuracy of the calculation, and of the numbers used to make the calculation. The employer can bring business records to disprove the UIA.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994; Item 2.

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Maximum Tax Rates When Quarterly Tax Reports Are Not Filed

What the law says: This issue is covered by Section 18(d)(2) of the *Michigan Employment Security Act*. The law says that if any of the quarterly tax reports due from an employer during the rate computation period (the twelve months ending on the June 30 of the previous calendar year) is missing, the UIA will figure the employer's tax rate on the basis of whatever reports were filed, as long as at least one report is on file, and will add a penalty of 3.0% because one or more reports are missing. If all the missing reports are submitted within 30 days after the rate Determination is issued, the UIA will refigure the tax rate and will drop the penalty. If the report or reports are submitted beyond 30 days, but within one year, the UIA will refigure the rate and will drop the penalty completely if the business had "good cause" for being late in filing, or will drop the penalty to 2.0% if the business did not have "good cause" for being late in filing. If all the missing reports are filed beyond 1 year but within 3 years, UIA will recalculate the rate and add a 3.0% penalty.

Early each year, the employer is sent Form UIA 1771, Tax Rate Determination for Calendar Year _____. From the date that Determination is mailed, the employer has 30 days in which to file the missing reports and protest the rate. This is true even if the employer did not file because they had no payroll during the calendar quarter. The employer's tax rate will then be recalculated, using the information the employer has then provided.

Example 1: Employer A forgot to file a UIA tax report (Form UIA 1020) for the first calendar quarter of 2009. The Agency needs the information from that report about wages paid to workers during that quarter, but will assign a rate of 6.7% based on the other 3 quarters on file, and will add a penalty of 3.0%. The rate will be labeled "Code 2."

Form UIA 1771, Tax Rate Determination for Calendar Year_____ will direct the employer's attention to explanatory item "Code 2" on the back of the Form. "Code 2" then explains that the rate was calculated on the quarters on file, and that a penalty was added because a quarter was missing. The Form also tells the employer exactly which quarterly report was missing. The employer must provide the missing report within 30 days to avoid having to pay the rate, as calculated, plus the 3% penalty.

***Example 2*:** The employer receives Form UIA 1771, imposing the maximum tax rate applicable to that employer and indicating that the tax report for the second quarter was not received by UIA. The employer believes the report was filed, and in fact the employer shows the tax payment entered in his/her check register. The employer therefore ignores the tax rate determination, believing the UIA will eventually correct the rate.

The employer will receive a rate calculated on the available quarters, plus a penalty of 3%, if the employer does not protest the rate and present evidence (such as the cancelled check) to show that the report was previously filed within 30 days. Unless the employer produces evidence with the letter of protest, such as a cancelled check to show that the UIA made an error and failed to properly record the receipt of the tax report, the employer will have to pay the rate as calculated, plus the 3% penalty. This could be extremely costly for the employer.

Proof at the Hearing: The UIA has the obligation to assert that the employer's tax report was not received. The employer must then prove the UIA's assertion was wrong by presenting evidence that the report was, in fact, received by the UIA on time. The employer must also show that, based on the information in the report in question, his/her tax rate should have been lower than the one assigned by the UIA. If good cause for untimely filing the report is at issue, the employer has the burden of showing the good cause.

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The Michigan Compensation Appellate Commission Appeal Process

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What the law says: The Michigan Compensation Appellate Commission (MCAC) replaced the former Michigan Employment Security Board of Review. Appeals to the MCAC are covered by Sections 34, 37, and 38 of the *Michigan Employment Security Act*, and by Rules of Practice found at R 421.1101 – 421.1317 of the *Michigan Administrative Code*.

The law says that any party that loses its case before an Administrative Law Judge (ALJ) has a right to appeal the decision to MCAC. An appeal to MCAC must be in writing and signed or verified. It must be received by MCAC by the end of the 30th day after the ALJ's decision or order was issued. If both of the involved parties agree, they can request, by written stipulation filed with the ALJ, to by-pass the MCAC and appeal directly to circuit court.

A timely appeal to MCAC will be reviewed by a three-member panel of commissioners. They will review the recording of the ALJ hearing, and any exhibits made part of the official record. The MCAC will then either affirm (agree with), modify (change the reasons and/or partly change the result), or reverse (disagree with) the ALJ decision. The MCAC may remand (send back) the case to the ALJ for a further hearing in order to obtain additional facts necessary to decide the case.

The MCAC does not generally conduct a new hearing concerning the facts of the case. After the redetermination is issued, the ALJ hearing is usually the last level in the appeal process where the parties provide evidence that will be used by the MCAC and courts for later appeals.

The purpose of the MCAC's review of a case is first to determine if the ALJ made correct findings of fact based on the evidence presented. The MCAC is not required to agree with the Administrative Law Judge's findings. Secondly, MCAC determines if the ALJ correctly applied the law as provided in the *Michigan Employment Security Act* and precedent court decisions, to those facts.

Transcripts are available only on request, and are subject to a printing/processing fee. A download of the recording is available at no charge by calling (313) 456-0423. If the recording is very long, a CD may have to be prepared, for which there is a charge of $25.00. A transcript currently costs $3.25 per page, and can be ordered directly from the vendor, which is currently Regency Court Reporting. Call them at 248-360-2145 to arrange for purchase of a transcript.

Oral Argument

A party appealing a case to the MCAC may make a written request that it conduct an "oral hearing" in addition to reviewing the recording and exhibits made part of the record during the ALJ hearing. The MCAC grants such a request only in rare cases. The written request for oral hearing must be received by the MCAC not later than the 20th day after the MCAC mails the parties the "Notice of Appeal". The MCAC will then decide whether or not to grant the request for oral hearing. An oral hearing, if granted, is not a new opportunity for the parties to present the facts of their case, but is for the purpose of presenting argument as to whether the ALJ decision is correct or incorrect.

Written Argument

Generally, an application for written argument will be considered only if a request oral argument was not approved. The request for written argument must be approved by 2 or more members of MCAC assigned to review the appeal, and will only be approved if all parties are represented or all parties agree that written argument should be considered.

A decision of the MCAC can be appealed by the losing party to circuit court. The appeal period to circuit court is 30 days from the mailing date of the Decision or Order.

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Filing Requirements for New, Additional, Reopened and Continued Claims

What the law says: This matter is covered by Sections 28(b) and 32(b) of the *Michigan Employment Security Act*, and by Administrative Rule 210. The law says that for a worker to be eligible to receive unemployment benefits for a week of unemployment, the worker must, among other things, file the claim on time and report , on time, to certify for benefits.

TYPES OF CLAIMS

There are three types of claims that can be filed to start, or restart, a claim for benefits:

A new claim is one that is filed to establish a claim that did not previously exist.

An additional claim is one that is filed to reactivate benefits when an unemployed worker already has a claim in existence, interrupts the payment of benefits on the claim by returning to work, and then becomes unemployed again.

A reopened claim is one that is filed when an unemployed worker already has a claim in existence, but interrupts the payment of benefits on the claim for a reason other than returning to work, and then seeks to reactivate benefits.

A worker files a "continued claim" when the worker reports by "MARVIN" to claim benefits by certifying as to his or her continued eligibility for benefits.

TIMELINESS REQUIREMENTS

For a new or additional claim: The claim must be filed by the Saturday after the end of the week containing the individual's last day of work. So a person laid off on September 6 (see the calendar on this page) would have until Saturday, September 14 to file a new or additional claim effective with the week of the layoff.

For a reopened or continued claim: The claim must be filed by the Saturday after the end of the week containing the last day of the period for which the worker is claiming benefits or is reporting to certify for benefits. A reopened claim filed on October 11 is effective for that week. A continued claim for the two weeks ending October 5 and October 12 must be filed by Saturday, October 19.

GOOD CAUSE FILING EXTENSION

For good cause (including such things as acts of God, delay in mail delivery, funeral attendance, incarceration, and jury duty), an additional period of 14 days will be permitted for filing the new, additional, or reopened claim, or for reporting to file a continued claim.

For an individual who last worked on Thursday, September 12, a new or additional claim, to be effective for week beginning September 8, must be filed by Saturday, September 21. For good cause, that date can be extended 14 days to Saturday, October 5.

To file a reopened claim for the week ending October 12, or to report to file a continued claim for the weeks ending October 5 and 12, the claim must be filed by Saturday, October 19. For good cause, the filing date is extended 14 more days to Saturday, November 2.

SEPT/OCT/NOV						
SU	M	TU	W	TH	F	SA
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	1	2

To file a reopened for the week ending October 12, or to report to file a continued claim for the weeks ending October 5 and 12, the claim must be filed by October 19. For good cause, the filing date is extended 14 more days to November 2.

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If the unemployed worker does not have good cause for late filing of a new, additional, reopened, or continued claim, then the claim will be effective as of the week in which it is filed.

If the unemployed worker cannot file timely because services from the Agency are unavailable, the claim will be timely if it is filed on the next workday.

METHODS OF FILING CLAIMS AND REPORTING

New Claims, Additional Claims, and Reopened Claims

New, additional, and reopened claims may be filed either by telephone or on the internet.

Telephone Filed Claims (TFC)

To file by telephone, an unemployed worker may call 1-866-500-0017 at the time indicated in the chart below. The numbers shown in the columns refer to the last 2 digits of the unemployed worker's social security number:

Time	Monday	Tuesday	Wednesday	Thursday & Friday
8:00 a.m. - 12:30 p.m.	00-15	34-48	67-81	Open Call-In
12:30 p.m. - 4:30 p.m.	16-33	49-66	82-99	(All Social Security Numbers)

If an unemployed worker's social security number was 123-45-6789, the last 2 digits would be "89." Looking at the table, the number "89" would be in the group of numbers under the "Wednesday" column, and they would be in the "12:30 p.m. to 4:30 p.m." row. Therefore, a person whose social security number ended with the digits "89" would call to file a new, additional, or reopened claim on Wednesday afternoon, between 12:30 and 4:30. Times are Eastern zone.

If an unemployed worker misses calling on the right day and time, he or she can call at any time between 8:00 a.m. and 4:30 p.m., on either Thursday or Friday of that same week.

Internet Filed Claims (IFC)

New, additional, and reopened claims may also be filed on the Agency's website at http://www.michigan.gov/uia, from 7:00 a.m., Monday through 7:00 p.m., Saturday.

Click on "File Unemployment Claim" to link to the site on the internet where the claim can be filed.

Continued Claims (Bi-weekly Telephone Reporting)

With a few exceptions specifically granted by the Agency, such as for individuals in certain kinds of training, or those with hearing difficulties, all continued claims for unemployment benefits must be filed by telephone or online using MARVIN (Michigan's Automated Response Voice Interactive Network). Unemployed workers are assigned a calling day and time. An unemployed worker who misses calling at the assigned time can call in at any time between 8:00 a.m. and 7:00 p.m. on Thursday or Friday of the same week, without penalty. Times are Eastern zone. The telephone number for calling MARVIN is 1-866-638-3993. A worker with a CWAM account can certify by online MARVIN at http://www.michigan.gov/uia and click on "Certify with MARVIN online," at any time Monday through Friday, 7:00 a.m. to 7:00 p.m. (Eastern Time).

Proof at the hearing: Where the question at a hearing is whether the claim was filed on time, or whether the unemployed worker had good cause for filing late, the burden of proof is on the unemployed worker to show that he or she filed on time or had good cause for being late.

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Payment of Benefits to Unemployed Workers Who Worked for Family Member

What the law says: This issue is discussed in Sections 43(g) and 46(d) of the *Michigan Employment Security Act*.

Generally, Section 43(g) of the law prevents an unemployed worker from receiving any unemployment benefits based on work for the worker's child or spouse, and based upon work for the worker's parent if the worker was under age 18 at the time the work was performed. The work is considered to be performed for one of these relatives if the relative was the **sole proprietor** of the business (that is, the sole owner of a business that was not incorporated). The work is also considered to be performed for these relatives if the business was a **partnership** (that is, owned by several people but not a corporation) owned entirely by two or more of the relatives mentioned above. A single-member LLC is treated like a sole proprietorship. Otherwise, an LLC is treated like a partnership.

The law no longer limits to 7 weeks the payment of benefits to family members of family corporations.

***Example 1*:** The unemployed worker works for his wife, who is the sole owner of a business that is not incorporated. The unemployed worker cannot be paid unemployment benefits based on services performed for his wife's unincorporated business.

***Example 2*:** The unemployed worker works for his parents who are the two partners in a partnership. While working for this partnership the unemployed worker turned age 18. Since the partnership was owned entirely by the unemployed worker's parents, he could not draw benefits based on wages for that service until he turned age 18. The week after the week in which the unemployed worker turned 18, he could start accruing qualifying wages based on service for that partnership.

Proof at the Hearing: If the question at the hearing is whether the unemployed worker is entitled to any benefits, or to limited benefits, the burden of proof is on the unemployed worker to show that the unemployed worker is not related to the owners or shareholders of the employer, or that the unemployed worker and employer notified the UIA of the relationship, or that the unemployed worker was over age 18 at the time the services were performed, if the unemployed worker was the child of the owner(s) or shareholder(s).

For Further Help: The UIA Advocacy Program can provide further assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.

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Preservation of Unused Benefit Entitlement

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What the law says: This issue is discussed in Section 28a of the *Michigan Employment Security Act*. Generally, this provision allows a worker who is not able to work and is therefore not entitled to collect unemployment benefits, to keep unused base period wages available for use when the worker is again able to work but remains unemployed.

Generally, in order for a worker to be entitled to unemployment benefits, the worker must have worked and had earnings in at least 2 calendar quarters during the first 4 of the last 5 completed calendar quarters, prior to filing a new claim. In the quarter with the highest wages during that period, the worker must have been paid at least $2,871, and during the entire 4 quarters must have been paid at least 1.5 times the amount earned in the quarter with the highest wages.

A worker is not entitled to unemployment benefits, though, if the worker is not able to work, available for work, seeking work, and satisfying certain other weekly eligibility requirements. If a worker becomes disabled, the worker generally cannot collect unemployment benefits. By allowing a disabled worker to "preserve" unused base period wages, the wages can be used at a later time to qualify for benefits when the worker is again able to work but remains unemployed. This allows the worker to use those wages even though they no longer fall within the base period at the time the claim is filed.

To preserve unused benefit entitlement, the worker must be disabled as a result of an illness, injury, or hospitalization, and the disability must have lasted for at least 14 consecutive days. Also, the worker must request preservation of unused benefit entitlement, and present a doctor's statement, within 90 days after the latest of the following dates: (1) date the disability began; (2) date a medical inability to file the request ended; (3) date the worker was informed by the UIA of the right to file for preservation of unused benefit entitlement.

However, in any event the worker must make the request within 3 years after the disability began.

The doctor's statement must describe the disability, must indicate that the individual is not able to work or available for work while disabled, and must estimate how long the disability is expected to last .

In a case where a claim is already in existence, preserved unused benefit entitlement may not be used to pay benefits more than 156 weeks (3 years) after the week the claim began. Also, the worker cannot use preserved unused benefit entitlement to set up a claim if the worker has enough base period wages to set up a claim without using preserved unused benefit entitlement. Preserved unused benefit entitlement can be used to extend a claim already in existence by the number of weeks the worker was disabled during the claim, up to 52 weeks.

When a claim is not already in existence, preserved unused benefit entitlement can be used to set up a new claim if the worker did not have enough other (non-preserved) base period wages to set up a claim in the usual way.

***Example 1*:** An individual who was collecting unemployment benefits became ill and was hospitalized. Her benefit claim period (that is, her 52-week **benefit year**) ran out after she had been in the hospital for 8 weeks. After the hospitalization, the worker was again able to work and was ready to resume drawing unemployment benefits. She did not have enough unused base period wages to set up a new claim, so the unemployed worker was notified by UIA of her right to request "preservation" of unused benefit entitlement from her old claim. She made the request right away and also presented a correctly completed doctor's statement right away. Her old claim period was extended by 8 weeks (the number of weeks of disability that fell in her old benefit year), to allow the worker to draw out the benefits she lost while she was hospitalized. **In this example, preserved unused benefit entitlement was used to extend a benefit claim that was already in existence.**

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Example 2: Another worker was in the hospital for 3 months, and then spent 6 months at home recovering. During that time, the worker was laid off from his job for lack of work. When he recovered, he did not have enough unused wages in the base period to set up a new claim for benefits. The worker was informed by UIA of his right to preserve unused benefit entitlement, and he made that request right away. He also provided a correctly completed doctor's statement. Since the unemployed worker could not otherwise set up a claim, the claim was established effective the week the disability began, using the unused wages in the base period of the claim. (If necessary, the benefit year will be extended from the end of the period of disability, by the number of weeks of the disability that fell within the benefit year.) **In this example, preserved unused benefit entitlement was used to set up a new claim because the worker did not otherwise have enough base period wages to do so.**

Example 3: Another worker had 22 weeks of benefits remaining on an existing claim when she became ill. She remained ill during the remaining 48 weeks of the benefit year, and for the 2 years (104 weeks) after that. Her total period of illness was 152 weeks. When she recovered, the worker requested, on time, to preserve unused benefit entitlement. She also presented, on time, a correctly completed doctor's statement.

Normally, her original claim period (that is, her benefit year) would be extended by 48 weeks (the number of weeks of disability during the original claim period) after the week the disability ended. However, the law says that the original claim period cannot be extended more than 156 weeks from the week it began. That leaves this unemployed worker with only 4 weeks of benefits before her 156-week period expires, rather than the 22 weeks of benefits she was originally entitled to.

Proof at the hearing: The burden of proof is on the worker to show that he or she was injured, ill, or hospitalized for at least 14 consecutive days, and to show that the request to preserve unused base period entitlement was made in time.

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Denial Periods for Seasonal Workers (Other than Construction Workers)

What the law says: This issue is discussed in Section 27(o) of the *Michigan Employment Security Act*.

Generally, Section 27(o) provides for a denial of unemployment benefits, under certain circumstances, to seasonal workers who have reasonable assurance from their seasonal employer at the end of a seasonal work period that they will be rehired when the new season begins.

Responsibilities of the Employer

- Apply to the Unemployment Insurance Agency (UIA), not less than 20 days before the estimated beginning of a season, to be designated as a seasonal employer
- Receive designation from the UIA as a seasonal employer
- Post notice to workers, at the time of application, that application for seasonal designation has been made
- Post notice to workers, once seasonal designation has been granted, of:
  - the designation, and
  - the beginning and ending dates of the normal seasonal work period, and
  - the fact that retroactive benefits may be payable to a worker for the period between seasons if the work assured for the next season does not materialize and if the worker timely applies for the benefits
- Notify a worker in writing, at the time of hire, of the employee's status as a seasonal worker, and notify the worker in writing of any subsequent changes in that status
- Give reasonable assurance to the worker at the end of the season that work will be available in the next season.

Designation as a Seasonal Employer

To be designated by the UIA as a *seasonal employer*, the employer must offer work in *seasonal employment*.

To be *seasonal employment*, the employer must employ individuals primarily hired to work during regularly recurring periods of 26 weeks or less within any 52-week period. However, an employer in the construction industry may not receive designation as a seasonable employer.

Application of Denial Period

A *seasonal worker* is one who is paid wages by a seasonal employer for work performed only during the *normal seasonal work period*. The Agency will determine each employer's normal seasonal work period. The benefits are denied during the period between normal seasonal work periods if the worker has reasonable assurance of re-employment.

If a worker either begins working before the start of an employer's normal seasonal work period, or finishes working after the end of that employer's normal seasonal work period, the worker no longer satisfies the definition of *seasonal worker* and would not be subject to the seasonal denial period for that year.

Example: The UIA has determined that the employer's normal seasonal work period lasts from May 12 until August 28. The unemployed worker works from May 5 until August 20 in a particular year and is given reasonable assurance of returning to the job the next season.

However, a *seasonal worker* is one who is paid wages by a seasonal employer for work performed only during the normal seasonal work period. Since the unemployed worker in this example started working before the start of the employer's normal seasonal work period, the worker no longer satisfies the definition of *seasonal worker* and would not be subject to the seasonal denial period for that year.

Proof at the Hearing: If the UIA determines that the employer is not a seasonal employer, the employer can appeal a redetermination of that finding to an Administrative Law Judge. If the UIA decides that the employer is a seasonal employer, the unemployed worker can appeal that designation at any time to an Administrative Law Judge.

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If the unemployed worker was denied benefits but should not have been because the unemployed worker began work before the start of the employer's normal seasonal work period or finished work after the end of the employer's normal seasonal work period, the unemployed worker can appeal the denial. The unemployed worker can also appeal the denial of benefits if the unemployed worker did not receive reasonable assurance of returning at the start of the following season, or if the unemployed worker believes the reasonable assurance that was given was not *bona fide*. The employer can refute the claimant's allegations, at the hearing.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.

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Disqualification for Discharge Involving Drugs

What the law says: This matter is covered by Section 29(1)(m) of the *Michigan Employment Security Act.* The law says that an individual will be disqualified from receiving unemployment benefits if the individual was fired from the job for illegally using or possessing a drug ("controlled substance") at the workplace; for refusing to take a drug test; or for failing a drug test.

For the disqualification to be imposed, the drug test must be given in a non-discriminatory way. To be given in a "non-discriminatory" way, the test must be given impartially and objectively in accordance with a collective bargaining agreement; employer rule, policy, or notice; or a labor-management contract. For example, a drug test may be required after a worker has had an accident at work, or it may be given to workers selected randomly.

Further, a worker who disagrees with the test result and expresses that disagreement to the employer must be given a confirmatory test on the same sample that also gives a positive result.

A worker who is disqualified from receiving benefits under this provision can requalify for benefits by doing either one, or a combination of both, of the following for 26 weeks:

- Certify to the Unemployment Insurance Agency (UIA) that he or she has met all of the requirements to receive a benefit payment (such as being able to work, available for work, and seeking work); and
- Earn at least $220.00.

However, even after the 26-week requalification period has been satisfied, the unemployed worker's original benefit entitlement is reduced by 13 weeks, and no benefits can be paid to the individual based on work with the employer involved in the firing due to the involvement with drugs. Benefits can be paid based only on work with other employers not involved in a drug disqualification (or a disqualification for theft, willful destruction of property, assault and battery, or theft after notice of layoff or discharge).

Examples: The employer asks a worker to take a drug test after the worker has an accident at the worksite. The worker refused and is fired. This worker would be disqualified from receiving unemployment benefits, as the basis for giving the worker the test was the accident, and this is a non-discriminatory basis upon which to test the employee.

If a worker is fired for testing positive for a drug ("controlled substance") for which the worker has a valid prescription and which the worker is using in a medically approved amount, the worker would not be disqualified from receiving unemployment benefits, because the controlled substance would not have been used or possessed *illegally.*

Proof at the Hearing: If either the employer or unemployed worker appeals the case to an Administrative Law Judge, then the employer must prove that the worker used or possessed a drug ("controlled substance") illegally, or that the worker refused or failed a drug test that was administered in a non-discriminatory way.

A report by a drug testing facility showing a positive result is conclusive proof at the hearing of the result, unless there is substantial evidence presented at the hearing to the contrary. If there is such contrary evidence, though, the Administrative Law Judge may request testimony of the drug-testing laboratory as to the results of the test, the testing method used, and the "chain of custody" of the sample tested.

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Advocacy
for Unemployed Workers & Employers
Cadillac Place • 3024 W. Grand Blvd., Suite 13-150 • Detroit, MI 48202

How UIA Charges an Employer's Account For Benefits

What the law says: This issue is covered by Sections 20, 32(b), and 29(1) of the *Michigan Employment Security Act*, and by Administrative Rule 205. The law says that when a new claim is filed, the Unemployment Insurance Agency (UIA) must notify the unemployed worker's last employer, and each of the employers in the base period of the claim, about potential charges to the employers' accounts.

The UIA mails out Form UIA 1575-WR, "Monetary Determination," showing the wages employers reported for the unemployed worker, the unemployed worker's weekly benefit amount, the number of weeks of benefits payable to the unemployed worker, the maximum possible charge to each employer, and the reason the unemployed worker gave for the separation from employment.

Form UIA 1575-WR, "Monetary Determination"

In some cases, the employer will disagree with the reason given for the separation, as reported by the claimant and shown on the Form. In that case, the employer should provide the reason they believe was the accurate one.

If the Form shows that the individual reported a "Quit" from the employer, the quit will be presumed to have been disqualifying and the employer's account will automatically be "non-charged" for any benefits paid to the claimant. If the reason shown is "Fired," and the UIA has not sent the employer specific questions about the firing, the employer should advise the Agency, in writing, of the circumstances. If the circumstances of the firing would result in a disqualification of the worker, the UIA will issue a "Redetermination of Charges" and the employer's account will not be charged for any benefits otherwise payable to the claimant. Benefits may become payable to a claimant, even if the circumstances were disqualifying, if the claimant is able to requalify by "rework." If a claimant requalifies for benefits, the benefits become payable even if the separation was disqualifying. The employer's interest in responding to a request for information from the UIA, or in providing information in the absence of a request, is not to prevent the payment of benefits, but rather to prevent those benefits from being charged to the employer's account.

If the employer notices a discrepancy in the wages shown, or in the reason for separation, and the employer believes the unemployed worker's reason for separation would prevent the charging of benefits to the employer, then the UIA must receive corrected information from the employer, in writing, within 10 days from the date the UIA mailed the form to the employer (or within 30 days if the separation reason was "quit").

If the employer does not provide corrected information within that 10-day (or 30-day for "quit") period, benefits will be paid on the basis of the information the UIA has on file. If benefits later need to be reduced or repaid by the unemployed worker, the employer's account will be credited only as to payments due for the week the corrected information is received by the UIA, and weeks thereafter.

The Form UIA 1575-WR is the only determination Form that will be sent to the employer and unemployed worker if the unemployed worker has already requalified for benefits and if the employer agrees with the wage information and charges to its account.

Form UIA 1955, "Redetermination of Charges"

If the employer responds in writing to Form UIA 1575-WR and requests (with supporting reasons) that charges not be made to its account, the UIA will consider whether the reason for the claimant's separation was disqualifying. The employer's account will not be charged if the separation reason was disqualifying, even though the unemployed worker may have already requalified for benefits and is being paid. Form UIA 1955 will notify the employer whether the UIA will be charging the employer's account. This will often be the Redetermination the employer appeals to an Administrative Law Judge.

Form UIA 1707, "Request for Information Relative to Possible Ineligibility or Disqualification;" Form UIA 1713, "Fact-Finding Form;" Form UIA 1302, "Nonmonetary Determination"

If the unemployed worker has not already requalified for benefits at the time the claim is filed, then the employer will also be sent Form UIA 1713 or Form UIA 1707. These forms ask for details about the claimant's separation from employment. The employer's answers to these questions, along with the unemployed worker's

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statement, will be considered in determining whether the unemployed worker will be disqualified from receiving benefits. The UIA will issue Form UIA 1302, "Nonmonetary Determination," indicating whether the unemployed worker will be disqualified from benefits.

To prevent potential charges to its account the employer should:

- Carefully review Form UIA 1575E-WR and look to see if the wage and separation information shown on the Form is correct. If the information is incorrect, the employer has 10 days to send a protest to the UIA (30 days for a quit).
- Provide the correct information along with supporting facts and documents explaining the reason the employer believes the claimant should be disqualified for benefits. Or the employer should request to be non-charged if they are a base period employer and the claimant has met the requalification requirement.
- Respond to the UIA's request for information about the separation. The UIA will mail Form UIA 1713 or Form UIA 1707 to the employer if the Agency knows that the reason for separation was a "benefit reducing" reason such as theft, theft after discharge, willful destruction of property, assault and battery, or discharge for drugs. If Form UIA 1713 or Form UIA 1707 is not sent to the employer, and the separation reason shown is something other than "quit," the employer should provide, within 10 days, written information about the separation in response to Form UIA 1575-WR.
- Notify the UIA if they know that an unemployed worker left his/her job with the employer to take a full time permanent job with another liable Michigan employer and performed work for the new employer, or accepted recall or referral through a union hiring hall.
- Notify the UIA if the unemployed worker was a part-time employee and quit, but continued to work for another employer.
- Notify the UIA if the unemployed worker is the spouse of an active duty military person and quit to move with the military spouse to a new geographic location assigned by the military.
- Notify the UIA if the worker quit after a work period of not more than 60 days.

How employers will be charged for benefits

If any employer paid a worker $200 or less in the base period of the claim, that employer's account will not be charged for any benefits on that claim.

Last Employer

If the wages paid by the unemployed worker's last employer before the unemployed worker filed a new claim equaled at least 40 times the state minimum hourly wage times 7 ($2072), then the entire benefit payment for each of the first 2 weeks of the claim will be charged to the unemployed worker's last employer.

If the last employer did not pay the unemployed worker at least $2,072, then each week of benefits, beginning with the first week, will be charged, proportionately, to all base period employers. The separating employer may or may not be a base period employer.

Base Period Employer(s)

The base period employers are charged their proportionate share of the unemployed worker's weekly benefit payments beginning with week 3 of benefits (assuming the last employer was charged for the first 2 weeks of benefits).

The proportionate charging of benefits is calculated by determining the percentage of the unemployed worker's total base period wages that were paid by each base period employer. That same percentage is then applied to the unemployed worker's weekly benefit amount to determine the amount of each week's benefits that are charged to the account of each base period employer.

Example:

The unemployed worker has a weekly benefit amount of $118.00, and is entitled to 16 weeks of benefits. The first 2 weeks will be charged to the last employer. The unemployed worker received wages in each of the quarters of the base period as follows:

Charges to Base Period Employers:

QTR 1	QTR 2	QTR 3	QTR 4	QTR 5	QTR 6
A=$350 B=$150	A=$500 B=$900 C-$1500	A=$250 B=$250	D=$500	LAG	D=$2,100 FILING

There are 4 different base period employers in the base period shown above. Total wages paid in the base period are $4,400. Of that amount, each base period employer paid the unemployed worker the following amounts in the base period:

Employer A paid a total of $1,100
($350, $500, and $250 in quarters 1, 2, and 3, respectively)

Employer B paid a total of $1,300
($150, $900, and $250 in quarters 1, 2, and 3, respectively)

Employer C paid a total of $1,500
(in quarter 2)

Employer D paid a total of $500
(in quarter 4)

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Each base period employer's proportionate share of total wages paid to the unemployed worker in the base period is as follows:

Employer A = $1,100 ÷ $4,400 = .25 = 25%

Employer B = $1,300 ÷ $4,400 = .2954.54 = 29.5454%, truncated to 29.545%, rounded to 29.55%

Employer C = $1,500 ÷ $4,400 = .340909 = 34.0909%, truncated to 34.090%, rounded to 34.09%

Employer D = $500 ÷ $4,400 = .113636 = 11.3636%, truncated to 11.363%, rounded to 11.36%

These percentages represent each employer's proportionate share of the unemployed worker's base period wages. If the percentages do not total 100%, then the amount needed to bring the total to 100% will be added to the percentage share of the employer with the largest pro rata share of the benefit charge.

These are the same percentages that are multiplied against the unemployed worker's weekly benefit amount to determine each employer's share of the charge for the unemployed worker's weekly benefit payment. In this example, the unemployed worker has a weekly benefit amount of $118.00, and was entitled to benefits for 18 weeks.

Employer A's account will be charged 25% of the weekly benefit charges.

.25 x $118 = $29.50

Employer B's account will be charged 29.55% of the weekly benefit charges.

.2955 x $118 = $34.87

Employer C's account will be charged 34.09% of the weekly benefit charges.

.3409 x $118 = $40.23

Employer D's account will be charged 11.36% of the weekly benefit charges.

.1136 x $118 = $13.40

If, after rounding, the benefit charges do not total the unemployed worker's weekly benefit amount, the difference will be added to the charge of the employer with the largest charge.

The maximum possible liability each base period employer will have on this claim is as follows:

Employer A : $29.50 for 16 weeks = $472.00
Employer B: $34.87 for 16 weeks = $557.92
Employer C: $40.23 for 16 weeks = $643.68
Employer D: $13.40 for 16 weeks = $214.40

Total Charges to Last Employer's Account:

Since Employer D was both a base period employer and the last employer, and Employer D paid wages greater than $2,072, Employer D will also be charged 100% of the first two weeks of benefits. 100% x $118 = $118, for 2 weeks = $236.00.

Therefore, the potential charge to the account of Employer D is $214.40 (proportionate share of base period wages) plus $236.00 (100% of first 2 weeks of benefits), for a grand total of $450.40.

Proof at the Hearing: If the subject of the hearing, as described in the "Notice of Hearing," is the amount and duration of benefits as described in the "Monetary Determination" (Form UIA 1575-WR), then either the unemployed worker or the employer can disagree with the UIA's calculation, or with the wages that formed the basis of the UIA's calculation.

If the subject of the hearing is whether the employer's account should be charged, as described in the "Redetermination of Charges" (Form UIA 1955), then the employer will have the burden of proving that the circumstances of the claimant's separation from employment were disqualifying (even if the unemployed worker has requalified for benefits and started receiving them).

If the subject of the hearing is whether the unemployed worker is entitled to benefits, as described in the "Non-Monetary Determination" (Form UIA 1302), then the employer has the burden of showing that the separation was disqualifying (for example, that the discharge was for misconduct or the quit was without good cause attributable to the employer) and the benefits are not payable. The unemployed worker has the burden of showing that the separation was not disqualifying and benefits should be payable (for example, that the discharge was not for misconduct or the quit was with good cause attributable to the employer).

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.

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Coverage of Workers Performing Domestic (Household) Services

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What the law says: This matter is covered by Sections 43(e) and 41(6) of the *Michigan Employment Security Act*. The law says that services performed by domestic (household) employees are excluded from coverage for unemployment benefits unless the employer had paid, for domestic services, at least $1,000 in any calendar quarter in the current or previous calendar year.

Domestic services include services performed in a private home and those performed for a local college club or local chapter of a college fraternity or sorority not operated for profit. Examples of domestic services would include cooking, cleaning, nursing, babysitting and home child care, gardening, and other similar domestic services.

Upon request to, and approval by, the UIA, a domestic employer may pay the unemployment tax annually, rather than quarterly, but the quarterly reports are still required.

Although an individual may own a business as a sole proprietor and be liable as an employer with respect to that business, he/she would not be liable as a "domestic employer" until he/she has paid at least $1,000 in a calendar quarter for domestic services.

***Example 1*:** Mary Jones employs a babysitter to take care of her small children after school for a few hours a day. Typically she employs the babysitter for 15 hours a week, at an hourly rate of $5.00, for a total of $975.00 in a calendar quarter. Mary decides to give the babysitter a dollar an hour increase, in keeping with the rates for babysitters in the area. At $6.00 per hour, the babysitter's quarterly wages become $1,170 a calendar quarter. At that point, Mary must register with the Unemployment Insurance Agency (UIA) as a domestic employer, and must begin filing quarterly wage and tax reports and paying contributions retroactive to the beginning of the year.

***Example 2*:** John Smith runs a tool and die shop as a sole proprietor. He is a liable employer and pays state and federal unemployment taxes with regard to his employees in that business.

John's elderly Mother comes to live with him and he pays a visiting nurse to come in once a day to bathe her. He pays her $15.00 per visit, for 5 visits a week. Eventually John finds it necessary to employ an additional visiting nurse for weekends, paying that additional nurse $15.00 per visit as well.

With the additional domestic service, John's payments for domestic services exceed $1,000 in a calendar quarter, and John must register with the Unemployment Insurance Agency as a domestic employer and must begin filing quarterly wage and tax reports on those services, and paying contributions on those services for the entire year in which liability was incurred.

***Example 3*:** After years of enduring bad food they prepared themselves, the brothers of the local college chapter of the Alpha Phi Omega Fraternity engaged the services of a professional cook. The fraternity chapter paid the cook for 4 hours of work per weekday at an hourly rate of $10.00. The duties of the cook involved shopping for and preparing the dinner meal, serving the dinner, and cleaning up the kitchen after the meal. The cook's quarterly wages were $2,600, more than enough to require the local chapter of the fraternity to become a liable domestic employer under the Michigan Employment Security Act.

Proof at the Hearing: If the question at the hearing is whether the unemployed worker is entitled to unemployment benefits, the key questions will be (1) whether the unemployed worker performed domestic services for the employer, and (2) whether the employer has paid the threshold amount for domestic services alone in any calendar quarter in the current or preceding calendar year.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.

The information on this sheet is intended to provide a general understanding of the subject matter.
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EXECUTIVE ORDER
No. 1994-2
[E.R.O. No. 1994-2]

MICHIGAN EMPLOYMENT SECURITY COMMISSION
MICHIGAN EMPLOYMENT SECURITY ADVISORY COUNCIL
EXECUTIVE REORGANIZATION

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the Michigan Employment Security Commission was created by Act No. 1 of the Public Acts of 1936 (Ex. Sess.), being Section 421.1 et seq. of the Michigan Compiled Laws; and

WHEREAS, the Michigan Employment Security Advisory Council was also created by Act No. 1 of the Public Acts of 1936 (Ex. Sess.), being Section 421.1 et seq. of the Michigan Compiled Laws; and

WHEREAS, the functions, duties and responsibilities assigned to the Michigan Employment Security Commission can, with certain exceptions, be more effectively organized and carried out under the supervision and direction of the Director of Employment Security; and

WHEREAS, the functions, duties and responsibilities assigned to the Michigan Employment Security Advisory Council can be more effectively organized and carried out under the supervision and direction of the Director of Employment Security; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

1. All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions of the Michigan Employment Security Commission, created under Section 3 of Act No. 1 of the Public Acts of 1936 (Ex. Sess.), being Section 421.3 of the Michigan Compiled Laws, are hereby transferred, except as set out below, to the Director of Employment Security by a Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws, and the Michigan Employment Security Commission is hereby abolished; provided, however, that the authority, powers, duties, functions and responsibilities set out below are transferred as follows:

(a) Pursuant to Article V, Section 2, of the Constitution of the State of Michigan of 1963, the power to appoint the Director of Employment Security contained in Section 5 of Act No. 1 of the Public Acts of 1936 (Ex. Sess.) being Section 521.5 of the Michigan Compiled Laws, is hereby vested in the Governor.

(b) All budgeting and management-related matters shall be reviewable by the Department of Management and Budget and subject to the Management and Budget Act, Act No. 431 of the Public Acts of 1984, as amended, being Section 18.1101 et seq. of the Michigan Compiled Laws, including, without limitation, the following:

(1) The planning, establishment and maintenance of automated, information processing systems and the design, implementation and maintenance of effective and efficient support systems.

(2) The acquisition, construction, improvement or demolition of facilities and the rental and lease of facilities subject to the provisions of Section 223 of Act No. 431 of the Public Acts of 1984, being Section 18.1223 of the Michigan Compiled Laws.

(3) The purchase of or the contracting for providing supplies, materials, services, insurance, utilities, third-party financing, equipment, printing and other items.

(c) All matters subject to the provisions of Act No. 2 of the Public Acts of 1921, as amended, being Section 17.1 et seq. of the Michigan Compiled Laws, shall be carried out pursuant to the general supervisory control of the State Administrative Board in accordance with the rules and procedures of the State Administrative Board.

2. All the statutory authority, powers, duties, functions and responsibilities of the Michigan Employment Security Advisory Council, created under Section 3a of Act No. 1 of the Public Acts of 1936 (Ex. Sess.), as amended, being Section 421.3a of the Michigan Compiled Laws, are hereby transferred to the Director of Employment Security by a Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws, and the Michigan Employment Security Advisory Council is hereby abolished.

3. The Director of Employment Security shall provide executive direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Director of Employment Security and all prescribed functions of rule making, licensing and registration, including the prescription of rules, regulations, standards and adjudications, shall be transferred to the Director of Employment Security.

4. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Michigan Employment Security Commission and the Michigan Employment Security Advisory Council for the activities transferred to the Director of Employment Security by this Order are hereby transferred to the Director of Employment Security.

5. The Director of Employment Security shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

6. The Director of Employment Security shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and State laws and regulations or other obligations to be resolved by the Michigan Employment Security Commission and the Michigan Employment Security Advisory Council.

7. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

8. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

9. Executive Order No. 1986-7 (E.R.O. No. 1986-2) and Executive Order No. 1991-30 are hereby rescinded.

In fulfillment of the requirements of Article V, Section 2 of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective 60 days after the filing of this Order.

Given under my hand and the Great Seal of the State of Michigan this 27th day of January, in the Year of our Lord, One Thousand Nine Hundred Ninety-Four, and of the Commonwealth, One Hundred Fifty-Eight.

/s/ John Engler
GOVERNOR

BY THE GOVERNOR:

/s/ Richard H. Austin
SECRETARY OF STATE

Filed with Secretary of State on 1-27-94 at 11:55 a.m.

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EXECUTIVE ORDER
No. 1995-8
[E.R.O. No. 1995-7]
MICHIGAN EMPLOYMENT SECURITY AGENCY
MICHIGAN JOBS COMMISSION
EXECUTIVE REORGANIZATION

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the Michigan Employment Security Agency was created by Act No. 1 of the Public Acts of 1936 (Ex. Sess.), being Section 421.1 et seq. of the Michigan Compiled Laws; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

1. All the statutory authority, powers, duties, functions, and responsibilities, of the Michigan Employment Security Agency, created under Section 3 of Act No. 1 of the Public Acts of 1936 (Ex. Sess.), being Section 421.3 of the Michigan Compiled Laws, as well as all the statutory authority, powers, duties, functions and responsibilities of the Michigan Employment Security Advisory Council, created under Section 3a of Act No. 1 of the Public Acts of 1936 (Ex. Sess.), as amended, being Section 421.3a of the Michigan Compiled Laws, which were transferred to the Director of Employment Security by a Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws, by Executive Order 1994-2 are hereby transferred to and shall be an autonomous entity in the Department of Jobs Commission.

2. The entity transferred hereby shall be known hereafter as the Michigan Employment Security Agency.

3. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

4. Provisions of Executive Order 1994-2 not altered or amended by this Executive Order shall remain in full force and effect.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective 60 days after the filing of this Order or after final appellate resolution of Morris et al. v Engler, et al., Wayne County Circuit No. 91-133511-CZ currently pending in Court of Appeals, No. 182239, whichever is later.

Given under my hand and the Great Seal of the State of Michigan this 15th day of May, in the Year of our Lord, One Thousand Nine Hundred Ninety-Five.

/s/ John Engler
GOVERNOR

BY THE GOVERNOR:

/s/ Candice S. Miller
SECRETARY OF STATE

Filed with Secretary of State on 5/15/95 at 4:46 p.m.

EXECUTIVE ORDER
No. 1997-12
[E.R.O. No. 1997-11]
MICHIGAN EMPLOYMENT SECURITY AGENCY
MICHIGAN JOBS COMMISSION
MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
EXECUTIVE REORGANIZATION

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the Michigan Employment Security Commission was created by Act No. 1 of the Public Acts of 1936 (Ex. Sess.), being Section 421.1 et seq. of the Michigan Compiled Laws; and

WHEREAS, Executive Order 1995-8 transferred all of the statutory authority, powers, duties, functions and responsibilities of the Michigan Employment Security Commission to the Michigan Jobs Commission as an autonomous entity known as the Michigan Employment Security Agency; and

WHEREAS, it is necessary to improve services to unemployed Michigan citizens who are seeking employment opportunities; and

WHEREAS, separating the employment services component of the Michigan Employment Security Agency from its unemployment insurance component will lead to enhanced administration of unemployment insurance services; and

WHEREAS, it is organizationally sound to separate the regulatory-oriented function of unemployment insurance from the more service-oriented functions of employment services; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

A. Definitions

In this Order, the following definitions shall apply except where the context clearly requires a different definition.

1. "Unemployment Insurance Program" means the State of Michigan component of the nationwide system of unemployment insurance offices, funded through the United States Unemployment Insurance Service, U.S. Department of Labor, and operated by the Michigan Employment Security Agency, as defined by the Michigan Employment Security Act, Act No. 1 of the Public Acts of 1936 (Ex. Sess.), being Section 421.1 et seq. of the Michigan Compiled Laws; the Federal Unemployment Tax Act, 26 USC 3301 et seq., Public Law 76-1, 53 Stat. 183, February 10, 1939, as amended, and the federal Social Security Act, 42 USC 501-504, 1101-1109, Public Law 74-271, 49 Stat. 620, August 14, 1935, as amended.
2. "Administrative Functions" means all administrative functions, including but not limited to personnel, budget, finance, office facilities, contract administration, information technology services, and communications, as well as any other positions identified as administrative by the directors of the Departments of Consumer and Industry Services and the Michigan Jobs Commission in the agreement reached pursuant to paragraph B.4. of this Order.
3. "Director of Employment Security" means the Director of Employment Security specified in Section 5 of Act No. 1 of the Public Acts of 1936 (Ex. Sess.), being MCL 421.5, and successor executive orders.

B. Michigan Employment Security Agency

1. All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions, of the Michigan Employment Security Agency to perform, directly or indirectly, unemployment insurance program functions, including all related administrative functions, shall be transferred, subject to paragraphs 4 and 5 of this Order, to the Department of Consumer and Industry Services by a Type I transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws. The transferred entity shall be known as the Unemployment Agency of the Department of Consumer and Industry Services and shall be an autonomous entity with the Department of Consumer and Industry Services. The remaining functions of the Michigan Employment Security Agency that are not transferred by this Order shall remain with the Michigan Jobs Commission.
2. The Director of Consumer and Industry Services shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.
3. The Director of Consumer and Industry Services shall provide executive direction and supervision for the implementation of the transfer.
4. The Director of Consumer and Industry Services and the Director of the Michigan Jobs Commission shall jointly identify the Unemployment Insurance Program positions and administrative function positions that will be transferred to the Department of Consumer and Industry Services according to the terms of this Order. The Directors of Consumer and Industry Services and the Michigan Jobs Commission shall develop an agreement specifying these positions no later than the effective date of this Order and the transfers shall be implemented no later than 120 days from the effective date of this Order.
5. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Michigan Jobs Commission for the activities transferred by this Order are hereby transferred to the Department of Consumer and Industry Services upon the effective date of the transfers identified in paragraph B.4.
6. The Director of Consumer and Industry Services and the Director of the Michigan Jobs Commission shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Michigan Jobs Commission.
7. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.
8. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.
9. The Department of Management and Budget shall determine and authorize the most efficient manner possible for handling the financial transactions and records related to this Order in the state's financial management system for the remainder of the fiscal year in which this Order takes effect.

C. Director of Employment Security

The Director of Employment Security is hereby transferred to the Department of Consumer and Industry Services.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective sixty (60) days after filing.

SEAL

Given under my hand and the Great Seal of the State of Michigan this 6th day of August, in the Year of our Lord, One Thousand Nine Hundred Ninety-Seven.

/s/ John Engler
GOVERNOR

BY THE GOVERNOR:

/s/ Candice S. Miller
SECRETARY OF STATE

Filed with Secretary of State Candice S. Miller on 8/6/97 at 3:15 p.m.

EXECUTIVE ORDER
No. 1997 - 18
[E.R.O. No. 1997-14]

MICHIGAN EMPLOYMENT SECURITY AGENCY

MICHIGAN JOBS COMMISSION

MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

EXECUTIVE REORGANIZATION

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Executive Order 1995-8 transferred all of the statutory authority, powers, duties, functions and responsibilities of the Michigan Employment Security Commission to the Michigan Jobs Commission as an autonomous entity known as the Michigan Employment Security Agency; and

WHEREAS, Executive Order 1997-12 transferred all of the statutory authority, powers, duties, functions and responsibilities of the Michigan Employment Security Agency for unemployment insurance programs from the Michigan Jobs Commission/Michigan Employment Security Agency to a new entity known as the Unemployment Agency within the Department of Consumer and Industry Services (the "Unemployment Agency"); and

WHEREAS, Executive Order 1997-12 further required the Departments of the Michigan Jobs Commission and Consumer and Industry Services to develop an agreement to identify the positions to be transferred to Consumer and Industry Services; and

WHEREAS, the State of Michigan should do everything possible to ensure that employment services are provided to Michigan citizens in a seamless system; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

A. Definitions

In this Order, the following definitions shall apply except where the context clearly requires a different definition.

1. "Workforce Development Board" means a local workforce development board established pursuant to the federal Job Training Partnership Act, 29 USC 1501 et seq., Public Law 97-300, 96 Stat. 1322, and the federal School-to-Work Opportunities Act of 1994, 20 USC 6101 et seq., Public Law 103-239, 108 Stat. 568, or the equivalent entity, and also referenced in Sections 406(6) and 407(2) of Act No. 104 of the Michigan Public Acts of 1997 and Section 67 of Act No. 93 of the Michigan Public Acts of 1997.

2. "Unemployment Insurance Program" means the State of Michigan component of the nationwide system of unemployment insurance offices, funded through the United States Unemployment Insurance Service, U.S. Department of Labor, and operated by the Michigan Employment Security Agency, as defined by the Michigan Employment Security Act, Act No. 1 of the Public Acts of 1936 (Ex. Sess.), being Section 421.1 et seq. of the Michigan Compiled Laws, as modified by successor executive orders, including Executive Order 1997-12, the Federal Unemployment Tax Act, 26 USC 3301 et seq., Public Law 76-1, 53 Stat. 183, February 10, 1939, as amended, and the federal Social Security Act, 42 USC 501-504, 1101-1109, Public Law 74-271, 49 Stat. 620, August 14, 1935, as amended.

3. "Administrative Functions" means all administrative functions, including but not limited to personnel, budget, finance, office facilities, contract administration, information technology services, and communications, as well as any other positions identified as administrative by the directors of the Departments of Consumer and Industry Services and the Michigan Jobs Commission in the agreement reached pursuant to paragraph B.4. of Executive Order 1997-12.

B. Consumer and Industry Services

1. Pursuant to the agreement required between the Michigan Jobs Commission and the Department of Consumer and Industry Services by Executive Order 1997-12, the following functions are transferred to the Unemployment Agency:

a. All functions and positions associated with the following funding sources:

Unemployment Insurance (Normal Base, UI Integrity, Year 2000 and Contingency)

- NAFTA Trade Benefits
- Work Opportunity Tax Credit
- Trade Readjustment Act Allowance Payments to Claimants
- Income Eligibility Verification System
- Penalty and Interest; and

b. Unemployment Insurance Program Administrative Functions.

2. The Director of Consumer and Industry Services shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

3. The Director of Consumer and Industry Services shall provide executive direction and supervision for the implementation of the transfer.

C. Michigan Jobs Commission

1. All of the functions and positions not transferred in paragraph B.1. of this Order will remain with the Michigan Employment Security Agency. The Michigan Employment Security Agency is renamed the "Employment Service Agency" and remains a Type I agency within the Michigan Jobs Commission. The programs, functions and positions to remain with the Employment Service Agency include those associated with the following funding sources:

a. Employment Service
b. Veterans (DVOP and LVER)
c. Bureau of Labor Statistics (CES, LAUS, OES, ES-202, MLS, CES AAMC, ES-202 AAMC, and MLS AAMC)
d. ALC-OES
e. Alien Labor Certification
f. Trade TAA Program
g. NAFTA Trade Training
h. Occupational Analysis Field Center
i. Labor Market Information
j. One Stop State Admin. and OES
k. ALMIS
l. North Assessment Test Development
m. Workforce Development Board Contracts
n. Private funds related to Employment Service or Labor Market Information

2. Employment Service Agency state employees shall deliver services to special populations including persons with disabilities, veterans and migrant and seasonal farm workers.

3. Employment Service Agency state employees shall provide labor market information services and employment service policy, administration, oversight, management of Governor's discretionary funded activities and other related functions.

4. The Employment Service Agency, in accordance with Civil Service and Department of Management and Budget rules and regulations, shall provide employment services, with the exception of the employment service portions of paragraphs C.2. and C.3. of this Order, via Workforce Development Boards in the same manner the state's other workforce development programs are provided, including federal Job Training Partnership Act programs, federal School-to-Work, federal One-Stop and Work First.

5. The Director of the Michigan Jobs Commission shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

6. The Director of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer.

D. Coordination

1. The Employment Service Agency and the Unemployment Agency shall work cooperatively with the Workforce Development Boards to ensure that the maximum available services are provided to Michigan citizens at locations known as "One-Stop" or "No Wrong Door" centers.

2. The Employment Service Agency will work with the local Workforce Development Boards to maximize coordination of state and local resources for delivery of employment services in the same manner as is currently done with other workforce development programs.

3. Local Unemployment Agency offices shall co-locate wherever possible with Workforce Development Board local service providers to provide seamless service delivery.

4. In order to ensure proper coordination among all entities involved, the Unemployment Agency shall require Unemployment Insurance Program claimants to personally register for employment services through Workforce Development Boards using the Michigan component of America's Talent Bank.

5. The Employment Service Agency, the Unemployment Agency and Workforce Development Boards shall continue to meet all of the confidentiality responsibilities required by law.

E. Miscellaneous

1. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

2. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

Given under my hand and the Great Seal of the
State of Michigan this 17th day of
November, in the Year of our Lord, One
Thousand Nine Hundred Ninety-Seven.

/s/ John Engler
GOVERNOR
BY THE GOVERNOR

Candice S. Miller
SECRETARY OF STATE

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EXECUTIVE ORDER
No. 2002 - 1
[E.R.O. No. 2002-1]

BUREAU OF WORKER'S COMPENSATION
UNEMPLOYMENT AGENCY
WORKER'S COMPENSATION BOARD OF MAGISTRATES
WAGE AND HOUR DIVISION
BUREAU OF WORKER'S AND UNEMPLOYMENT COMPENSATION
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

Executive Reorganization

WHEREAS, Article V, Section 1, of the Constitution of the state of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2, of the Constitution of the state of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the statutory powers, functions, duties and responsibilities assigned to the Bureau of Worker's Compensation, the Unemployment Agency, the Worker's Compensation Board of Magistrates, and the Wage and Hour Division can be more effectively carried out by a new Bureau of Worker's and Unemployment Compensation; and

WHEREAS, the missions of the Bureau of Worker's Compensation and the Unemployment Agency are related to maintaining a system for the timely payment of benefits on behalf of Michigan workers and employers; and

WHEREAS, there is a need for more sharing of data and information between the Bureau of Worker's Compensation and the Unemployment Agency to more efficiently meet statutory requirements relating to coordination of worker's compensation and unemployment compensation benefits; and

WHEREAS, the Wage and Hour Division serves the citizens of Michigan by protecting wages and fringe benefits to which workers are entitled and assuring appropriate employment and working conditions for young people;

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the state of Michigan, pursuant to the powers vested in me by the Constitution of the state of Michigan of 1963 and the laws of the state of Michigan, do hereby order the following:

I. DEFINITIONS

As used herein:

A. The "Department of Consumer and Industry Services" means the principal department of state government created by Executive Order 1996-2, being Section 445.2001 of the Michigan Compiled Laws.

B. The "Bureau of Worker's Compensation" means the bureau established within the Department of Labor by Section 201 of Act 317 of the Public Acts of 1969, as amended, being Section 418.201 of the Michigan Compiled Laws, the functions of which were subsequently transferred to the Department of Consumer and Industry Services by Executive Order 1996-2, being Section 445.2001 of the Michigan Compiled Laws.

C. The "Unemployment Agency" means the agency established within the Department of Consumer and Industry Services by Executive Order 1997-12, being Section 421.94 of the Michigan Compiled Laws.

D. The "Worker's Compensation Board of Magistrates" means the board established as an autonomous entity within the Department of Labor by Section 213 of Act 317 of the Public Acts of 1969, as amended, being Section 418.213 of the Michigan Compiled Laws, the functions of which were subsequently transferred to the Department of Consumer and Industry Services by Executive Order 1996-2, being Section 445.2001 of the Michigan Compiled Laws.

E. The "Wage and Hour Division" means the division created on January 31, 1992 as an agency within the Bureau of Safety and Regulation within the Department of Labor, the functions of which were subsequently transferred to the Department of Consumer and Industry Services by Executive Order 1996-2, being Section 445.2001 of the Michigan Compiled Laws.

II. CREATION OF THE BUREAU OF WORKER'S AND UNEMPLOYMENT COMPENSATION

A. The Bureau of Worker's and Unemployment Compensation is hereby created as a Type I agency within the Department of Consumer and Industry Services. The bureau shall exercise its prescribed statutory powers, duties and functions of rulemaking, licensing and registration including the prescription of rules, rates, regulations and standards, and adjudication independently of the head of the department. All budgeting, procurement and related management functions of the bureau shall be performed under the direction and supervision of the head of the department.

B. The Bureau of Worker's and Unemployment Compensation shall be headed by a Director who shall be appointed by the Governor.

C. All of the statutory authority, powers, functions, duties and responsibilities of the Bureau of Worker's Compensation are transferred to the Bureau of Worker's and Unemployment Compensation by Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

D. All of the statutory authority, powers, functions, duties and responsibilities of the Unemployment Agency are transferred to the Bureau of Worker's and Unemployment Compensation by Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

E. All of the statutory powers, functions, duties, and responsibilities of the Director of the Bureau of Worker's Compensation established in Chapter 2 of the Worker's Disability Compensation Act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being Section 418.201 et. seq. of the Michigan Compiled Laws, are transferred to the Director of the Bureau of Worker's and Unemployment Compensation by a Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

F. All of the statutory powers, functions, duties, and responsibilities of the Director of the Unemployment Agency created in Section 5 of the Michigan Employment Security Act, Act No. 1 of the Public Acts of 1936 (Ex. Sess.), as amended, being Section 421.5 of the Michigan Compiled Laws, and defined as the Director of Employment Security in Executive Order 1997-12 are transferred to the Director of the Bureau of Worker's and Unemployment Compensation by a Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

G. All of the statutory powers, functions, duties, and responsibilities of the Worker's Compensation Board of Magistrates established by Section 213 of the Worker's Disability Compensation Act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being Section 418.213 of the Michigan Compiled Laws, are transferred to the Bureau of Worker's and Unemployment Compensation.

H. All of the statutory authority, powers, functions, duties and responsibilities of the Wage and Hour Division in the Department of Consumer and Industry Services, including, but not limited to, those set forth in:
   1. Act No. 154 of the Public Acts of 1964, as amended, being Sections 408.381 et. seq. of the Michigan Compiled Laws (Minimum Wage Law of 1964);
   2. Act No. 390 of the Public Acts of 1978, as amended, being Sections 408.471 et. seq. of the Michigan Compiled Laws (Wage and Benefits Act);
   3. Act No. 166 of the Public Acts of 1965, as amended, being Sections 408.551 et. seq. of the Michigan Compiled Laws (Prevailing Wage Act);
   4. Act No. 90 of the Public Acts of 1978, as amended, being Sections 409.101 et. seq. of the Michigan Compiled Laws (the Youth Employment Standards Act); are transferred to the Bureau of Worker's and Unemployment Compensation by Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

III. MISCELLANEOUS

A. The Director of the Department of Consumer and Industry Services shall provide executive direction and supervision for the implementation of the transfers made under this Order. The assigned functions shall be administered under the direction and supervision of the Director of the Department of Consumer and Industry Services.

B. The Director of the Department of Consumer and Industry Services shall administer the assigned functions transferred by this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

C. The Director of the Department of Consumer and Industry Services shall immediately initiate coordination with the Bureau of Worker's Compensation, the Unemployment Agency, the Worker's Compensation Board of Magistrates, and the Bureau of Safety and Regulation to facilitate the transfers and develop memoranda of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Bureau of Worker's Compensation and the Unemployment Agency.

D. All records, personnel, property, grants and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available for the activities, power, duties, functions and responsibilities transferred by this Order are hereby transferred to the Bureau of Worker's and Unemployment Compensation.
E. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of the year.
F. The Director of the Bureau of Worker's and Unemployment Compensation may by written instrument delegate a duty or power conferred by law or this Order and the person to whom such duty or power is so delegated may perform such duty or exercise such power at the time and to the extent such duty or power is delegated by the Director of the Bureau of Worker's and Unemployment Compensation.
G. All rules, orders, contracts and agreements relating to the functions transferred to the Bureau of Worker's and Unemployment Compensation by this Order by the responsible state agency shall continue to be effective until revised, amended or rescinded.
H. Any suit, action or other proceeding lawfully commenced by, against or before any entity effected by this Order, shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.
I. The invalidity of any portion of this Order shall not affect the validity of the remainder thereof.
J. The Bureau of Worker's Compensation, the position of Director of the Bureau of Worker's Compensation, the Unemployment Agency, and the position of Director of the Unemployment Agency are hereby abolished.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the state of Michigan of 1963, the provisions of this Executive Order shall become effective sixty (60) days from the filing of this Order.

Given under my hand and the Great Seal of the
State of Michigan this 7th day of February, in the
Year of our Lord, Two Thousand Two.

/s/ John Engler
GOVERNOR
BY THE GOVERNOR

Candice S. Miller
SECRETARY OF STATE

EXECUTIVE ORDER NO. 2003 – 18

[E.R.O. No. 2003-1]

DEPARTMENT OF LABOR AND ECONOMIC GROWTH

EXECUTIVE REORGANIZATION`

(Pertinent excerpts)

WHEREAS, Article V, Section 1 of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Article V, Section 2 of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, Article V, Section 8 of the Michigan Constitution of 1963 provides that each principal department shall be under the supervision of the Governor unless otherwise provided by the Constitution;

WHEREAS, the Department of Commerce was created as a principal department of state government under Section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325;

WHEREAS, the Department of Commerce was renamed the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001;

WHEREAS, the Department of Labor was created as a principal department of state government under Section 375 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.475;

WHEREAS, certain authority, powers, duties, functions, and responsibilities of the Department of Labor were transferred to the Department of Consumer and Industry Services and the Department of Labor was abolished under Executive Order 1996-2, MCL 445.2001;

WHEREAS, reorganizing labor and economic development functions into one principal department will ensure more efficient use of taxpayer dollars and will allow the state to offer more streamlined services;

WHEREAS, because the development of cooperative economic alliances between business and labor will improve the lives of Michigan's working families and the vitality of Michigan's businesses, the State of Michigan should encourage such alliances;

WHEREAS, Michigan's already successful economic development programs will benefit from greater consolidation of and linkage to workforce development programs;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration;

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, pursuant to the power vested in the Governor by the Michigan Constitution of 1963 and Michigan law order:

I. DEFINITIONS

As used in this Order:

…

E. "Bureau of Worker's Compensation" means the bureau established within the Department of Labor under Section 201 of the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.201, transferred to the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001, and then transferred to the Bureau of Worker's and Unemployment Compensation under Executive Order 2002-1, MCL 445.2004.

F. "Bureau of Worker's and Unemployment Compensation" means the bureau established within the Department of Consumer and Industry Services under Executive Order 2002-1, MCL 445.2004.

…

I. "Department of Consumer and Industry Services" means the principal department of state government created as the Department of Commerce under Section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325, and renamed the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001.

J. "Department of Labor and Economic Growth" means the principal department of state government formerly known as the Department of Consumer and Industry Services and renamed the Department of Labor and Economic Growth under Section II.A of this Order.

…

L. "Director of Unemployment Insurance" means the director of the Unemployment Insurance Agency created under Section II.N.

…

CC. "Type II Transfer" means that type of transfer as defined in Section 3(b) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103(b).

…

FF. "Unemployment Insurance Agency" means the organizational unit within the Department of Labor and Economic Growth created under Section II.N.

…

II. DEPARTMENT OF LABOR AND ECONOMIC GROWTH

…

N. Unemployment Insurance Agency

1. The Unemployment Insurance Agency is created as a Type II Agency within the Department of Labor and Economic Growth. The Unemployment Insurance Agency shall be headed by a Director of Unemployment Insurance.

2. Any authority, powers, functions, duties, and responsibilities of the Unemployment Agency transferred to the Bureau of Worker's and Unemployment Compensation under Executive Order No. 2002-1, MCL 445.2004, are transferred from the Bureau of Worker's and Unemployment Compensation to the Unemployment Insurance Agency.

3. All of the statutory powers, functions, duties, and responsibilities of the Director of the former Unemployment Agency created in Section 5 of the Michigan Employment Security Act, 1936 (Ex Sess) PA 1, MCL 421.5, defined as the Director of Employment Security in Executive Order 1997-12, MCL 421.94, and transferred to the Director of the Bureau of

Worker's and Unemployment Compensation under Executive Order 2002-1, MCL 445.2004, are transferred from the Director of the Bureau of Worker's and Unemployment Compensation to the Director of Unemployment Insurance.

4. The Director of the Department of Labor and Economic Growth shall immediately initiate coordination with the Bureau of Worker's and Unemployment Compensation to facilitate the transfers and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Unemployment Insurance Agency.

5. All records, personnel, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available for the activities, power, duties, functions, and responsibilities transferred under this Section II.N are transferred to the Unemployment Insurance Agency.

6. All rules, orders, contracts, and agreements relating to the functions transferred to the Unemployment Insurance Agency by this Section II.N lawfully adopted prior to the issuance of this Order shall continue to be effective until revised, amended, or rescinded.

...

In fulfillment of the requirements of Article V, Section 2 of the Michigan Constitution of 1963, the provisions of this Executive Order are effective on Sunday, December 7, 2003 at 12:00 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of October, 2003.

_____

Jennifer M. Granholm
GOVERNOR

BY THE GOVERNOR:

_____

Terri Lynn Land
SECRETARY OF STATE

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EXECUTIVE ORDER
2011 - 6

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN COMPENSATION APPELLATE COMMISSION
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

WORKERS' COMPENSATION APPELLATE COMMISSION
MICHIGAN EMPLOYMENT SECURITY BOARD OF REVIEW

EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the state of Michigan in the Governor; and

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration; and

WHEREAS, Section 8 of Article V of the Michigan Constitution of 1963 provides that each principal department shall be under the supervision of the Governor, unless otherwise provided by the Constitution; and

WHEREAS, there is a continued need to reorganize functions among state departments to ensure efficient administration; and

WHEREAS, the centralization of administrative hearing appellate functions will promote efficient and timely delivery of necessary services;

NOW, THEREFORE, I, Richard D. Snyder, Governor of the state of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. MICHIGAN COMPENSATION APPELLATE COMMISSION

A. The Michigan Compensation Appellate Commission (Commission) is created within the Michigan Administrative Hearing System.

B. All authority, powers, duties, functions, and responsibilities of the following entities transferred to the Michigan Administrative Hearing System pursuant to Executive Order 2011-4 are transferred to the Michigan Compensation Appellate Commission:

1. The Workers' Compensation Appellate Commission and the Chairperson of the Workers' Compensation Appellate Commission created under Executive Order 2003-18, MCl 445.2011, including but not limited to all authority, powers, duties, functions, and responsibilities assigned to the Appellate Commission under the Worker's Disability Compensation Act, 1969 PA 317, MCl 418.101 to 418.941. Any and all statutory references to the Workers' Compensation Appellate Commission not inconsistent with this Order shall be deemed references to the Michigan Compensation Appellate Commission.

2. The Michigan Employment Security Board of Review and the Chairperson of the Michigan Employment Security Board of Review created under the Michigan Employment Security Act, 1936 PA 1, as amended, MCl 421.1 to 421.75, including but not limited to all authority, powers, duties, functions, and responsibilities assigned to the Board of Review under the Michigan Employment Security Act. Any and all statutory references to the Michigan Employment Security Board of Review not inconsistent with this Order shall be deemed references to the Michigan Compensation Appellate Commission.

C. Upon the appointment of nine Appellate Commissions under Section I, D., the Workers' Compensation Appellate Commission and the Michigan Employment Security Board of Review are abolished.

D. The Commission shall consist of nine members appointed by the Governor with the advice and consent of the Senate. Of the nine members initially appointed, three members shall be appointed for a term expiring on July 31, 2013, three members shall be appointed for a term expiring on July 31,2014, and three members shall be appointed for a term expiring on July 31, 2015.

E. Except as provided in Section I, D., Appellate Commissioners shall be appointed for terms of four years. An Appellate Commissioner may be reappointed. A vacancy caused by the expiration of a term shall be filled in the same manner as the original appointment. An Appellate Commissioner appointed to fill a vacancy created other than by expiration of a term shall be appointed for the balance of the unexpired term.

F. To be eligible for appointment as an Appellate Commissioner a person shall be a member in good standing of the State Bar of Michigan.

G. The Governor shall designate a member of the Commission as its Chairperson, to serve as Chairperson at the pleasure of the Governor.

H. A matter to be heard by the Appellate Commission shall be assigned to a panel of three members of the Commission. If the Commission is operating with a full contingent of nine members, the Chair shall appoint three panels. A decision reached by a panel shall be the final decision of the Commission, unless six members of the Commission request that the matter be brought for a full review by the entire Commission. The request shall be made within five working days after the decision of the panel.

I. Each Appellate Commissioner shall devote full time to the functions of the Commission and shall perform the functions of the office during the hours generally worked by officers and employees of the executive departments of this state. An Appellate Commissioner shall not participate in a case in which the Commissioner is an interested party.

J. Any matter before the Commission that is a matter of first impression with regard to worker's compensation or unemployment compensation in this state as determined by the Chairperson of the Commission, or any matter that six or more members of the Commission request be reviewed by the entire Commission, shall be reviewed and decided by the entire Commission.

K. In consultation with the Chairperson of the Commission, the Executive Director of the Michigan Administrative Hearing System (Executive Director) shall have general supervisory control of and be in charge of the assignment and scheduling of the work of the Michigan Compensation Appellate Commission. The Executive Director may also establish productivity standards that are to be adhered to by the new Workers' Compensation Appellate Commission, its members, and its panels.

L. In consultation with the Chairperson, the Executive Director shall annually evaluate the performance of each Appellate Commissioner. The evaluation shall be based upon at least the following criteria:

- Productivity including reasonable time deadlines for disposing of cases and adherence to established productivity standards.
- Manner in conducting hearings.
- Knowledge of rules of evidence as demonstrated by transcripts of proceedings in which the Appellate Commissioner participated as an Appellate Commissioner.
- Knowledge of the law.
- Evidence of any demonstrable bias against particular defendants, claimants, or attorneys.
- Written surveys or comments of all interested parties.

M. After completing an evaluation under Section I, L., the Executive Director shall submit a written report, including any supporting documentation, to the Director of the Department of Licensing and Regulatory Affairs regarding that evaluation, which may include but not be limited to recommendations with regard to one or more of the following:

- Retention
- Suspension
- Removal
- Additional training or education

N. An Appellate Commissioner may be removed by the Governor upon recommendation by the Director of the Department of Licensing and Regulatory Affairs, based upon recommendations under Section I. M. or other neglect of duties.

O. The Department of Licensing and Regulatory Affairs shall provide suitable office space for the Commission and its functions.

P. The Michigan Administrative Hearing System shall provide the Commission the staff necessary for the Commission to perform its duties under the Worker's Disability Compensation Act of 1969, the Michigan Employment Security Act, and this Order, which may include legal assistants for the purpose of legal research and otherwise assisting the Commission and the Appellate Commissioners.

Q. Opinions issued by the Commission shall be in writing and shall clearly define the legal principles being applied. The Commission shall provide for public distribution of its opinions regarding workers' compensation, including but not limited to distribution by electronic means such as the internet.

II. MISCELLANEOUS

A. All rules, orders, opinions, contracts, and agreements relating to the functions of the Workers' Compensation Appellate Commission and the Michigan Employment Security Board of Review that are transferred to the Michigan Compensation Appellate Commission under this Order and lawfully adopted prior to the issuance of this Order, shall continue to be effective until revised, amended, or rescinded.

B. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Workers' Compensation Appellate Commission and the Michigan Employment Security Board of Review for the activities, powers, duties, functions, and responsibilities transferred under this Order, are transferred to the new Michigan Compensation Appellate Commission.

C. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order, shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

D. The invalidity of any portion of this Order shall not affect the validity of the portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

This Executive Order shall become effective on August 1, 2011, consistent with Section 2 of Article V of the Michigan Constitution of 1963.

SEAL

Given under my hand and the Great Seal of the state of Michigan this 17th day of May in the Year of our Lord, two thousand eleven.

/s/ Richard D. Snyder
GOVERNOR

BY THE GOVERNOR:

/s/ Ruth A. Johnson
SECRETARY OF STATE

Filed with Secretary of State on 05-17-11 at 1:33 p.m.

MICHIGAN EMPLOYMENT SECURITY ACT
Act 1 of 1936 (Ex. Sess.)

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MICHIGAN EMPLOYMENT SECURITY ACT
Act 1 of 1936 (Ex. Sess.)

AN ACT to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to levy and provide for obligation assessments; to provide for the collection of those contributions and assessments; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of this act; and to repeal all acts and parts of acts inconsistent with this act.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1954, Act 197, Imd. Eff. May 7, 1954-Am. 1977, Act 52, Imd. Eff. July 5, 1977-Am. 1985, Act 197, Imd. Eff. Dec. 26, 1985-Am. 1989, Act 232, Imd. Eff. Dec. 21, 1989-Am. 1991, Act 10, Eff. Apr. 1, 1992-Am. 2011, Act 268, Imd. Eff. Dec. 19, 2011.

Compiler's note: For transfer of powers, duties, and functions of the Michigan Employment Security Commission to the Director of Employment Security; for vesting power to appoint the Director of Employment Security and the chairperson of the Michigan Employment Security Commission to the Governor; and, for abolition of the Michigan Employment Security Advisory Council and transfer of its powers and duties to the Michigan Employment Security Commission, see E.R.O. No. 1991 21 compiled at §421.91 of the Michigan Compiled Laws.

For transfer of the authority, powers, functions, duties, and responsibilities of the Unemployment Agency to the Bureau of Worker's and Unemployment Compensation, see Executive Order No. 2002-1. Also, see Section 5b of the Michigan Employment Security Act, being MCL §421.5b.

Amendatory Act 162 of 1994 was cited and shall be known as the "Delange, Geake, Cherry, Murphy wage record conversion act of 1994.

The People of the State of Michigan enact:

421.1 Michigan employment security act; short title.

Sec. 1. This act shall be known and may be cited as the "Michigan employment security act." Wherever in this act reference is made to the "Michigan unemployment compensation act" or to the "unemployment compensation act" such reference shall mean the "Michigan employment security act."

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;-CL 1948, 421.1-Am. 1951, Act 251, Imd. Eff. June 17, 1951.

Compiler's note: For transfer of certain management functions of the Michigan Employment Security Commission to the Department of Labor, see E.R.O. No. 1986 2, compiled at §408.212 of the Michigan Compiled Laws.

For transfer of powers, duties, and functions of the Michigan Employment Security Commission to the Director of Employment Security; for vesting power to appoint the Director of Employment Security and the chairperson of the Michigan Employment Security Commission to the Governor; and, for abolition of the Michigan Employment Security Advisory Council and transfer of its powers and duties to the Michigan Employment Security Commission, see E.R.O. No. 1991 21 compiled at §421.91 of the Michigan Compiled Laws.

For transfer of the authority, powers, functions, duties, and responsibilities of the Unemployment Agency to the Bureau of Worker's and Unemployment Compensation, see Executive Order No. 2002-1. Also, see Section 5b of the Michigan Employment Security Act, being MCL §421.5b.

Cited in other sections: Section 421.1 et seq. is cited in §§15.263, 24.315, 125.1510, 206.30, 418.358, 421.91, 600.2421b, 600.6419, 750.411f.

421.2 Declaration of public policy; findings.

Sec. 2. (1) The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his or her family, to the detriment of the welfare of the people of this state. Social security requires protection against this hazard of our economic life. Employers should be encouraged to provide stable employment. The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state.

(2) The legislature finds that from time to time high levels of unemployment have resulted in the exhaustion of the funds in this state's account of the unemployment trust fund, has required advances or loans to the state from the federal account of the unemployment trust fund, and has caused the imposition of lawful penalty taxes and solvency taxes to repay those advances and the interest on those advances. The financing and payment of the outstanding principal amount heretofore or hereafter advanced or loaned to this state from the federal account of the unemployment trust fund and the interest on those loans, if any, the funding of unemployment compensation benefits, and the financing and funding of this state's account in the unemployment trust fund including, without limitation, the funding of sufficient fund balances in the unemployment trust fund, are an essential governmental function and public purpose of this state. The legislature further finds that the issuance of bonds by the Michigan finance authority or other issuer to finance the foregoing payments and to avoid or reduce the imposition of penalty taxes and solvency taxes will further and facilitate an essential governmental function and public purpose of this state that will encourage the development of industry and commerce, foster economic growth, provide employment opportunities for the citizens and residents of this state and further other economic development and activities in this state, and in general promote the public health and general welfare of the people of this state.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;-CL 1948, 421.2-Am. 2011, Act 268, Imd. Eff. Dec. 19, 2011.

421.3 Bureau of worker's and unemployment compensation; policies; definitions.

Sec. 3. (1) The bureau of worker's and unemployment compensation shall establish policies in conformity with this act to do all of the following:

(a) Reduce and prevent unemployment.

(b) Promote the reemployment of unemployed workers throughout this state in every other way that may be feasible.

(c) Carry on and publish the results of investigations and research studies.

(d) Investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and this state, of reserves for public works to be used in times of business depression and unemployment.

(2) As used in this act:

(a) "Bureau", "commission", and "unemployment agency" mean the bureau of worker's and unemployment compensation created in section 5b.

(b) "Director" means the director of the bureau of worker's and unemployment compensation.

(c) "Experience account" means an account in the unemployment compensation fund showing an employer's experience with respect to contribution payments and benefit charges under this act, determined and recorded in the manner provided in this act. A reference in this act to an employer's "experience record" or "rating account" shall be construed to include reference to the employer's experience account.

(d) "Nonchargeable benefits account" and "solvency account" mean the account in the unemployment compensation fund maintained as provided in section 17(2) and (3).

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.3-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1968, Act 338, Imd. Eff. July 19, 1968-Am. 1975, Act 83, Imd. Eff. May 20, 1975; -Am. 2002, Act 192, Imd. Eff. Apr. 26, 2002-Am. 2003, Act 174, Imd. Eff. Aug. 14, 2003.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Michigan employment security commission, with certain exceptions, to the director of employment security, see E.R.O. No. 1994 2 compiled at §421.92 of the Michigan Compiled Laws.

Transfer of powers: See §16.479.

Cited in other sections: Section 421.3 is cited in §§16.479 and 421.91.

421.3a Michigan employment security advisory council; creation; appointment, qualifications, and terms of members; vacancies; compensation; expenses; recommendations; assistance and studies.

Sec. 3a. (1) There is created an advisory council which shall be known as the Michigan employment security advisory council, consisting of 11 members who are residents of this state to be appointed by the governor with advice and consent of the senate for terms of 4 years. Four members of the council shall represent employer interests 1 of whom shall represent public employers, 4 members shall represent employee interests 1 of whom shall represent public employees, and 3 members shall represent the public interest. Present members of the advisory council shall continue in office until their respective terms expire. Upon expiration of each term, a member may be reappointed or a successor appointed for a term of 4 years. Appointments to complete the unexpired term of any member whose position becomes vacant shall be made in the same manner as appointments in the first instance. At least 1 member of the council representing employer interests shall be an employer of not more than 20 employees. The members of the advisory council shall serve without compensation, but shall be reimbursed from the administration fund for all necessary expenses in connection with the discharge of their official duties.

(2) The advisory council shall make recommendations to the commission, on policy, and to the governor, the legislature, and the commission, on proposed amendments to this act, deemed advisable to carry out the purposes of this act and to provide more effective administration of this act.

(3) The commission shall furnish the advisory council clerical and other assistance as it may require and may make statistical and other studies requested by the advisory council in the performance of its duties. The cost of the assistance and the studies shall be considered proper administrative expenses.

History: Add. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.3a-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1976, Act 226, Imd. Eff. Aug. 4, 1976-Am. 1978, Act 76, Imd. Eff. Mar. 22, 1978-Am. 1983, Act 164, Imd. Eff. July 24, 1983.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Michigan employment security advisory council to the director of employment security, see E.R.O. No. 1994 2, compiled at §421.92 of the Michigan Compiled Laws.

Transfer of powers: See §16.479.

Cited in other sections: Section 421.3a is cited in §§16.479 and 421.91.

421.3b Repealed.

History: Add. 1977, Act 202, Imd. Eff. Nov. 17, 1977. Repealed, 2002, Act 192, Imd. Eff. Apr. 26, 2002.

421.4 Rules and regulations; distribution; public hearing; notice; publication; copies furnished; effective date.

Sec. 4. (1) The bureau may promulgate rules and regulations that it determines necessary, and that are not inconsistent with this act, to carry out this act.

(2) The bureau shall cause to be printed for distribution to the public the text of this act, and all rules and regulations of the bureau, and shall make available to the public upon request statements of all informal rules or criteria of decision, administrative policies, or interpretations, which may be utilized by the bureau or any of its agents or employees in any

manner.

(3) No rule or regulation shall be made or changed until after public hearing, notice of which shall first be given not less than 20 days before the hearing, by publication in at least 3 newspapers of general circulation in different parts of this state, 1 of which shall be in the Upper Peninsula. Copies of proposed rules or regulations shall be furnished by the bureau upon application by any interested parties. Rules and regulations shall become effective in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;-- Am. 1943, Act 246, Imd. Eff. June 1, 1943;-- Am. 1947, Act 360, Imd. Eff. July 8, 1947;-- CL 1948, 421.4 -- Am. 1951, Act 251, Imd. Eff. June 17, 1951;-- Am. 1996, Act 498, Imd. Eff. Jan. 9, 1997;-- Am. 2002, Act 192, Imd. Eff. Apr. 26, 2002.

Administrative rules: R 421.1 et seq. of the Michigan Administrative Code.

421.4a Parking facility, approval of state administrative board.

Sec. 4a. The bureau may acquire, purchase, erect, or improve land or buildings, within funds available for that purpose, as it considers necessary for use as a parking facility in Detroit for the state administrative office. No land or buildings shall be acquired, purchased, erected, or improved until the approval of the state administrative board is obtained. Title to the land or buildings shall be in the name of this state.

History: Add. 1969, Act 211, Eff. Mar. 20, 1970; -Am. 2002, Act 192, Imd. Eff. Apr. 26, 2002.

Compiler's note: Former §421.4a, deriving from Act 307 of 1945 and authorizing commission to acquire necessary property and buildings, was repealed by Act 360 of 1947.

421.5 Employment security commission; director; appointment, term, and duties; annual salary; employees and assistants; delegation of authority; compensation and expenses; bond; appointment and qualifications of persons to assist employers and represent claimants.

Sec. 5. (1) The commission by affirmative vote of not less than 3 of its members shall appoint an administrative officer, hereinafter referred to as the director, who shall serve at the pleasure of the commission and shall act as secretary of the commission and shall perform other duties as shall be delegated by the commission. The director shall receive an annual salary as established annually by the legislature and shall be entitled to the actual and necessary expenses incurred in the discharge of his or her official duties, to be paid from the administration fund. The director shall devote his or her entire time to the duties of the office. The director may appoint, with the approval of the commission, employees and assistants as shall be necessary for the proper exercise of the powers hereby granted, and subject to the approval of the commission may delegate to those employees or assistants the authority as he or she considers reasonable and necessary. Employees and assistants shall receive their actual and necessary expenses incurred in the discharge of their official duties. Compensation and expenses of the director and all assistants and employees shall be paid from the administration fund. The commission may incur expenses as shall be required to carry out this act.

(2) The commission shall arrange for a suitable bond for any person holding moneys or signing checks or vouchers under this act. The cost of the bond shall be paid from the administration fund under section 10.

(3) The director, in consultation with the commission, shall appoint not to exceed 20 persons who shall be law students or other persons who have previous experience in unemployment compensation for the purposes of providing assistance to employers in interpreting the provisions of this act and to represent claimants at the referee and board of review hearing levels. Appointments made under this subsection shall not exceed 20 full time equivalent positions and shall terminate April 1, 1986.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937;-CL 1948, 421.5-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1953, Act 117, Eff. Oct. 2, 1953-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1957, Act 287, Imd. Eff. June 13, 1957-Am. 1959, Act 270, Imd. Eff. Oct. 30, 1959-Am. 1964, Act 231, Eff. Aug. 28, 1964-Am. 1968, Act 338, Imd. Eff. July 19, 1968-Am. 1970, Act 135, Imd. Eff. July 29, 1970-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1975, Act 113, Imd. Eff. June 13, 1975-Am. 1980, Act 358, Eff. Mar. 1, 1981-Am. 1982, Act 535, Eff. Jan. 2, 1983-Am. 1983, Act 164, Imd. Eff. July 24, 1983.

Cited in other sections: Section 421.5 is cited in §421.91.

421.5a Advocacy assistance program.

Sec. 5a. (1) For calendar years beginning January 1, 1994 and ending December 31, 1998, the commission shall develop and implement a program to provide, upon request, claimant and employer advocacy assistance or consultation. The purpose of the program shall be to provide information, consultation, and representation to claimants and employers relating to the referee or board of review appeal levels, or both.

(2) The program shall be funded from the penalty and interest account in the contingent fund. If the advocacy program does not operate or the legislature fails to approve a yearly appropriation for the advocacy program in an amount at least equal to the maximum yearly expenditure for the program as provided in this subsection, then the provision of section 19(a)(5) reducing the maximum nonchargeable benefits component from 1% to 1/2 of 1% shall not be effective for the tax year for which the appropriation is not made or in which the advocacy program does not operate. For fiscal years beginning on and after October 1, 1994, the maximum amount of the expenditure for the program each year shall not exceed $1,500,000.00.

(3) The appropriations shall be used to finance all costs connected with the program. Not to exceed 60% of the maximum expenditure allowed in each fiscal year shall be used for costs related to representation of claimants and not to exceed 40% of the maximum expenditure allowed in each fiscal year shall be used for costs related to representation of employers.

(4) An individual who desires to provide advocacy assistance services shall apply to the commission for approval. The commission shall develop standards for individuals providing advocacy assistance services including standards relating to knowledge of this act and the practices and procedures at the referee and board of review appeal levels. Advocacy assistance services may be provided by individuals other than attorneys. The commission shall develop a schedule for payment of individuals providing advocacy assistance services. Individuals providing advocacy assistance services shall not be active commission or state employees. The only active state or commission employees involved in the program shall be those supervising or coordinating the program but who shall not provide direct advocacy assistance services.

(5) The commission may include in the program standards regarding the provision of advocacy assistance services in precedent setting cases, multiclaimant cases, cases without merit, or regarding other cases or factors as determined by the commission.

(6) Individuals who are approved by the commission to provide advocacy assistance services shall contract with the commission that the payments made pursuant to the schedule established by the commission shall be payment in full for all services rendered and expenses incurred and that the claimant or employer who has received the benefit of the services shall not be billed for or be liable for the cost of the services or representation provided. An individual approved by the commission to provide advocacy assistance services shall only receive the fee approved fee by the commission for these services and shall not receive any other fee for these services from the claimant or the employer.

(7) If either a claimant or an employer receives advocacy assistance services beyond an initial consultation, the other party in the case shall be immediately notified of that fact. The commission shall include in the program provisions to determine the method and the timeliness by which immediate notice shall be provided to the other party. The commission shall not approve the same individual to provide advocacy assistance services for both claimants and employers. The commission shall clearly designate each individual approved to provide services pursuant to this section as representing either claimants or employers. An individual approved by the commission to provide advocacy assistance services shall not be entitled to payment under this section for representing his or her own personal

interests. No active state employee shall represent a claimant or an employer under this program at the referee or board of review appeal levels. However, this subsection shall not be construed to prevent an employee of the commission from participating in a case in which the commission is an interested party or if the employee is representing the commission's interest when acting as an administrator for a federal program as required by federal law.

(8) The commission shall make an annual report to the legislature on the operation of the advocacy assistance program. The first report under this subsection shall be due within 60 days after the first anniversary date of the beginning of the program. Each report under this subsection shall include, but not be limited to, the following for the previous 12-month period:

(a) Number and type of claimants served.

(b) Number and type of employers served.

(c) Costs to the program of the claimants served.

(d) Costs to the program of the employers served.

(e) An analysis of the impact of the services provided on the appeal system provided by this act.

History: Add. 1989, Act 226, Eff. Dec. 21, 1989-Am. 1993, Act 311, Imd. Eff. Dec. 29, 1993.

421.5b Bureau of worker's and unemployment compensation; creation within department of consumer and industry services; director; transfer of powers and duties by executive order.

Sec. 5b. (1)The bureau of worker's and unemployment compensation is created within the department of consumer and industry services.

(2) The bureau shall be headed by a director who shall be appointed by the governor.

(3) All of the authority, powers, functions, duties, and responsibilities of the unemployment agency provided under this act are transferred to the bureau as provided in Executive Order No. 2002-1.

(4) All of the powers, functions, duties, and responsibilities of the director of the unemployment agency, defined as the director of employment security in Executive Order No. 1997-12, provided under this act are transferred to the director as provided in Executive Order No. 2002-1.

History: Add. 2002, Act 192, Imd. Eff. Apr. 26, 2002.

421.6 Conversion to wage record system; assistance of ad hoc committees; administrative costs.

Sec. 6. (1) The director of the commission shall appoint individuals to serve on ad hoc committees to oversee the implementation of an educational plan to assist the public in understanding the conversion to the wage record system and to assist in the development of forms to be used after conversion to the wage record system.

(2) None of the administrative costs associated with amendments made by the 1994 amendatory act that added this section relating to conversion to a wage record system shall be financed by any state tax on employers. This subsection shall not prohibit the legislature from appropriating money deposited from penalties, interest, and damages in the contingent fund pursuant to section 10(6) for any administrative costs of conversion to a wage record system that are unsupported by federal grants.

History: Add. 1994, Act 162, Imd. Eff. June 17, 1994.

Compiler's note: Former §421.6, which provided for appointment and salary of director of employment security commission, was repealed by Act 251 of 1951, Imd. Eff. June 17, 1951.

421.6a Unemployment Insurance Agency; destruction or disposal of documents; admissibility of reproduction as evidence.

Sec. 6a. The unemployment insurance agency may destroy or dispose of a document as soon as practicable after the document has been electronically captured and preserved in an information retrieval system. Electronically stored records shall be retained for the same minimum retention period as required for the original record. If an original document is destroyed or disposed of pursuant to this section, a reproduction of the document in a medium pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, is admissible in evidence the same as the original in any proceeding before the commission, administrative law judge, or Michigan compensation appellate commission and in all courts. Information contained on printouts prepared by automatic data processing equipment is also admissible in evidence, if the original documents from which such information was obtained would have been admissible.

History: Add. 1941, Act 364, Imd. Eff. July 1, 1941;-CL 1948, 421.6a-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1967, Act 254, Imd. Eff. July 19, 1967-Am. 1992, Act 204, Imd. Eff. Oct. 5, 1992-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.6b Appropriation for continuing work on unemployment insurance computer system improvement and capacity extension project; staff training; appointment, membership, and duties of computer project oversight committee; reversion of unexpended funds; work project.

Sec. 6b. (1) The $19,450,000.00 appropriated for the fiscal year ending September 30, 1990 from the penalty and interest account in the contingent fund shall be expended for continuing work on the unemployment insurance computer system improvement and capacity expansion project. One million dollars of this amount shall be used for staff training in use of the improved computer system.

(2) The commission shall appoint a computer project oversight committee of not to exceed 15 members. The committee shall be composed of computer system specialists and unemployment insurance specialists from the private sector and employees of the commission who are involved in the project. The committee, on a quarterly basis, shall review commission staff reports on the status of the project and shall provide a short written summary report on the review, including their comments, to the commission, the department of management and budget, and the senate and house of representatives labor committees and appropriations subcommittees on regulatory. The committee shall serve in an advisory capacity to the commission regarding the project upon request.

(3) Any funds from the appropriations described in subsection (1) that are not expended within 3 years after the effective date of the amendatory act that added this section shall revert to the penalty and interest account in the contingent fund.

(4) The appropriation described in this section and made by law shall be considered a work project and shall not lapse at the end of the fiscal year but shall continue to be available for expenditure until the project is completed.

History: Add. 1989, Act 238, Imd. Eff. Dec. 21, 1989

421.6c Emergency backup plan for computer system.

Sec. 6c. (1) Within 6 months after the effective date of the amendatory act that added this section, the commission by an affirmative majority vote of the members shall finalize an emergency backup plan for the current computer system. The plan, funded in the amount of $1,500,000.00 from the penalty and interest account in the contingent fund shall be placed in a reserve established in the account for this purpose.

(2) An emergency shall exist when the commission, due to computer system problems, is unable to service claimants or employers on a statewide, regional, or local basis over a prolonged period of time, as determined by the commission.

(3) Expenditure of funds from the reserve established pursuant to subsection (1) shall only be made after the commission by an affirmative majority vote of the members determines that an emergency exists or according to specific criteria included in the plan approved pursuant to subsection (1).

(4) The emergency plan shall not be required after the commission determines that the unemployment insurance computer system improvement and capacity expansion project is fully operational or 36 months after the effective date of the amendatory act that added this section, whichever occurs first. Unexpended funds remaining in the reserve account at the end of this period shall revert to the penalty and interest account.

(5) The appropriation described in this section shall be considered a work project and shall not lapse at the end of the fiscal year but shall continue to be available for expenditure as provided by law.

History: Add. 1989, Act 230, Imd. Eff. Dec. 21, 1989.

21.6d Stabilization fund.

Sec. 6d. (1) A stabilization fund is established for the purpose of offsetting the effects on state budgeted staffing levels due to unanticipated cuts in federal administrative funds that may occur in any fiscal year.

(2) The $3,500,000.00 appropriation for the fund for the fiscal year ending September 30, 1990 shall be from the penalty and interest account in the contingent fund. A reserve is established in the account for this purpose. Expenditures from the fund shall be authorized by the commission by an affirmative majority vote of the members if it determines that the requirements of subsection (1) are met.

(3) The appropriation described in this section shall be considered a work project and shall not lapse at the end of the fiscal year but shall continue to be available for expenditure as provided under this section.

History: Add. 1989, Act 232, Imd. Eff. Dec. 21, 1989.

421.6e Employee training program; operation; funding; purpose.

Sec. 6e. The commission shall operate an employee training program which shall be funded in the amount of $1,000,000.00 each year from the penalty and interest account in the contingent fund. This training program shall be used by the commission for the purpose of training employees to provide more effective service to claimants and employers.

History: Add. 1989, Act 231, Imd. Eff. Dec. 21, 1989.

421.6f Appropriation to fund improvements; expenditure; work project.

Sec. 6f. (1) The $2,700,000.00 appropriated for the fiscal year ending September 30, 1990, from the penalty and interest account in the contingent fund to fund improvements in the commission headquarters' offices in Detroit shall be expended upon approval by the commission as follows:

(a) $950,000.00 for elevator modernization.

(b) $1,200,000.00 for fire suppression and alarm systems.

(c) $550,000.00 for exterior and other repairs.

(2) This appropriation described in subsection (1) shall be considered a work project and shall not lapse at the end of the current fiscal year but shall continue to be available for expenditure until the project is completed.

History: Add. 1989, Act 250, Imd. Eff. Dec. 21, 1989.

421.6g Securing automated systems for fraud control and collections division; fraud control and investigation; funding; work project.

Sec. 6g. (1) The $425,000.00 appropriated from the penalty and interest account in the contingent fund for the fiscal year ending September 30, 1990, shall be used by the commission to secure automated systems for the fraud control and collections division. The commission shall operate an increased fraud control and investigation program which shall be funded in the amount of $1,000,000.00 each year from the penalty and interest account in the contingent fund.

(2) The $425,000.00 appropriation made by law described in subsection (1) shall be considered a work project and shall not lapse at the end of the current fiscal year but shall continue to be available for expenditure until the project is completed.

History: Add. 1989, Act 239, Imd. Eff. Dec. 21, 1989.

421.7 Employment security commission; consolidation of divisions.

Sec. 7. Same; the commission may consolidate its employment service division and its unemployment compensation division.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936 ;-- Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937 ;-- Am. 1941, Act 364, Imd. Eff. July 1, 1941 ;-- CL 1948, 421.7.

421.8 Legislative purpose; annual review of maximum weekly benefit rates; comparison of consumers' price index; "base month" defined; determining percentage of increase or decrease; report.

Sec. 8. A basic purpose of this act is to lighten the burden of involuntary unemployment on the unemployed worker and his family. In view of this, the maximum weekly benefit rates under section 27(b) are related to the cost of the necessities of life for the various dependency classes recognized in that section. At the same time, the legislature has concluded that the maximum weekly benefit rates established in that section will finance the most favorable standard of living consistent with maintaining for unemployed individuals generally a proper incentive to seek and accept new work. To maintain this optimum relationship between maximum weekly benefit rates and the standard of living of the unemployed individual, the maximum weekly benefit rates established shall be reviewed annually. The commission shall annually, not later than February 28, compare the United States department of labor's consumers' price index for the preceding December with the corresponding United States department of labor's consumers' price index for the base month. The base month, as used in this subsection, means the month of June 1974, which shall remain the base month until the next adjustment of maximum weekly benefit rates is made. Thereafter, the base month shall be the month of December preceding the most recent calendar year in which an adjustment of maximum weekly benefit rates is made. If in a calendar year the United States department of labor's consumers' price index for the preceding December has increased or decreased as compared to the base month, the commis-

sion shall determine the percentage of that increase or decrease. The commission shall then multiply the maximum weekly benefit rate for each dependency class by this percentage. If the product thus obtained is $1.00, or more, the commission shall report that fact to the governor, the legislature, and the Michigan employment security advisory council.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.8-Am. 1967, Act 254, Imd. Eff. July 10, 1967-Am. 1968, Act 338, Imd. Eff. July 19, 1968-Am. 1970, Act 14, Imd. Eff. Apr. 14, 1970-Am. 1974, Act 104, Eff. June 9, 1974-Am. 1978, Act 526, Imd. Eff. Dec. 20, 1978-Am. 1996, Act 535, Imd. Eff. Jan. 13, 1997.

421.9 Employment security commission; subpoenas, issuance; enforcement; immunity.

Sec. 9. The commission may by itself, or by its duly appointed agents, examine or copy the books, records and papers of any employing unit relating to any requirement pertaining to this act. Any member of the commission or its duly authorized agents may issue a subpoena requiring any person to appear before the commission, or its duly authorized agent at any reasonable time and place, and be examined with reference to any matter within the scope of the inquiry or investigation being conducted by the commission and to produce any books, records or papers pertaining to the question involved. Any member of the commission or its duly authorized agents may administer an oath or affirmation to a witness in any matter before the commission, certify to official acts, and take depositions. In case of disobedience of a subpoena, the commission, or the party on whose behalf it was issued, may invoke the aid of any circuit court of the state in requiring the attendance and testimony of witnesses and the production of books, records and papers pertaining to the question involved. And any of the circuit courts of the state within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena, issue an order requiring such person to appear before said commission or its duly authorized agents and to produce books, records and papers if so ordered and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

No person shall be excused from testifying or from producing any books, records or papers in any investigation, or upon any hearing, when ordered to do so by the commission, or its duly authorized agents, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to a criminal penalty; but no person shall be prosecuted or subjected to any criminal penalty for, or on account of, any transaction made or thing concerning which he is compelled, upon the claiming of his privilege to testify. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;-CL 1948, 421.9-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1970, Act 14, Imd. Eff. Apr. 14, 1970.

421.10 Administration fund; contingent fund.

Sec. 10. (1) There is created in the department of treasury a special fund to be known and designated as the administration fund (Michigan employment security act). Any balances in the administration fund at the end of any fiscal year of this state shall be carried over as a part of the administration fund and shall not revert to the general fund of this state. Except as otherwise provided in subsection (3), all money deposited into the administration fund under this act shall be appropriated by the legislature to the unemployment agency to pay the expenses of the administration of this act.

(2) The administration fund shall be credited with all money appropriated to the fund by the legislature, all money received from the United States or any agency of the United States for that purpose, and all money received by this state for the fund. All money in the administration fund that is received from the federal government or any agency of the federal government or that is appropriated by this state for the purposes of this act, except money requisitioned from the account of this state in the unemployment trust fund pursuant to a specific appropriation made by the legislature in accordance with section 903(c)(2) of title IX of the social security act, 42 USC 1103(c)(2), and with section 17(3)(f), shall be expended solely for the purposes and in the amounts found necessary by the appropriate agency of the United States and the legislature for the proper and efficient administration of this act.

(3) All money requisitioned from the account of this state in the unemployment trust fund pursuant to a specific appropriation made by the legislature in accordance with section 903(c)(2) of title IX of the social security act, 42 USC 1103(c)(2), and with section 17(3)(f), shall be deposited in the administration fund. Any money that remains unexpended at the close of the 2-year period beginning on the date of enactment of a specific appropriation shall be immediately redeposited with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund; or any money that for any reason cannot be expended or is not to be expended for the purpose for which appropriated before the close of this 2-year period shall be redeposited at the earliest practicable date.

(4) If any money received after June 30, 1941, from the appropriate agency of the United States under title III of the social security act, 42 USC 501 to 504, or any unencumbered balances in the administration fund (Michigan employment security act) as of that date, or any money granted after that date to this state under the Wagner-Peyser act, as defined in section 12, or any money made available by this state or its political subdivisions and matched by money granted to this state under the Wagner-Peyser act, is found by the appropriate agency of the United States, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by that agency of the United States for the proper administration of this act, the money shall be replaced by money appropriated for that purpose from the general funds of this state to the administration fund (Michigan employment security act) for expenditure as provided in this act. Upon receipt of notice of such a finding by the appropriate agency of the United States, the commission shall promptly report the amount required for replacement to the governor and the governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of that amount. This subsection shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, under the provisions of 42 USC 501 to 504.

(5) If any funds expended or disbursed by the commission are found by the appropriate agency of the United States to have been lost or expended for purposes other than, or in amounts in excess of, those found necessary by that agency of the United States for the proper administration of this act, and if these funds are replaced as provided in subsection (4) by money appropriated for that purpose from the general fund of this state, then the director who approved the expenditure or disbursement of those funds for those purposes or in those amounts, is liable to this state in an amount equal to the sum of money appropriated to replace those funds.

(6) There is created in the department of treasury a separate fund to be known as the contingent fund (Michigan employment security act) into which shall be deposited all solvency taxes collected under section 19a and all interest on contributions, penalties, and damages collected under this act. Except as otherwise provided in subsections (8) and (9), all amounts in the contingent fund (Michigan employment security act) and all earnings on those amounts are continuously appropriated without regard to fiscal year for the administration of the unemployment agency and for the payment of interest on advances from the federal government to the unemployment compensation fund under 42 USC 1321, to be expended only if authorized by the unemployment agency. Money deposited from the solvency taxes collected under section 19a shall not be used for the administration of the unemployment agency, except for the repayment of loans from the state treasury and interest on loans made under section 19a(3). However, an authorization or expenditure shall not be made as a substitution for a grant of federal funds or for any portion of a grant that, in the absence of an authorization, would be available to the unemployment agency. Immediately upon receipt of administrative grants from the appropriate agency of the United States to cover administrative costs for which the unemployment agency has authorized and made expenditures from the contingent fund, those grants shall be transferred to the contingent fund to the extent necessary to reimburse the contingent fund for the amount of those expenditures. Amounts needed to refund interest, damages, and penalties erroneously collected shall be withdrawn and expended for those purposes from the contingent fund upon order of the unemployment agency. Any amount authorized to be expended for administration under this section may be transferred to the administration fund. An amount not needed for the purpose for which authorized shall, upon order of the unemployment agency, be returned to the contingent fund. Amounts needed to refund erroneously collected solvency taxes shall be withdrawn and expended for that purpose upon order of the unemployment agency.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1942, 2nd Ex. Sess., Act 18, Imd. Eff. Feb. 27, 1942-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.10-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1957, Act 311, Imd. Eff. June 21, 1957-Am. 1982, Act 535, Eff. Jan. 2, 1983-Am. 1983, Act 247, Imd. Eff. Dec. 5, 1983-Am. 1989, Act 224, Eff. Dec. 21, 1989; -Am. 2002, Act 192, Imd. Eff. Apr. 26, 2002-Am. 2003, Act 84, Imd. Eff. July 23, 2003- Am. 2011, Act 14, Imd. Eff. Mar. 29, 2011-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.10a Obligation trust fund; creation; receipt and deposit of money or other assets; investment; money remaining in fund; administrator; expenditures; purpose.

Sec. 10a. (1) The obligation trust fund is created as a separate fund in the state treasury. The assets of the obligation trust fund shall not be commingled with any other fund and shall not be considered part of the general fund of the state.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. All obligation assessments on employers collected under section 26a; all interest on payments, penalties, and damages collected in connection with the obligation assessments made under section 26a; and a portion of the proceeds of any obligations, as described in section 26a, in amounts specified by the issuer, shall be deposited into the obligation trust fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the obligation trust fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. Money in the fund is continuously appropriated for the purposes specified in section 26a.

(4) The department of licensing and regulatory affairs shall be the administrator of the fund for auditing purposes.

(5) The department of licensing and regulatory affairs shall expend money from the fund only for 1 or more of the following purposes:

(a) To pay obligations, administrative expenses, and associated expenses described in section 26a.

(b) To refund erroneously collected assessments under section 26a.

(c) For any other purpose described in section 26a(1).

History: Add. 2011, Act 268, Imd. Eff. Dec. 19, 2011.

421.11 Employment security commission; cooperation with federal agency; reports; compliance with federal regulations; "social security act" defined; disclosure of information; reciprocal agreements.

Sec. 11. (a) In the administration of this act, the commission shall cooperate with the appropriate agency of the United States under the social security act. The commission shall make reports, in a form and containing information as the appropriate agency of the United States may require, and shall comply with the provisions that the appropriate agency of the United States prescribes to assure the correctness and verification of the reports. The commission, subject to this act, shall comply with the regulations prescribed by the appropriate agency of the United States relating to the receipt or expenditure of the sums that are allotted and paid to this state for the purpose of assisting in the administration of this act. As used in this section, "social security act" means the social security act, chapter 531, 49 Stat. 620.

(b)(1) Information obtained from any employing unit or individual pursuant to the administration of this act and determinations as to the benefit rights of any individual are confidential and shall not be disclosed or open to public inspection other than to public employees and public officials in the performance of their official duties under this act and to agents or contractors of those public officials, including those described in subdivision *(viii)*, in any manner that reveals the individual's or the employing unit's identity or any identifying particular about any individual or any past or present employing unit or that could foreseeably be combined with other publicly available information to reveal identifying particulars. However, all of the following apply:

(i) Information in the commission's possession that might affect a claim for worker's disability compensation under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, shall be available to interested parties as defined in R 421.201 of the Michigan administrative code, regardless of whether the commission is a party to an action or proceeding arising under that act.

(ii) Any information in the commission's possession that may affect a claim for benefits or a charge to an employer's experience account shall be available to interested parties as defined in R 421.201 of the Michigan administrative code, and to their agents, if their agents provide the unemployment insurance agency with a written authorization of representation from the party represented. A written authorization of representation is not required in any of the following circumstances:

(A) If the request is made by an attorney who is retained by an interested party and files an appearance for purposes related to a claim for unemployment benefits.

(B) If the request is made by an elected official performing constituent services and the elected official presents reasonable evidence that the identified individual authorized the disclosure.

(C) If the request is made by a third party who is not acting as an agent for an interested party and the third party presents a release from an interested party for the information. The release shall be signed by an interested party; specify the information to be released and all individuals who may receive the information; and state the specific purpose for which the information is sought, that files of the state may be accessed to obtain the information, and that the information sought will only be used for the purpose indicated. The purpose specified in the release shall be limited to that of providing a service or benefit to the individual signing the release or carrying out administration or evaluation of a public program to which the release pertains.

(iii) Except as provided in this act, the information and determinations shall not be used in any action or proceeding before any court or administrative tribunal unless the commission is a party to or a complainant in the action or proceeding, or unless used for the prosecution of fraud, civil proceeding, or other legal proceeding in the programs indicated in subdivision (2).

(iv) Any report or statement, written or verbal, made by any person to the commission, any member of the commission, or to any person engaged in administering this act is a privileged communication, and a person, firm, or corporation shall not be held liable for slander or libel on account of a report or statement. The records and reports in the custody of the commission shall be available for examination by the employer or employee affected.

(v) Subject to restrictions that the commission prescribes by rule, information in the commission's possession may be made available to any agency of this state, any other state, or any federal agency charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices; the bureau of internal revenue of the United States department of the treasury; the bureau of the census of the economics and statistics administration of the United States department of commerce; or the social security administration of the United States department of health and human services.

(vi) Information obtained in connection with the administration of this act may be made available to persons or agencies for purposes appropriate to the operation of a public employment service or unemployment compensation program. Subject to restrictions that the commission prescribes by rule, the commission may also make that information available to agencies of other states that are responsible for the administration of public assistance to unemployed workers; to the departments of this state; and to federal, state, and local law enforcement agencies in connection with a criminal investigation involving the health, safety, or welfare of the public. Information so released shall be used only for purposes not inconsistent with the purposes of this act. The information shall only be released upon assurance by the entity receiving the information that it will reimburse the cost of providing the information and will not disclose the information except to the individual or employer that is the subject of the information, an attorney or agent of the individual or employer, or a prosecuting authority for or on behalf of the entity receiving the information.

(vii) Upon request, the commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to further benefits under this act.

(viii) Subject to restrictions the commission prescribes, by rule or otherwise, the commission may also make information that it obtains available for use in connection with research projects of a public service nature to a college, university, or agency of this state that is acting as a contractor or agent of a public official and conducting research that assists the public official in carrying out the duties of the office. A person associated with those institutions or agencies shall not disclose the information in any manner that would reveal the identity of any individual or employing unit from or concerning whom the information was obtained by the commission. The unemployment insurance agency shall enter into a written, enforceable agreement with the public official that holds the official responsible for ensuring that the agent or contractor maintains the confidentiality of the information. If the agreement is violated, the agreement shall be terminated and the public official may be subject to penalties equivalent to those that apply under section 54(f) to a person associated with a college, university, or public agency who discloses confidential information.

(ix) The commission may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered under this act, and may, in connection with the request, transmit the report or return to the comptroller of the currency of the United States as provided in section 3305(c) of the internal revenue code of 1986, 26 USC 3305(c).

(2) The commission shall disclose to qualified requesting agencies, upon request, with respect to an identified individual, information in its records pertaining to the individual's name; social security number; gross wages paid during each quarter; the name, address, and federal and state employer identification number of the individual's employer; any other wage information; whether an individual is receiving, has received, or has applied for unemployment benefits; the amount of unemployment benefits the individual is receiving or is entitled to receive; the individual's current or most recent home address; whether the individual has refused an offer of work and if so a description of the job offered including the terms, conditions, and rate of pay; and any other information which the qualified requesting agency considers useful in verifying eligibility for, and the amount of, benefits. For purposes of this subdivision, "qualified requesting agency" means any state or local child support enforcement agency responsible for enforcing child support obligations under a plan approved under part d of title IV of the social security act, 42 USC 651 to 669b; the United States department of health and human services for purposes of establishing or verifying eligibility or benefit amounts under titles II and XVI of the social security act, 42 USC 401 to 434 and 42 USC 1381 to 1383f; the United States department of agriculture for the purposes of determining eligibility for, and amount of, benefits under the food stamp program established under the food stamp act of 1977, 7 USC 2011 to 2036; and any other state or local agency of this or any other state responsible for administering the following programs:

(i) The aid to families with dependent children program under part a of title IV of the social security act, 42 USC 601 to 619.

(ii) The medicaid program under title XIX of the social security act, 42 USC 1396 to 1396v.

(iii) The unemployment compensation program under section 3304 of the internal revenue code of 1986, 26 USC 3304.

(iv) The food stamp program under the food stamp act of 1977, 7 USC 2011 to 2036.

(v) Any state program under a plan approved under title I, X, XIV, or XVI of the social security act, 42 USC 301 to 306, 42 USC 1201 to 1206, 42 USC 1351 to 1355, and 42 USC 1381 to 1383f.

(vi) Any program administered under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

The information shall be disclosed only if the qualified requesting agency has executed an agreement with the commission to obtain the information and if the information is requested for the purpose of determining the eligibility of applicants for benefits, or the type and amount of benefits for which applicants are eligible, under any of the programs listed above or under title II and XVI of the social security act, 42 USC 401 to 434 and 42 USC 1381 to 1383f; for establishing and collecting child support obligations from, and locating individuals owing such obligations that are being enforced under a plan described in section 454 of the social security act, 42 USC 654; or for investigating or prosecuting alleged fraud under any of these programs.

The commission shall cooperate with the department of human services in establishing the computer data matching system authorized in section 83 of the social welfare act, 1939 PA 280, MCL 400.83, to transmit the information requested on at least a quarterly basis. The information shall not be released unless the qualified requesting agency agrees to reimburse the commission for the costs incurred in furnishing the information.

In addition to the requirements of this section, except as later provided in this subdivision, all other requirements with respect to confidentiality of information obtained in the administration of this act apply to the use of the information by the officers and employees of the qualified requesting agencies, and the sanctions imposed under this act for improper disclosure of the information apply to those officers and employees. A qualified requesting agency may redisclose information only to the individual who is the subject of the information, an attorney or other duly authorized agent representing the individual if the information is needed in connection with a claim for benefits against the requesting agency, or any criminal or civil prosecuting authority acting for or on behalf of the requesting agency.

The commission is authorized to enter into an agreement with any qualified requesting agency for the purposes described in this subdivision. The agreement or agreements shall comply with all federal laws and regulations applicable to such agreements.

(3) The commission shall enable the United States department of health and human services to obtain prompt access to any wage and unemployment benefit claims information, including any information that may be useful in locating an absent parent or an absent parent's employer, for purposes of section 453 of the social security act, 42 USC 653, in carrying out the child support enforcement program under title IV of the social security act, 42 USC 601 to 679b. Access to the information shall not be provided unless the requesting agency agrees to reimburse the commission for the costs incurred in furnishing the information.

(4) Upon request accompanied by presentation of a consent to the release of information signed by an individual, the commission shall disclose to the United States department of housing and urban development, any state or local public housing agency, or an entity contracting with a state or local public housing agency to provide public housing, or any other agency responsible for verifying an applicant's or participant's eligibility for, or level of benefits in, any housing assistance program administered by the United States department of housing and urban development, the name, address, wage information, whether an individual is receiving, has received, or has applied for unemployment benefits, and the amount of unemployment benefits the individual is receiving or is entitled to receive under this act. This information shall be used only to determine an individual's eligibility for benefits or the amount of benefits to which an individual is entitled under a housing assistance program of the United States department of housing and urban development. The information shall not be released unless the requesting agency agrees to reimburse the commission for the costs incurred in furnishing the information. For purposes of this subdivision, "public housing agency" means an agency described in section 3(b)(6) of the United States housing act of 1937, 42 USC 1437a(b)(6).

(5) The commission may make available to the department of treasury information collected for the income and eligibility verification system begun on October 1, 1988 for the purpose of detecting potential tax fraud in other areas.

(6) A recipient of confidential information under this act shall use the disclosed information only for purposes authorized by law and consistent with an agreement entered into with the unemployment insurance agency. The recipient shall not redisclose the information to any other individual or entity without the written permission of the unemployment insurance agency.

(c) The commission may enter into agreements with the appropriate agencies of other states or the federal government whereby potential rights to benefits accumulated under the unemployment compensation laws of other states or of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under plans that the commission finds will be fair and reasonable to all affected interests and will not result in substantial loss to the unemployment compensation fund.

(d)(1) The commission may enter into reciprocal agreements with the appropriate agencies of other states or of the federal government adjusting the collection and payment of contributions by employers with respect to employment not localized within this state.

(2) The commission may enter into reciprocal agreements with agencies of other states administering unemployment compensation, whereby contributions paid by an employer to any other state may be received by the other state as an agent acting for and on behalf of this state to the same extent as if the contributions had been paid directly to this state if the payment is remitted to this state. Contributions so received by another state shall be considered contributions, required and paid under this act as of the date the contributions were received by the other state. The commission may collect contributions in a like manner for agencies of other states administering unemployment compensation and remit the contributions to the agencies under the terms of the reciprocal agreements.

(e) The commission may make the state's records relating to the administration of this act available and may furnish to the railroad retirement board or any other state or federal agency administering an unemployment compensation law, at the expense of that board, state, or agency, copies of the records as the railroad retirement board considers necessary for its purpose.

(f) The commission may cooperate with or enter into agreements with any agency of another state or of the United States charged with the administration of any unemployment insurance or public employment service law.

The commission may investigate, secure, and transmit information, make available services and facilities, and exercise other powers provided in this act with respect to the administration of this act as it considers necessary or appropriate to facilitate the administration of any unemployment compensation or public employment service law, and may accept and utilize information, services, and facilities made available to this state by the agency charged with the administration of any other unemployment compensation or public employment service law.

On request of an agency that administers an employment security law of another state or foreign government and that has found, in accordance with that law, that a claimant is liable to repay benefits received under that law, the commission may collect the amount of the benefits from the claimant to be refunded to the agency.

In any case in which under this subsection a claimant is liable to repay any amount to the agency of another state or foreign government, the amount may be collected by civil action in the name of the commission acting as agent for the agency. Court costs shall be paid or guaranteed by the agency of that state.

To the extent permissible under the laws and constitution of the United States, the commission may enter into or cooperate in arrangements whereby facilities and services provided under this act and facilities and services provided under the unemployment compensation law of Canada may be utilized for the taking of claims and the payment of benefits under the unemployment compensation law of this state or under a similar law of Canada.

Any employer who is not a resident of this state and who exercises the privilege of having 1 or more individuals perform service for him or her within this state, and any resident employer who exercises that privilege and thereafter leaves this state, is considered to have appointed the secretary of state as his or her agent and attorney for the acceptance of process in any civil action under this act. In instituting the action, the commission shall cause process or notice to be filed with the secretary of state, and the service shall be sufficient and shall be of the same force and validity as if served upon the nonresident or absent employer personally within this state. The commission immediately shall send notice of the service of process or notice, together with a copy thereof, by certified mail, return receipt requested, to the employer at his or her last known address. The return receipt, the commission's affidavit of compliance with this section, and a copy of the notice of service shall be attached to the original of the process filed in the court in which the civil action is pending.

The courts of this state shall recognize and enforce liabilities, as provided in this act, for unemployment compensation contributions, penalties, and interest imposed by other states that extend a like comity to this state.

The attorney general may commence action in the appropriate court of any other state or any other jurisdiction of the United States by and in the name of the commission to collect unemployment compensation contributions, penalties, and interest finally determined, redetermined, or decided under this act to be legally due this state. The officials of other states that extend a like comity to this state may sue in the courts of this state for the collection of unemployment compensation contributions, penalties, and interest, the liability for which has been similarly established under the laws of the other state or jurisdiction. A certificate by the secretary of another state under the great seal of that state attesting the authority of the official or officials to collect unemployment compensation contributions, penalties, and interest is conclusive evidence of that authority.

The attorney general may commence action in this state as agent for or on behalf of any other state to enforce judgments and established liabilities for unemployment compensation taxes or contributions, penalties, and interest due the other state if the other state extends a like comity to this state.

(g) The commission may also enter into reciprocal agreements with the appropriate and authorized agencies of other states or of the federal government whereby remuneration and services that determine entitlement to benefits under the unemployment compensation law of another state or of the federal government are considered wages and employment for the purposes of sections 27 and 46, if the other state agency or agency of the federal government has agreed to reimburse the fund for that portion of benefits paid under this act upon the basis of the remuneration and services as the commission finds will be fair and reasonable as to all affected interests. A reciprocal agreement may provide that wages and employment that determine entitlement to benefits under this act are considered wages or services on the basis of which unemployment compensation under the law of another state or of the federal government is payable; may provide that services performed by an individual for a single employing unit for which services are customarily performed by the individual in more than 1 state are considered services performed entirely within any 1 of the states in which any part of the individual's service is performed, in which the individual has his or her residence, or in which the employing unit maintains a place of business, if there is in effect as to those services, an election approved by the agency charged with the administration of the state's unemployment compensation law, under which all the services performed by the individual for the employing unit are considered to be performed entirely within the state; and may provide that the commission will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits, paid under the law of any other state or of the federal government upon the basis of employment and wages, as the commission finds will be fair and reasonable as to all affected interests. Reimbursements payable under this subsection are considered benefits for the purpose of limiting duration of benefits and for the purposes of sections 20(a) and 26, and the payments shall be charged to the contributing employer's experience account for the purposes of sections 17, 18, 19, and 20, or the reimbursing employer's account under section 13c, 13g, 13i, or 13*l*, as applicable. Benefits paid under a combined wage plan shall be allocated and charged to each employer involved in the quarter in which the paying state requires reimbursement. Benefits charged to this state shall be allocated to each employer of this state who has employed the claimant during the base period of the paying state in the same ratio that the wages earned by the claimant during the base period of the paying state in the employ of the employer bears to the total amount of wages earned by the claimant in the base period of the paying state in the employ of all employers of the state. The commission is authorized to make to other state or federal agencies and receive from other state or federal agencies reimbursements from or to the fund, in accordance with arrangements made under this section.

(h) The commission may enter into any agreement necessary to cooperate with any agency of the United States charged with the administration of any program for the payment of primary or supplemental benefits to individuals recently discharged from the military services of the United States, and to assist in the establishing of eligibility and in the payments of benefits under those programs, and for those purposes may accept and administer funds made available by the federal government and may accept and exercise any delegated function under those programs. The commission shall not enter into any agreement providing for, or exercise any function connected with, the disbursement of the state's unemployment trust fund for purposes not authorized by this act.

(i) The commission may enter into agreements with the appropriate agency of the United States under which, in accordance with the laws of the United States, the commission, as agent of the United States or from funds provided by the United States, provides for the payment of unemployment compensation or unemployment allowances of any kind, including the payment of any benefits and allowances that are made available for manpower development, training, retraining, readjustment, and relocation. The commission may receive and disburse funds from the United States or any appropriate agency of the United States in accordance with any such agreements.

If the federal enactment providing for unemployment compensation, training allowance, or relocation payments requires joint federal-state financing of such payments, the commission may participate in the programs by using funds appropriated by the legislature to the extent provided by the legislature for such programs.

(j) The commission shall participate in any arrangement that provides for the payment of compensation on the basis of combining an individual's wages and employment covered under this act with his or her wages and employment covered under the unemployment compensation laws of other states, if the arrangement is approved by the United States secretary of labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation. An arrangement shall include provisions for both of the following:

(i) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under 2 or more state unemployment compensation laws.

(ii) Avoiding the duplicate use of wages and employment as a result of the combining.

(k) In a proceeding before any court, the commission and the state shall be represented by the attorney general of this state or attorneys designated by the attorney general. Only the attorney general or other attorneys designated by the attorney general shall act as legal counsel for the commission.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1943, Act 246, Imd. Eff. June 1, 1943-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.11-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1957, Act 311, Imd. Eff. June 21, 1957-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1965, Act 398, Imd. Eff. Oct. 26, 1965-Am. 1967, Act 254, Imd. Eff. July 19, 1967-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1974, Act 104, Eff. June 9, 1974-Am. 1982, Act 248, Imd. Eff. Sept. 23, 1982-Am. 1985, Act 197, Imd. Eff. Dec. 26, 1985-Am. 1989, Act 178, Imd. Eff. Aug. 23, 1989-Am. 1993, Act 279, Imd. Eff. Dec. 28, 1993-Am. 1995, Act 25, Eff. Mar. 28, 1996-Am. 2005, Act 182, Imd. Eff. Oct. 20, 2005-Am. 2009, Act 1, Imd. Eff. Mar. 11, 2009-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

Administrative rules: R 421.10 of the Michigan Administrative Code.

Cited in other sections: Section 421.11 is cited in §400.83.

421.11a Repealed. 1965, Act 281, Eff. Sept. 5, 1965.

Compiler's note: The repealed section pertained to agreements for benefits under federal temporary unemployment compensation act of 1958.

421.12 Acceptance of Wagner-Peyser act.

Sec. 12. This state hereby accepts the provisions of the Wagner-Peyser act.

The state employment service is established in the employment security commission which shall be so administered as to cooperate with any federal agency charged with the administration of the Wagner-Peyser act and to conform with the requirements of the Wagner-Peyser act. Free public employment offices which shall be designated as the state employment service offices shall be established and maintained by the commission in such number and such places as may be necessary for the proper administration of this act and for the purpose of performing such functions as are within the purview of the Wagner-Peyser act. The commission is designated and constituted the agency of this state for the purpose of the Wagner-Peyser act.

The commission is authorized and empowered, subject to the approval of any federal agency charged with the administration of the Wagner-Peyser act, to establish and operate in each employment service office established in the state, a department or division, the sole function and purpose of which shall be to secure and make available, insofar as is possible, suitable employment for persons over 45 years of age.

All moneys made available by, or received by this state under said act of congress, shall be paid into the administration fund created by this act, and said moneys are appropriated and made available to the state employment service to be expended only for the uses and purposes for which same are received, as provided by this act and by said Wagner-Peyser act.

For the purpose of establishing and maintaining free public employment offices, the commission is authorized to enter into agreements with any political subdivision of this state, or with any private, nonprofit organization, and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the administration fund.

"Employment office" means a free public employment office or branch thereof which is operated by this state or another state as a part of a state controlled system of public employment offices, or by a federal agency which is charged with the administration of an unemployment compensation program or of free public employment offices.

"Wagner-Peyser act" means the act passed by the congress of the United States of America, entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of said system, and for other purposes," approved June 6, 1933, being 48 statutes 113; United States code, title 29, section 49(c), as amended, known as the Wagner-Peyser act.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941;-CL 1948, 421.12-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1955, Act 178, Eff. Oct. 14, 1955-Am. 1963, Act 124, Eff. Sept. 6, 1963-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972.

421.12a Employment security; community work or training program; employee benefits.

Sec. 12a. Any person, whether paid a wage, allowance or stipend, or a combination thereof, engaged in a community work or training program or work experience program, whether private or public, and whether it is conducted by a profit or nonprofit organization, sponsored or conducted by the Michigan employment security commission, either on its own behalf or as agent on behalf of the federal government, shall be entitled to the benefits provided by Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.899 of the Compiled Laws of 1948, in the same manner as employees of the state.

History: Add. 1970, Act 173, Imd. Eff. Aug. 3, 1970.

421.13 Contributions of employer; rate; computation and payment; reports; records; quarterly wage report; apportioned payments.

Sec. 13. (1) Each employer subject to this act shall pay to the unemployment agency a tax in the form of payments in lieu of contributions where the employer is liable for those payments, or tax contributions equal to a standard rate of 2.7% for calendar years before 1985 and 5.4% for calendar year 1985 and thereafter, subject to an adjustment in rate of contributions as provided in section 19. The contributions shall become due and be paid to the unemployment agency, for the unemployment compensation fund, by each employer semiannually or for shorter periods of not less than 28 days, as the unemployment agency may by rule prescribe. Contributions due and payable from an employer that is liable under this act solely on the basis of the payment of wages for domestic service may be paid annually on the date specified by the unemployment agency. Contributions, and payments in lieu of contributions, shall be credited first to penalty; then to interest; and then to principal, unpaid and owing in the oldest calendar quarter and progressing each quarter to the most recent quarter. An employer's contribution shall not be deducted directly or indirectly, in whole or in part, from wages of individuals in his or her employ. A contribution payment amount that is not an even dollar amount shall be credited to the account of the employer in an amount equal to the next lower dollar amount if under 50 cents and in an amount equal to the next higher dollar amount if 50 cents or more. The unemployment agency may prescribe by rule the details of the computation and payment of contributions. Every employing unit shall file with the unemployment agency periodic reports on forms and at a time the unemployment agency prescribes to disclose liability for contributions under this act. Each employing unit shall keep records, including wage and employment records, and shall, within prescribed time limits, submit or provide reports, including wage and employment reports, to the unemployment agency or to the employing unit's employees or former employees as the unemployment agency prescribes by rule.

(2) Beginning with the first quarter of 1986, each employer shall file a quarterly wage report with the unemployment agency, on forms and at a time as the unemployment agency prescribes, which shall include for each of the employer's employees the employee's name, social security number, gross wages paid during each quarter, and the name, address, and federal and state employer identification number of the individual's employer. If the unemployment agency discovers an error in a report filed timely, the unemployment agency shall provide written notification to the employer of the error. If the employer provides corrected information within 14 days of the notification, the administrative fine provided in section 54 for a late, incomplete, or erroneous report shall not apply. An employer having more than 25 employees on January 1, 2013 shall file quarterly reports beginning with the report for the first quarter of 2013 by an electronic method approved by the unemployment agency. An employer having more than 5 but fewer than 26 employees on January 1, 2013 shall file quarterly reports beginning with the report for the first quarter of 2014 by an electronic method approved by the unemployment agency. An employer having 5 or fewer employees on January 1, 2013 shall file quarterly reports beginning with the report for the first quarter of 2015 by an electronic method approved by the unemployment agency, except that the director of the unemployment agency, upon application by the employer, may grant additional time for the employer to comply with the electronic filing method if the director concludes that satisfying the requirement of electronic filing will cause economic hardship for the employer. The employer shall provide, and the director shall consider, information about the employer's anticipated cost expenditure for preparing for electronic filing and about the employer's annual income. An employer

that complies with the reporting requirements of this subsection by filing electronically a quarterly wage report using a method approved by the unemployment agency is not required to file periodically to disclose contributions under this act.

(3) The unemployment agency shall allow a contributing employer that employed 25 or fewer individuals during the pay period that includes January 12, 2012, or during the corresponding pay period in each succeeding calendar year, and that incurred 50% or more of the employer's total previous year's contribution obligation in the first quarter of that year to discharge the liability for contributions due in the next succeeding year through quarterly payments that distribute the payment of the first quarter's obligation equally over the 4 quarters in that year. To avoid interest and penalties otherwise applicable to those payments, an employer meeting the requirements of this subsection shall notify the unemployment agency of the election to make apportioned payments with the first quarter's payment and timely file each succeeding quarterly payment in the amounts prescribed in section 15a. This subsection applies to contributions beginning in the 2013 tax year.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937-Am. 1943, Act 246, Imd. Eff. June 1, 1943-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.13-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1951, 1st Ex. Sess., Act 1, Imd. Eff. Aug. 23, 1951-Am. 1967, Act 254, Imd. Eff. July 19, 1967-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1977, Act 277, Eff. Jan. 1, 1978-Am. 1984, Act 172, Imd. Eff. June 29, 1984-Am. 1985, Act 197, Imd. Eff. Dec. 26, 1985-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.13a Contributions of nonprofit organizations; reimbursement payments in lieu of contributions; "nonprofit organization" defined; notice of election to become reimbursing employer; surety bond, irrevocable letter of credit, or other security; applicability of subsection (4).

Sec. 13a. (1) Any nonprofit organization which is, or becomes, subject to this act after December 31, 1971, shall pay contributions as a contributing employer pursuant to section 13, unless it elects to make reimbursement payments in lieu of contributions as a reimbursing employer pursuant to sections 13a to 13c. For the purpose of this act, a nonprofit organization is an organization or group of organizations which is described in section 501(c)(3) of the federal internal revenue code and is exempt from income tax under section 501(a) of that code.

(2) A nonprofit organization which is subject to this act on December 31, 1971, may elect to become a reimbursing employer for a period of not less than 2 calendar years beginning with January 1, 1972 if it files with the commission a written notice of its election within 30 days after January 1, 1972.

(3) A nonprofit organization which becomes subject to this act on or after January 1, 1972, may elect to become a reimbursing employer for a period of not less than 2 calendar years beginning with the calendar year which contains the day when it became subject to this act by filing a written notice of its election with the commission not later than 30 days immediately following the date of determination that it was subject to this act.

(4) A nonprofit organization subject to this act that elects to become a reimbursing employer on or after the effective date of the amendatory act that added this subsection shall execute and file a surety bond, irrevocable letter of credit, or other security as approved by the commission in an amount approved by the commission to secure the payment of its obligations under this act. This subsection shall not apply to any nonprofit reimbursing employer who pays $100,000.00 or less remuneration per calendar year for employment as determined by the commission.

History: Add. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1989, Act 236, Imd. Eff. Dec. 21, 1989.

421.13b Liability of nonprofit organization for reimbursement payments in lieu of contributions; termination of status as reimbursing employer; notice of termination; election to become reimbursing employer; notice of election; termination of election; extension of time; determination of status as employer.

13b. (1) A nonprofit organization which makes an election in accordance with section 13a(2) or (3) shall continue to be liable for reimbursement payments in lieu of contributions until it files with the commission a written notice terminating its status as a reimbursing employer. A notice of termination may not be filed later than 30 days before the beginning of the calendar year when the termination is to be effective. Subsequent to the effective date of termination, the nonprofit organization shall be considered a newly liable employer for purposes of section 19(a).

(2) A nonprofit organization which pays contributions under this act for a period subsequent to January 1, 1972, may elect to become a reimbursing employer by filing a written notice of election with the commission not later than 30 days before the beginning of a calendar year for which the election is effective. An election may not be terminated by the organization for the same year with respect to which the election is made or the following year.

(3) The commission for good cause may extend for 30 days the period within which a notice of election or a notice of termination shall be filed under this section or under section 13a.

(4) The commission, in accordance with section 14, shall notify a nonprofit organization of a determination which is made of its status as an employer, the effective date of an election which it makes, and the termination of the election. The determinations shall be final unless further proceedings are taken pursuant to section 32a.

History: Add. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1974, Act 104, Eff. June 9, 1974-Am. 1977, Act 277, Eff. Jan. 1, 1978.

421.13c Payments by nonprofit organization to commission; computation; statement of charges; past due reimbursement payments.

Sec. 13c. (1) A nonprofit organization or group of nonprofit organizations which is liable for reimbursement payments in lieu of contributions shall pay to the commission an amount equal to the full amount of regular benefits plus the amount of extended benefits and training benefits paid during any calendar quarter that is attributable to service in the employ of such organization and which is not reimbursable by the federal government. The amount which a nonprofit organization or group of nonprofit organizations is required to pay shall be ascertained by the commission as soon as practicable after the end of each calendar quarter and a statement of charges shall be mailed to each nonprofit organization or group of organizations. Payment of the amount indicated in the statement of charges shall not be made later than 30 days after the statement of charges was mailed.

(2) Past due reimbursement payments in lieu of contributions shall be subject to the interest, penalty, assessment, and collection provisions provided in section 15.

History: Add. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1974, Act 104, Eff. June 9, 1974.

421.13d Delinquency of nonprofit organization in making reimbursement payments; termination of election; surety bond, irrevocable letter of credit, or other security.

Sec. 13d. If a nonprofit organization is delinquent in making reimbursement payments in lieu of contributions as required pursuant to sections 13a to 13c, the commission may terminate the organization's election to make reimbursement payments in lieu of contributions as of the beginning of the next calendar year which termination shall be effective for that and the next calendar year, or the commission may require the nonprofit organization to execute and file with the commission a surety bond, irrevocable letter of credit, or other security as approved by the commission in an amount approved by the commission to secure the payment of its obligations under this act.

History: Add. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1989, Act 236, Imd. Eff. Dec. 21, 1989.

421.13e Group account for sharing cost of benefits; joint application; approval; notice; duration; termination; adding employer to or removing employer from group account; liability for benefit charges; effective date and application of amendatory provision.

Sec. 13e. (1) Two or more employers who become liable for reimbursement payments in lieu of contributions pursuant to sections 13a to 13c, or after December 31, 1977, 2 or more employers who become liable for reimbursement payments in lieu of contributions pursuant to section 13i, may file a joint application with the commission for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of those employers. The joint application shall identify and authorize a representative to act for the group for the purposes of this act. Upon approval of the application, the commission shall establish a group account for the employers which shall be effective as of the beginning of the calendar quarter in which the application is received or the first day of the following calendar quarter if requested by the group's representative. The commission shall notify the group's representative of the effective date of the account. The account shall remain in effect for not less than 2 calendar years and thereafter until terminated at the discretion of the commission or upon application by the group.

Upon written notice to the commission, an employer shall be added to a group account effective the first day of the calendar quarter in which the notice is received or the first day of the following calendar quarter if requested by the employer. Upon written notice received by the commission, not later than 30 days before the start of a calendar year, an employer shall be removed from a group account. However, an employer shall remain a member of the group for not less than 2 calendar years.

(2) In the case of a group composed of nonprofit organizations, the group shall be liable for all benefit charges, which are based on service with an employer while it was a member of that group. Membership in a group shall not relieve a member of liability for charges attributable to service in its employ.

(3) In the case of a group composed of governmental entities, the group shall be liable for all benefit charges, which are based on services with an employer while it was a member of that group. Membership in a group account shall not relieve a member of liability for charges attributable to service in its employ.

(4) The provision of that section as amended by this 1977 amendatory act shall be effective January 1, 1978, and shall apply to all group accounts in existence, or established, on or after that date.

History: Add. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1977, Act 277, Eff. Jan. 1, 1978.

21.13f Reimbursement by nonprofit organization of benefits paid; charging benefits paid to rating account of nonprofit organization.

Sec. 13f. (1) For benefit years established before the conversion date prescribed in section 75, the benefits paid on the basis of credit weeks earned with a nonprofit organization while it was a reimbursing employer shall be reimbursed by the nonprofit organization pursuant to section 13c(1) and the benefits paid on the basis of credit weeks earned with that nonprofit organization while it was a contributing employer shall be charged to the experience account of the nonprofit organization pursuant to section 20.

(2) For benefit years established after the conversion date prescribed in section 75, the benefits paid on the basis of base period wages paid by a nonprofit organization while it was a reimbursing employer shall be reimbursed by the nonprofit organization pursuant to section 13c(1) and the benefits paid on the basis of base period wages paid by that nonprofit organization while it was a contributing employer shall be charged to the experience account of the nonprofit organization pursuant to section 20. Benefits paid to an individual and chargeable to the nonprofit organization on the basis that the nonprofit organization was the separating employer in the claim shall be charged to the experience account of the nonprofit organization if it was a contributing employer at the time of the separation, or shall be reimbursed by the nonprofit organization if it was a reimbursing employer at the time of the separation.

History: Add. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1994, Act 162, Imd. Eff. June 17, 1994.

421.13g Reimbursement payments by state in lieu of contributions; amount, time, and manner of payments; separate accounts; funds to which reimbursement payments charged; liability for reimbursement payments; election to be reimbursing employer; reimbursement of benefits; charging benefits to experience account; past due reimbursement payments.

Sec. 13g. (1) The state, as a reimbursing employer, is liable for reimbursement payments in lieu of contributions and shall pay to the commission an amount equal to the full amount of regular benefits plus the amount of extended benefits and training benefits paid during any calendar quarter that is attributable to service in the employ of the state and which is not reimbursable by the federal government. The amount which is required to be paid into the fund shall be ascertained by the commission as soon as practicable after the end of each calendar quarter. Payments by the state shall be made at the times and manner as the commission prescribes.

(2) The commission shall maintain a separate account in the fund for each department, commission, or other budgetary unit of the state. Reimbursement payments made by the state to the unemployment fund under this section shall be charged to funds available for the payment of wages and salaries in each department, commission, or other budgetary unit, according to the amount of benefits charged to each budgetary unit.

(3) The state shall continue to be liable for reimbursement payments in lieu of contributions until it terminates its status as a reimbursing employer and elects to become a contributing employer. The election shall be by concurrent resolution of the legislature adopted before the beginning of a calendar year for which the election is to be effective.

(4) If the state elects to be a contributing employer, it may subsequently elect, by concurrent resolution of the legislature, to become a reimbursing employer. The concurrent resolution shall be adopted before the beginning of a calendar year for which the election is to be effective. The election to be a reimbursing employer may not be terminated for the calendar year with respect to which the election is made and the following calendar year.

(5) For benefit years established before the conversion date prescribed in section 75, benefits paid on the basis of credit weeks earned with the state while it was a reimbursing employer shall be reimbursed by the state and benefits paid on the basis of credit weeks earned with the state while it was a contributing employer shall be charged to the experience account of the state pursuant to section 20. For benefit years established after the conversion date prescribed in section 75, benefits paid on the basis of base period wages paid by the state while it was a reimbursing employer shall be reimbursed by the state and benefits paid on the basis of base period wages paid by the state while it was a contributing employer shall be charged to the experience account of the state pursuant to section 20. Benefits paid to an individual and chargeable to the state on the basis that the state was the separating employer in

the claim for benefits shall be charged to the experience account of the state if it was a contributing employer at the time of the separation, or shall be reimbursed by the state if it was a reimbursing employer at the time of the separation.

(6) Past due reimbursement payments in lieu of contributions shall be subject to the interest, penalty, assessment, and collection provisions provided in section 15.

History: Add. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1974, Act 104, Eff. Jan. 1, 1975-Am. 1977, Act 277, Eff. Jan. 1, 1978-Am. 1994, Act 162, Imd. Eff. June 17, 1994.

421.13h Provisions applicable to reimbursement payments in lieu of contributions and reimbursing employers.

Sec. 13h. Except where otherwise provided or where the context clearly requires otherwise, the terms, conditions, rules and regulations which apply to contributions and contributing employers under this act shall also apply to reimbursement payments in lieu of contributions and reimbursing employers.

History: Add. 1974, Act 104, Eff. June 9, 1974.

421.13i Governmental entity as reimbursing employer or contributing employer; election; notice; termination of election; liability for reimbursement payments; notice terminating status; extension of period for filing notice of election; determination of status as employer, effective date of election, and termination of prior election.

Sec. 13i. (1) Except as provided in section 13g, a governmental entity which:

(a) Is, or becomes subject to this act after December 31, 1974, shall make reimbursement payments in lieu of contributions as a reimbursing employer for not less than 2 calendar years beginning January 1, 1975, unless it elects to pay contributions as a contributing employer pursuant to section 13.

(b) Becomes subject to this act on or after January 1, 1975, may elect to become a contributing employer beginning with the calendar year which contains the day when it becomes subject to this act by filing a written notice of its election with the commission not later than 30 days after the date of determination that it was subject to this act.

(c) Pays contributions under this act for a period after January 1, 1975, may elect to become a reimbursing employer by filing a written notice of the election with the commission not later than 30 days before the beginning of a calendar year for which the election is to be effective. The election may not be terminated for the calendar year with respect to which the election is made and the following calendar year.

(d) Becomes a reimbursing employer under subdivision (a) or elects to become a reimbursing employer in accordance with subdivision (c), shall continue to be liable for reimbursement payments in lieu of contributions until it files with the commission a written notice terminating its status as a reimbursing employer and electing to become a contributing employer. The notice may not be filed later than 30 days before the beginning of the calendar year when the termination and election is to be effective. After the effective date of termination, the governmental entity shall be considered a newly liable employer for the purposes of section 19(a).

(2) The commission for good cause may extend for 30 days the period within which a notice of election shall be filed under this section.

(3) The commission, in accordance with section 14, shall notify a governmental entity of a determination which is made of its status as an employer, the effective date of an election which it makes and the termination of any prior election. The determinations shall be final unless further proceedings are taken pursuant to section 32a.

History: Add. 1974, Act 104, Eff. Jan. 1, 1975-Am. 1977, Act 277, Eff. Jan. 1, 1978.

421.13j Repealed. 1977, Act 277, Eff. Jan. 1, 1978.

Compiler's note: The repealed section pertained to effect of local unemployment compensation system within political subdivision.

Section 3 of Act 277 of 1977 provides:

"Section 13j of Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being section 421.13j of the Compiled Laws of 1970, and Act No. 170 of the Public Acts of 1958, being section 421.501 of the Compiled Laws of 1970, is repealed. However, if a political subdivision had a local unemployment compensation system in effect at any time during the calendar week ending December 31, 1977, wages earned with such political subdivision prior to January 1, 1978 shall continue to be used in determining entitlement to benefits under such local unemployment compensation system for weeks of unemployment occurring before July 2, 1978, and for which the individual claiming benefits is not entitled to unemployment benefits under the Michigan employment security act."

421.13k Payment by governmental entity of regular benefits plus extended benefits and training benefits; ascertainment of amount; statement of charges; reimbursement of fund; past due reimbursement payments; liability for and payment of contributions; delinquency; termination of election; reimbursement of benefits; charging benefits to experience account.

Sec. 13k. (1) Except as provided in section 13g, a governmental entity which is liable for reimbursement payments in lieu of contributions shall pay to the commission an amount equal to the full amount of regular benefits plus the amount of extended benefits and training benefits paid during a calendar quarter that are attributable to service in the employ of the organization and which are not reimbursable by the federal government.

(2) The amount required to be paid by a governmental entity shall be ascertained by the commission as soon as practicable after the end of each calendar quarter and a statement of charges shall be mailed to each entity. A governmental entity shall reimburse the fund within 30 days after the start of the next fiscal year of the governmental entity following the calendar year for which the governmental entity is to be charged.

(3) Past due reimbursement payments in lieu of contributions shall be subject to the interest, penalty, assessment, and collection provisions provided in section 15.

(4) A school district or community college district which is liable for contributions for a calendar year shall pay the contributions within 30 days after the start of its next fiscal year after that calendar year.

(5) A governmental entity, other than the state or a school district or community college district which is liable for contributions shall pay the contributions due as required by section 13.

(6) If a governmental entity other than the state is delinquent for 2 consecutive calendar years in making reimbursement payments in lieu of contributions, the commission may terminate the employer's election to make reimbursement payments in lieu of contributions as of the beginning of the next calendar year, which termination shall be effective for that and the next calendar year.

(7) For benefit years established before the conversion date prescribed in section 75, benefits paid on the basis of credit weeks earned with a governmental entity while it was a reimbursing employer shall be reimbursed by the employer pursuant to subsections (1), (2), and (3), and the benefits paid on the basis of credit weeks earned with a governmental entity while it was a contributing employer shall be charged to the experience account of the employer pursuant to section 20. For benefit years established after the conversion date prescribed in section 75, benefits paid on the basis of base period wages paid by a governmental entity while it was a reimbursing employer shall be reimbursed by the employer pursuant to subsections (1), (2), and (3), and benefits paid on the basis of base period wages paid by a governmental entity while it was a contributing employer shall be charged to the experience account of the employer pursuant to section 20. Benefits paid to an individual and chargeable to the governmental entity on the basis that the governmental entity was the separating employer in the claim shall be charged to the experience account of the governmental entity if it was a contributing employer at the time of the separation, or shall be reimbursed by the governmental entity if it was a reimbursing employer at the time of the separation.

History: Add. 1974, Act 104, Eff. Jan. 1, 1975-Am. 1977, Act 277, Eff. Jan. 1, 1978-Am. 1994, Act 162, Imd. Eff. June 17, 1994.

421.13*l* Indian tribe or tribal unit as employer; requirements.

Sec. 13*l*. (1) An Indian tribe or tribal unit liable as an employer under section 41 shall pay reimbursements in lieu of contributions under the same terms and conditions as all other reimbursing employers liable under section 41, unless the Indian tribe or tribal unit elects to pay contributions.

(2) An Indian tribe or tribal unit that elects to make contributions shall file with the unemployment agency a written request for that election before January 1 of the calendar year in which the election will be effective or within 30 days of the effective date of the amendatory act that added this section. The Indian tribe or tribal unit shall determine if the election to pay contributions will apply to the tribe as a whole, will apply only to individual tribal units, or will apply to stated combinations of individual tribal units.

(3) An Indian tribe or tribal unit paying reimbursements in lieu of contributions shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit. An Indian tribe or tribal unit shall reimburse the fund annually within 30 calendar days after the mailing of the final billing for the immediately preceding calendar year.

(4) If an Indian tribe or tribal unit fails to make payments in lieu of contributions, including assessments of interest and penalties, within 90 calendar days after the mailing of the notice of delinquency, the Indian tribe will lose the ability to make payments in lieu of contributions immediately unless the payment in full or collection on the

security is received by the unemployment agency by December 1 of that calendar year. An Indian tribe that loses the ability to make payments in lieu of contributions shall be made a contributing employer and shall not have the ability to make payments in lieu of contributions until all contributions, payments in lieu of contributions, interest, or penalties have been paid. The ability to make payments in lieu of contributions shall be reinstated effective the January 1 immediately succeeding the year in which the Indian tribe has paid in full all contributions, payments in lieu of contributions, interest, and penalties. If an Indian tribe fails to pay in full all contributions, payments in lieu of contributions, interest, and penalties within 90 calendar days of a notice of delinquency, the unemployment agency shall immediately notify the United States department of labor and the internal revenue service of the United States department of treasury of that delinquency. If that delinquency is satisfied, the unemployment agency shall immediately notify the United States department of labor and the internal revenue service of the United States department of treasury that all contributions, payments in lieu of contributions, interest, and penalties have been paid.

(5) A notice of delinquency to an Indian tribe or tribal unit shall include information that failure to make full payment within 90 days of the date of mailing of the notice of delinquency will result in the Indian tribe losing the ability to make payments in lieu of contributions until the delinquency and all contributions, payments in lieu of contributions, interest, and penalties have been paid in full.

(6) Any Indian tribe or tribal unit that makes reimbursement payments in lieu of contributions shall be required to post a security, subject to all of the following conditions:

(a) A reimbursing tribe or tribal unit must either post the security within 30 days of the effective date of the amendatory act that added this section or by November 30 of the year before the year for which the security is required.

(b) The security shall be in the form of a surety bond, irrevocable letter of credit, or other banking device that is acceptable to the unemployment agency and that provides for payment to the unemployment agency, on demand, of an amount equal to the security that is required to be posted. The required security may be posted by a third-party guarantor.

(c) The requirement for a security does not apply to an Indian tribe or tribal unit that is expected to have less than $100,000.00 per calendar year in total wage payments, as determined by the unemployment agency. An Indian tribe or tribal unit is required to provide security if the payment of gross wages in a calendar year is equal to or greater than $100,000.00. The employer shall notify the unemployment agency within 60 days from the date its payroll equals or exceeds $100,000.00. The security shall be posted within 30 days of notice by the unemployment agency of a requirement to post a security.

(d) The amount of the security required is 4.0% of the employer's estimated total annual wage payments, as determined by the unemployment agency. Indian tribes or tribal units that have a previous wage payment history shall be required to file a security that is equal to 4.0% of the gross wages paid for the 12-month period ending June 30 of the year immediately preceding the year for which the security is required or 4.0% of the employer's estimated total annual wages, whichever is greater.

(7) Any Indian tribe or tribal unit that is liable for reimbursements in lieu of contributions may form a group account with another tribe or tribal unit, in the same manner and with the same restrictions provided in section 13e(3).

(8) Notwithstanding section 41(1), after December 20, 2000, "employer" includes an Indian tribe or tribal unit for which services are performed in employment as defined in subsection (9).

(9) After December 20, 2000, "employment" includes service performed in the employ of an Indian tribe or tribal unit, if the service is excluded from employment as that term is defined in the federal unemployment tax act, chapter 23 of subtitle C of the internal revenue code of 1986, 26 U.S.C. 3301 to 3311, solely by reason of section 3306(c)(7) of the federal unemployment tax act, chapter 23 of subtitle C of the internal revenue code of 1986, and is not otherwise excluded from the definition of employment under section 43.

(10) As used in this act:

(a) "Indian tribe" means that term as defined in section 3306(u) of the federal unemployment tax act, chapter 23 of subtitle C of the internal revenue code of 1986, 26 U.S.C. 3306.

(b) "Tribal unit" includes any subdivision, subsidiary, or business enterprise, wholly owned by an Indian tribe.

History: Add. 2002, Act 192, Imd. Eff. Apr. 26, 2002.

421.13m

421.13m Professional employer organization; determination of status as liable employer; reporting of wage and payment of unemployment contributions; requirements; act or omission ocurring before January 1, 2011; "professional employer organization" defined.

Sec. 13m (1) A professional employer organization that has not previously filed shall file a report with the agency in accordance with R 421.121 and R 421.190 of the Michigan administrative code for a determination of its status as a liable employing unit and employer under this act. A PEO determined to be a liable employer shall complete an electronic employer registration in the manner approved by the agency to register its employer liability.

(2) Except as provided in subdivision (b), a PEO that is a liable employer shall use the following method for reporting wages and paying unemployment contributions under this act:

(a) The PEO shall comply with all requirements of this act that apply to a contributing employer. The PEO shall file a single quarterly wage report and unemployment contribution report and pay contributions of its client employers based on the account information of each client employer. The unemployment agency shall convert a reimbursing employer to a contributing employer beginning with the calendar quarter in which the employer becomes a client employer of a PEO. The PEO shall file reports required under R 421.121 of the Michigan administrative code and make contribution payments by electronic reporting and payment methods approved by the agency. The PEO shall notify the agency within 30 days after any employer becomes its client employer and within 30 days after any client employer discontinues its association with the PEO. All of the following apply to a rate calculation for client employers of the PEO:

(i) For a client employer that is a contributing employer and was a client employer of the PEO on the date that the PEO changed to the reporting method provided in this subdivision, the following rates apply:

(A) Except as provided in sub-subparagraphs (B) and (C), if the client employer reported no employees or no payroll to the agency for 8 or more calendar quarters or, beginning January 1, 2014, for 12 or more calendar quarters, the client employer's unemployment tax rate will be the new employer tax rate.

(B) If the client employer was a client employer of the PEO for less than 8 calendar quarters or, beginning January 1, 2014, for less than 12 calendar quarters, the client employer's unemployment tax rate will be based on the client employer's prior account and experience.

(C) If the client employer's account has been terminated for more than 1 year or if the client employer never previously registered with the agency, the client shall be separately registered using a method approved by the agency within 30 days after the employer becomes a client employer of the PEO. The client employer shall be assigned the new employer unemployment tax rate.

(ii) A business entity that is a contributing employer and becomes a client employer of the PEO on or after January 1, 2011 shall retain its existing unemployment tax rate or establish a new rate as provided in section 19.

(b) A PEO that is a liable employer and that was operating in this state before January 1, 2011 may elect and use the reporting method in subdivision (a) before January 1, 2014, but shall report using the method in subdivision (a) on and after January 1, 2014.

(3) A PEO that is a liable employer is the employer for purposes of claims management and hearings under this act on behalf of the client employer.

(4) A PEO that reports under subsection (2)(a) shall confirm the mailing address of the client employer, which may be stated as that of the PEO or of the client employer. The PEO shall disclose the business address of the client employer, which shall be the physical address of the client employer, to the agency.

(5) Either the PEO that reports under subsection (2)(a) or the PEO's client employers, but not both, shall file a quarterly wage detail report electronically, and shall file a quarterly contribution payment in a manner approved by the agency. If a client entity of a PEO leases some of its employees from the PEO but retains the remainder of its employees, the leased employees shall be reported by the PEO under the client entity's unemployment insurance agency account number and the retained employees shall be reported by the client entity under an agency-assigned subaccount number of the client entity's account number.

(6) The agency shall issue a FUTA certification in accordance with the internal revenue code of 1986, 26 USC 1 to 9834, and regulations, rulings, instructions, and directives of the internal revenue service.

(7) The requirements of this section do not preclude the agency from enforcing any provision of this act based on any act or omission by a PEO that occurred before January 1, 2011.

(8) As used in this section, “professional employer organization” or “PEO” means that term as defined in R 421.190(1)(d) of the Michigan administrative code.

History: Add. 2010, Act 383, Imd. Eff. Jan. 1, 2011-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011-Am. 2012, Act 219, Imd. Eff. June 28, 2012.

421.14 Employing unit as employer and services as employment; determinations; notice; review and redetermination; collection of contributions; retroactive determination; introduction of determination, redetermination, or decision in proceeding involving claim for benefits.

Sec. 14. The commission, after affording reasonable opportunity for the submission of relevant information in writing or in person, may make determinations with respect to whether an employing unit constitutes an employer and whether services performed for or in connection with the business of an employing unit constitute employment for that employing unit subject to this act. The employing unit, or other interested parties, which may include an individual who is or was employed by that employing unit, on his or her request, shall be promptly notified of the determination and the reasons for the determination. The determination shall be final as to those parties unless the employing unit or other interested parties files an application for a review and redetermination in accordance with section 32a or, within 30 days after the mailing or personal service of the notice of determination, pays under protest the amount charged or found to be due as contributions. If evidence is presented indicating that an employing unit which has been determined not to be an employer is or was actually an employer, or that services which have been held not to constitute employment are or were actually employment, the previous determination shall be reopened and reconsidered by the commission in accordance with section 32a and a redetermination made as the facts and law require; but in the absence of fraud, if the employing unit is finally found to constitute an employer or to be liable for contributions with respect to services previously held nonsubject, contributions with respect to those services shall not be collectible for any period before the first day of the last completed calendar year preceding the reopening of the determination. In the absence of fraud, an individual, legal entity, or employing unit shall not be retroactively determined to be an employer for any period before the 3 calendar years preceding the issuance of the determination.

A determination or redetermination of the commission, or a decision of a referee or the appeal board, or of the courts of this state, which has become final, together with the record thereof, may be introduced in any proceeding involving a claim for benefits and the facts therein found and the determination, redetermination, or decision therein made shall be conclusive unless substantial evidence to the contrary is introduced by or on behalf of the claimant.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;-- Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937;-- Am. 1939, Act 324, Imd. Eff. June 22, 1939;-- Am. 1941, Act 364, Imd. Eff. July 1, 1941;-- CL 1948, 421.14;-- Am. 1951, Act 251, Imd. Eff. June 17, 1951;-- Am. 1955, Act 281, Eff. July 15, 1955;-- Am. 1965, Act 281, Eff. Sept. 5, 1965;-- Am. 1975, Act 110, Eff. June 8, 1975;-- Am. 1983, Act 164, Eff. Oct. 1, 1983.

421.15 Delinquent contributions.

Sec. 15. (a) Contributions unpaid on the date on which they are due and payable, as prescribed by the unemployment agency, and unpaid restitution of benefit overpayments shall bear interest at the rate of 1% per month, computed on a day-to-day basis for each day the delinquency is unpaid, from and after that date until payment plus accrued interest is received by the unemployment agency. The interest on unpaid contributions and on unpaid benefit overpayments, exclusive of penalties, shall not exceed 50% of the amount of contributions due at due date or 50% of the amount of restitution owing. Nothing in this act authorizes the assessment or collection of interest on a penalty imposed under this act. Interest and penalties collected pursuant to this section shall be paid into the contingent fund. The unemployment agency may cancel any interest and any penalty when it is shown that the failure to pay on or before the last day on which the tax could have been paid without interest and penalty was not the result of negligence, intentional disregard of the rules of the unemployment agency, or fraud.

(b) The unemployment agency may make assessments against an employer, claimant, employee of the unemployment agency, or third party who fails to pay contributions, restitution of benefit overpayments, reimbursement payments in lieu of contributions, penalties, forfeitures, or interest as required by this act. The unemployment agency shall immediately notify the employer, claimant, employee of the unemployment agency, or third party of the assessment in writing by first-class mail. An assessment by the unemployment agency against a claimant, an employee of the unemployment agency, or a third party under this subsection shall be made only for penalties for violations of section 54(a) or (b) or sections 54a to 54c. The assessment is a final determination unless the employer, claimant, employee of the unemployment agency, or third party files with the unemployment agency an application for a redetermination of the assessment in accordance with section 32a. A review by the unemployment agency or an appeal to an administrative law judge or the Michigan compensation appellate commission on the assessment

does not reopen a question concerning an employer's liability for contributions or reimbursement payments in lieu of contributions or a claimant's entitlement to benefits, unless the claimant or employer was not a party to the proceeding or decision where the basis for the assessment was determined. An employer may pay an assessment under protest and file an action to recover the amount paid as provided under subsection (d). Unless an assessment is paid within 15 days after it becomes final the unemployment agency may issue a warrant under its official seal for the collection of the assessed amount. The unemployment agency through its authorized employees, under a warrant issued, may place a lien on any bank account of the claimant or employer and may levy upon and sell the property of the employer that is used in connection with the employer's business, or that is subject to a notice to withhold, found within the state, for the payment of the amount of the contributions including penalties, interests, and the cost of executing the warrant. Property of the employer used in connection with the employer's business is not exempt from levy under the warrant. Wages subject to a notice to withhold are exempt to the extent the wages are exempt from garnishment under the laws of this state. The warrant shall be returned to the unemployment agency together with the money collected under the warrant within the time specified in the warrant which shall not be less than 20 or more than 90 days after the date of the warrant. The unemployment agency shall proceed upon the warrant as prescribed by law in respect to executions issued against property upon judgments by a court of record. The state, through the unemployment agency or some other officer or agent designated by it, may bid for and purchase property sold under the provisions of this subsection. If an employer, claimant, employee of the unemployment agency, or third party, as applicable, is delinquent in the payment of a contribution, reimbursement payment in lieu of contribution, penalty, forfeiture, or interest provided for in this act, the unemployment agency may give notice of the amount of the delinquency served either personally or by mail, to a person or legal entity, including the state and its subdivisions, that has in its possession or under its control a credit or other intangible property belonging to the employer, claimant, employee of the unemployment agency, or third party, or who owes a debt to the employer, claimant, employee of the unemployment agency, or third party at the time of the receipt of the notice. A person or legal entity so notified shall not transfer or dispose of the credit, other intangible property, or debt without retaining an amount sufficient to pay the amount specified in the notice unless the unemployment agency consents to a transfer or disposition or 45 days have elapsed from the receipt of the notice. A person or legal entity so notified shall advise the unemployment agency within 5 days after receipt of the notice of a credit, other intangible property, or debt, which is in its possession, under its control, or owed by it. A person or legal entity that is notified and that transfers or disposes of credits or personal property in violation of this section is liable to the unemployment agency for the value of the property or the amount of the debts thus transferred or paid, but not more than the amount specified in the notice. An amount due a delinquent employer, claimant, employee of the unemployment agency, or third party subject to a notice to withhold shall be paid to the unemployment agency upon service upon the debtor of a warrant issued under this section.

(c) In addition to the mode of collection provided in subsection (b), if, after due notice, an employer defaults in payment of contributions or interest on the contributions, or a claimant, employee of the unemployment agency, or third party defaults in the payment of a penalty or interest on a penalty, the unemployment agency may bring an action at law in a court of competent jurisdiction to collect and recover the amount of a contribution, and any interest on the contribution, or the penalty or interest on the penalty, and in addition 10% of the amount of contributions or penalties found to be due, as damages. An employer, claimant, employee of the unemployment agency, or third party adjudged in default shall pay costs of the action. An action by the unemployment agency against a claimant, employee of the unemployment agency, or third party under this subsection shall be brought only to recover penalties and interest on those penalties for violations of section 54(a) or (b) or sections 54a to 54c. Civil actions brought under this section shall be heard by the court at the earliest possible date. If a judgment is obtained against an employer for contributions and an execution on that judgment is returned unsatisfied, the employer may be enjoined from operating and doing business in this state until the judgment is satisfied. The circuit court of the county in which the judgment is docketed or the circuit court for the county of Inham may grant an injunction upon the petition of the unemployment agency. A copy of the petition for injunction and a notice of when and where the court shall act on the petition shall be served on the employer at least 21 days before the court may grant the injunction.

(d) An employer or employing unit improperly charged or assessed contributions provided for under this act, or a claimant, employee of the unemployment agency, or third party improperly assessed a penalty under this act and who paid the contributions or penalty under protest within 30 days after the mailing of the notice of determination of assessment, may recover the amount improperly collected or paid, together with interest, in any proper action against the unemployment agency. The circuit court of the county in which the employer or employing unit or claimant, employee of the unemployment agency, or third party resides, or, in the case of an employer or employing unit, in which is located the principal office or place of business of the employer or employing unit, has original jurisdiction of an action to recover contributions improperly paid or collected or a penalty improperly assessed whether or not the charge or assessment has been reviewed by the unemployment agency or heard or reviewed by an administrative law judge or the Michigan compensation appellate commission. The court has no jurisdiction of the action unless

written notice of claim is given to the unemployment agency at least 30 days before the institution of the action. In an action to recover contributions paid or collected or penalties assessed, the court shall allow costs it considers proper. Either party to the action has the right of appeal as is now provided by law in other civil actions. An action by a claimant, employee of the unemployment agency, or third party against the unemployment agency under this subsection shall be brought only to recover penalties and interest on those penalties improperly assessed by the unemployment agency under section 54(a) or (b) or sections 54a to 54c. If a final judgment is rendered in favor of the plaintiff in an action to recover the amount of contributions illegally collected or charged, the treasurer of the unemployment agency, upon receipt of a certified copy of the final judgment, shall pay the amount of contributions illegally collected or charged or penalties assessed from the clearing account, and pay interest as allowed by the court, in an amount not to exceed the actual earnings of the contributions as found to have been illegally collected or charged, from the contingent fund.

(e) Except for liens and encumbrances recorded before the filing of the notice provided for in this section, all contributions, interest, and penalties payable under this act to the unemployment agency from an employer, claimant, employee of the unemployment agency, or third party that neglects to pay the same when due are a first and prior lien upon all property and rights to property, real and personal, belonging to the employer, claimant, employee of the unemployment agency, or third party. The lien continues until the liability for that amount or a judgment arising out of the liability is satisfied or becomes unenforceable by reason of lapse of time. The lien attaches to the property and rights to property of the employer, claimant, employee of the unemployment agency, or third party, whether real or personal, from and after the required filing date of the report upon which the specific tax is computed. Notice of the lien shall be recorded in the office of the register of deeds of the county in which the property subject to the lien is situated, and the register of deeds shall receive the notice for recording. Notice of the lien may also be filed with the secretary of state in accordance with the state tax lien registration act, 1968 PA 203, MCL 211.681 to 211.687. This subsection applies only to penalties and interest on those penalties assessed by the unemployment agency against a claimant, employee of the unemployment agency, or third party for violations of section 54(a) or (b) or sections 54a to 54c.

If there is a distribution of an employer's assets pursuant to an order of a court under the laws of this state, including a receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full before all other claims except for wages and compensation under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941. In the distribution of estates of decedents, claims for funeral expenses and expenses of last sickness shall also be entitled to priority.

(f) An injunction shall not issue to stay proceedings for assessment or collection of contributions, or interest or penalty on contributions, levied and required by this act.

(g) A person or employing unit that acquires the organization, trade, business, or 75% or more of the assets from an employing unit, as a successor described in section 41(2), is liable for contributions and interest due to the unemployment agency from the transferor at the time of the acquisition in an amount not to exceed the reasonable value of the organization, trade, business, or assets acquired, less the amount of a secured interest in the assets owned by the transferee that are entitled to priority. The transferor or transferee who has, not less than 10 days before the acquisition, requested from the unemployment agency in writing a statement certifying the status of contribution liability of the transferor shall be provided with that statement and the transferee is not liable for any amount due from the transferor in excess of the amount of liability computed as prescribed in this subsection and certified by the unemployment agency. At least 2 calendar days not including a Saturday, Sunday, or legal holiday before the acceptance of an offer, the transferor, or the transferor's real estate broker or other agent representing the transferor, shall disclose to the transferee on a form provided by the unemployment agency, the amounts of the transferor's outstanding unemployment tax liability, unreported unemployment tax liability, and the tax payments, tax rates, and cumulative benefit charges for the most recent 5 years, a listing of all individuals currently employed by the transferor, and a listing of all employees separated from employment with the transferor in the most recent 12 months. This form shall specify any other information the unemployment agency determines is required for a transferee to estimate future unemployment compensation costs based on the transferor's benefit charge and unemployment tax reporting and payment experience. Failure of the transferor, or the transferor's real estate broker or other agent representing the transferor, to provide accurate information required by this subsection is a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than $2,500.00, or both. In addition, the transferor, or the transferor's real estate broker or other agent representing the transferor, is liable to the transferee for any consequential damages resulting from the failure to comply with this subsection. However, the real estate broker or other agent is not liable for consequential damages if he or she exercised good faith in compliance with the disclosure of information. The remedy provided the transferee is not exclusive, and does not reduce any other right or remedy against any party provided for in this or any other act. Nothing in this subsection decreases the liability

of the transferee as a successor in interest, or prevents the transfer of a rating account balance as provided in this act. The foregoing provisions are in addition to the remedies the unemployment agency has against the transferor.

(h) If a part of a deficiency in payment of the employer's contribution to the fund is due to negligence or intentional disregard of unemployment agency rules, but without intention to defraud, 5% of the total amount of the deficiency, in addition to the deficiency and all other interest charges and penalties provided herein, shall be assessed, collected, and paid in the same manner as a deficiency. If a part of a deficiency is determined in an action at law to be due to fraud with intent to avoid payment of contributions to the fund, then the judgment rendered shall include an amount equal to 50% of the total amount of the deficiency, in addition to the deficiency and all other interest charges and penalties provided herein.

(i) If an employing unit fails to make a report as reasonably required by the rules of the unemployment agency pursuant to this act, the unemployment agency may estimate the liability of that employing unit from information it obtains and, according to that estimate, assess the employing unit for the contributions, penalties, and interest due. The unemployment agency may act under this subsection only after a default continues for 30 days and after the unemployment agency has determined that the default of the employing unit is willful.

(j) An assessment or penalty with respect to contributions unpaid is not effective for any period before the 3 calendar years preceding the date of the assessment.

(k) The rights respecting the collection of contributions and the levy of interest and penalties and damages made available to the unemployment agency by this section are additional to other powers and rights vested in the unemployment agency under other provisions of this act. The unemployment agency may exercise any of the collection remedies under this act even though an application for a redetermination or an appeal is pending final disposition.

(l) A person recording a lien under this section shall pay a fee of $2.00 for recording a lien and a fee of $2.00 for recording a discharge of a lien.

(m) In addition to the restitution recoupment methods in section 62, the unemployment agency may obtain restitution due from a claimant as a result of a benefit overpayment that has become final by any of the following methods:

(1) Levy of a bank account belonging to the claimant.

(2) Entry into a wage assignment with the claimant.

(3) Issuing an administrative garnishment of the wages of the claimant.

(n) To obtain an administrative garnishment, the unemployment agency shall notify the claimant of both of the following: the intention to issue an administrative garnishment on the claimant's employer and the amount determined to be due from the claimant. The notice shall include a demand for immediate payment of the amount due, a statement that it is not subject to appeal, and a statement that the claimant may, within 30 days of the issuance of the notice, object to the garnishment by providing information to the agency, with supporting documentation, that the claimant does not owe the stated amount of restitution. Not less than 30 days after issuing the notice to the claimant, the unemployment agency shall notify the claimant's employer to withhold from earnings due or to become due from the claimant the amount shown on the notice plus accrued interest. The employer shall comply with the notice to withhold and shall continue to withhold each pay period the amount shown on the notice plus accrued interest until the garnishment amount plus accrued interest has been satisfied and the notice is released by the unemployment agency. The unemployment agency's administrative garnishment has priority over any subsequent garnishment or wage assignment. The amount subject to garnishment for any pay period shall be decreased by any other irrevocable and previously effective assignment of wages or other garnishment action served on the employer before service of the agency's garnishment notice. The amount of the agency's garnishment shall not exceed 25% of the balance. In response to the administrative garnishment, the employer shall do all of the following:

(1) Within 10 calendar days of the date of the agency's notice to withhold wages, notify the agency of the amount of any irrevocable and previously effective assignment of wages or garnishment actions.

(2) Within 10 days after the end of each pay period in which wages are required to be withheld under the administrative garnishment, remit to the agency the amount withheld pursuant to the administrative garnishment.

(3) Within 10 days after the date on which the claimant ceases to be employed by the employer, notify the agency.

(o) Before payment of a prize of $1,000.00 or more under the McCauley-Traxler-Law-Bowman-McNeeley lottery act, 1972 PA 239, MCL 432.1 to 432.47, the bureau of state lottery shall determine whether a lottery prize

winner has a current liability for restitution of unemployment benefits, penalty, or interest, assessed by the unemployment insurance agency and the amount of the prize owing to the unemployment insurance agency and shall remit that amount to the unemployment insurance agency.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1943, Act 246, Imd. Eff. June 1, 1943-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.15-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1957, Act 311, Imd. Eff. June 21, 1957-Am. 1959, Act 131, Imd. Eff. July 8, 1959-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1974, Act 104, Eff. June 9, 1974-Am. 1975, Act 110, Eff. June 8, 1975-Am. 1983, Act 164, Eff. Oct. 1, 1983-Am. 1989, Act 228, Eff. Apr. 2, 1990-Am. 1991, Act 7, Eff. Apr. 1, 1992-Am. 1996, Act 498, Imd. Eff. Jan. 9, 1997-Am. 2011, Act 14, Imd. Eff. Mar. 29, 2011-Am. 2011, Act 269, Eff. Dec. 19, 2011.

Cited in other sections: Section 421.15 is cited in §600.2567a.

421.15a Apportioned quarterly payments; interest on contribution obligation not required; failure to make payment.

Sec. 15a. (1) The unemployment agency shall not collect interest on a contribution obligation that an employer pays through apportioned quarterly payments, if the employer meets the requirements of section 13(3) and has remitted the following amounts or more each quarter by the date established for each quarterly filing:

(a) First quarter - 25% of the total obligation incurred in the first quarter.

(b) Second quarter - the obligation incurred in the second quarter plus 25% of the total obligation for the first quarter.

(c) Third quarter - the obligation incurred in the third quarter plus 25% of the total obligation for the first quarter.

(d) Fourth quarter - the obligation incurred in the fourth quarter plus 25% of the total obligation for the first quarter.

(2) If an employer fails in any quarter to pay in full, by the due date of the tax payment for that quarter, the percentage of the tax deferred from the first quarter as described in subsection (1), the unemployment agency may collect interest at the rate specified in section 15 on the amount of the deferred tax that is due in that quarter and unpaid.

History: Add. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.15b Repealed. 1951, Act 251, Imd. Eff. June 17,1951.

Compiler's note: The repealed sections provided for legal representation of state and commission by attorney general, and for fees for registering certain liens and recording the discharge thereof.

421.16 Adjustment or refund of contributions or interest.

Sec. 16. If not later than 3 years after the date of payment of any amount as contributions or interest thereon, an employing unit which has paid such amount shall make application for an adjustment or refund thereof the commission shall determine whether such contributions or interest or any portion thereof was erroneously collected; and the employing unit shall be promptly notified of such determination, which shall become final unless the employing unit files with the commission an application for redetermination thereof in accordance with the provisions of section 32a. If it is finally determined, redetermined or otherwise decided that any amount thus at issue was erroneously collected, the commission shall allow such employing unit to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him. If the adjustment cannot be made within the ensuing 3 months the commission shall refund the amount, without interest, from the appropriate fund or funds. For like cause, in the same manner, and within the same period, adjustment or refund may be made by the commission on its own initiative. When the individual owner of an employing unit who is entitled to a refund dies or is legally declared insane or mentally incompetent, the refund shall become due and payable to the person who appears to the commission upon investigation to be the legal heir or guardian of the individual owner, or to any other person found by the commission to be equitably entitled to the refund by reason of having incurred expenses in behalf of the individual owner for his burial or other necessary expenses.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;-- Am. 1941, Act 364, Imd. Eff. July 1, 1941;-- Am. 1947, Act 360, Imd. Eff. July 8, 1947;--CL 1948, 421.16;-- Am. 1951, Act 251, Imd. Eff. June 17, 1951;-- Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972.

421.17 Nonchargeable benefits account; experience account; pooling of contributions; credits.

Sec. 17 (1) The unemployment agency shall maintain in the unemployment compensation fund a nonchargeable benefits account and a separate experience account for each employer as provided in this section. This act does not give an employer or individuals in the employer's service prior claims or rights to the amount paid by the employer to the unemployment compensation fund. All contributions to that fund shall be pooled and available to pay benefits to any individual entitled to the benefits under this act, irrespective of the source of the contributions.

(2) The nonchargeable benefits account shall be credited with the following:

(a) All net earnings received on money, property, or securities in the fund.

(b) Any positive balance remaining in the employer's experience account as of the second June 30 computation date occurring after the employer has ceased to be subject to this act or after the employer has elected to change from a contributing employer to a reimbursing employer.

(c) The proceeds of the nonchargeable benefits component of employers' contribution rates determined as provided in section 19(a)(5).

(d) All reimbursements received under section 11(c).

(e) All amounts that may be paid or advanced by the federal government under section 903 or section 1201 of the social security act, 42 USC 1103 and 1321, to the account of the state in the federal unemployment trust fund.

(f) All benefits improperly paid to claimants that have been recovered and that were previously charged to an employer's account.

(g) Any benefits forfeited by an individual by application of section 62(b).

(h) The amount of any benefit check, any employer refund check, any claimant restitution refund check, or other payment duly issued that has not been presented for payment within 1 year after the date of issue.

(i) Any other unemployment fund income not creditable to the experience account of any employer.

(j) Any negative balance transferred to an employer's new experience account pursuant to this section.

(k) Amounts transferred from the contingent fund under section 10.

(3) The nonchargeable benefits account shall be charged with the following:

(a) Any negative balance remaining in an employer's experience account as of the second June 30 computation date occurring after the employer has ceased to be subject to this act or has elected to change from a contributing employer to a reimbursing employer.

(b) Refunds of amounts erroneously collected due to the nonchargeable benefits component of an employer's contribution rate.

(c) All training benefits paid under section 27(g) not reimbursable by the federal government and based on service with a contributing employer.

(d) Any positive balance credited or transferred to an employer's new experience account under this subsection.

(e) Repayments to the federal government of amounts advanced by it under section 1201 of the social security act, 42 USC 1321, to the unemployment compensation fund established by this act.

(f) The amounts received by the unemployment compensation fund under section 903 of the social security act, 42 USC 1103, that may be appropriated to the unemployment agency in accordance with subsection (8).

(g) All benefits determined to have been improperly paid to claimants that have been credited to employers' accounts in accordance with section 20(a).

(h) The amount of any substitute check or other payment issued to replace an uncashed benefit check, employer refund check, claimant restitution refund check, or other payment previously credited to this account.

(i) The amount of any benefit check or other payment issued that would be chargeable to the experience account of an employer who has ceased to be subject to this act, and who has had a balance transferred from the employer's experience account to the solvency or nonchargeable benefits account.

(j) All benefits that become nonchargeable to an employer under section 19(b) or (c), 29(1)(a)*(ii)* or *(iii)* or (3), or 42a.

(k) For benefit years beginning before October 1, 2000, with benefits allocated under section 20(e)(2) for a week of unemployment in which a claimant earns remuneration with a contributing employer that equals or exceeds

the amount of benefits allocated to that contributing employer, and for benefit years beginning on or after October 1, 2000, with benefits allocated under section 20(f) for a week of unemployment in which a claimant earns remuneration with a contributing employer that equals or exceeds the amount of benefits allocated to that contributing employer.

(l) Benefits that are nonchargeable to an employer's account in accordance with section 20(i) or (j).

(m) Benefits otherwise chargeable to the account of an employer when the benefits are payable solely on the basis of combining wages paid by a Michigan employer with wages paid by a non-Michigan employer under the interstate arrangement for combining employment and wages under 20 CFR 616.1 to 616.11.

(4) All contributions paid by an employer shall be credited to the unemployment compensation fund, and, except as otherwise provided with respect to the proceeds of the nonchargeable benefits component of employers' contribution rates by section 19(a)(5), to the employer's experience account, as of the date when paid. However, those contributions paid during any July shall be credited as of the immediately preceding June 30. Additional contributions paid by an employer as the result of a retroactive contribution rate adjustment, solely for the purpose of this subsection, shall be credited to the employer's experience account as if paid when due, if the payment is received within 30 days after the issuance of the initial assessment that results from the contribution rate adjustment and a written request for the application is filed by the employer during this period.

(5) If an employer who has ceased to be subject to this act, and who has had a positive or negative balance transferred as provided in subsection (2) or (3) from the employer's experience account to the solvency or nonchargeable benefits account as of the second computation date after the employer has ceased to be subject to this act, becomes subject to this act again within 6 years after that computation date, the unemployment agency shall transfer the positive or negative balance, adjusted by the debits and credits that are made after the date of transfer, to the employer's new experience account.

(6) If an employer's status as a reimbursing employer is terminated within 6 years after the date the employer's experience account as a prior contributing employer was transferred to the solvency or nonchargeable benefits account as provided in subsection (2) or (3) and the employer continues to be subject to this act as a contributing employer, any positive or negative balance in the employer's experience account as a prior contributing employer, which was transferred to the solvency or nonchargeable benefits account, shall be transferred to the employer's new experience account. However, an employer who is delinquent with respect to any reimbursement payments in lieu of contributions for which the employer may be liable shall not have a positive balance transferred during the delinquency.

(7) If a balance is transferred to an employer's new account under subsection (5) or (6), the employer shall not be considered a "qualified employer" until the employer has again been subject to this act for the period set forth in section 19(a)(1).

(8) All money credited under section 903 of the social security act, 42 USC 1103, to the account of the state in the federal unemployment trust fund shall immediately be credited by the unemployment agency to the fund's nonchargeable benefits account. There is authorized to be appropriated to the unemployment agency from the money credited to the nonchargeable benefits account under this subsection, an amount determined to be necessary for the proper and efficient administration by the unemployment agency of this act for purposes for which federal grants under title 3 of the social security act, 42 USC 501 to 504, and the Wagner-Peyser act, 29 USC 49 to 49l-2, are not available or are insufficient. The appropriation shall expire not more than 2 years after the date of enactment and shall provide that any unexpended balance shall then be credited to the nonchargeable benefits account. An appropriation shall not be made under this subsection for an amount that exceeds the "adjusted balance" of the nonchargeable benefits account on the most recent computation date. Appropriations made under this subsection shall limit the total amount that may be obligated by the unemployment agency during a fiscal year to an amount that does not exceed the amount by which the aggregate of the amounts credited to the nonchargeable benefits account under this subsection during the fiscal year and the 24 preceding fiscal years, exceeds the aggregate of the amounts obligated by the unemployment agency by appropriation under this subsection and charged against the amounts thus credited to the nonchargeable benefits account during any of the 25 fiscal years and any amounts credited to the nonchargeable benefits account that have been used for the payment of benefits.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.17-Am. 1954, Act 197, Imd. Eff. May 7, 1954-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1957, Act 311, Imd. Eff. June 21, 1957-Am. 1963, Act 226, Eff. Sept. 6, 1963-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1967, Act 254, Imd. Eff. July 19, 1967-Am. 1968, Act 338, Imd. Eff. July 19, 1968-Am. 1970, Act 14, Imd. Eff. Apr. 14, 1970-Am. 1970, Act 128, Imd. Eff. July 27, 1970-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1974, Act 104, Eff. June 9, 1974-Am. 1977, Act 155, Imd. Eff. Nov. 8, 1977-Am. 1980, Act 388, Imd. Eff. Jan. 6, 1981-Am. 1982, Act 535, Eff. Jan. 2, 1983-Am. 1994, Act 162, Imd. Eff. June 17, 1994-Am. 1996, Act 535, Imd. Eff. Jan. 13, 1997-Am. 2003, Act 174, Imd. Eff. Aug. 14, 2003; -Am. 2009, Act 18, Imd. Eff. Apr. 13, 2009-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.18 Definitions.

Sec. 18. As used in this act:

(a) "Computation date" means June 30 of each year.

(b) "Balance" means:

(1) As applied to an employer's experience account or to the nonchargeable benefits account, the initial balance of that account plus the credits and minus the charges that are made in accordance with this act. A "negative balance" in an experience account exists when its balance is a minus quantity.

(2) As applied to the fund, the sum obtained by adding the total money received by the fund through the date in question plus interest earnings credited to the fund by the United States treasury as of or before that date, and subtracting:

(i) Amounts received by the fund from the federal government as advances to pay benefits under a federal act but not used as yet for that purpose.

(ii) Advances made to the fund by the federal government under section 1201 of the social security act, 42 U.S.C. 1321, that have not been repaid to, canceled, or recovered by the federal government.

(iii) Amounts that may have been appropriated by the legislature in accordance with section 903(c)(2) of the social security act, 42 U.S.C. 1103(c)(2).

(iv) All disbursements from the fund.

(c) "Adjusted balance", as applied to the nonchargeable benefits account, means the balance of that account minus its contingent liabilities, namely, the amount of advances made to the fund by the federal government under section 1201 of the social security act, 42 U.S.C. 1321, that have not been repaid to, canceled, or recovered by the federal government, and the total amount of negative balances in employer experience accounts.

(d) (1) The "experience component" of an employer's contribution rate means the sum of the employer's chargeable benefits and account building components.

(2) If at least 1 but fewer than all of the applicable quarterly reports of wages and contributions due with respect to the 12 month period ending on the computation date have been filed by an employer, the employer's experience component shall be set so that his or her contribution rate for the calendar year affected shall be the rate set in accordance with section 19(a), and in addition a penalty of 3% of wages paid to an individual with respect to employment, subject to the taxable wage limit, shall be imposed on the employer. The commission shall calculate the rate using the information filed by the employer for the quarter or quarters reported. If none of the applicable quarterly reports of wages and contributions due with respect to the 12 month period ending on the computation date have been filed by an employer, the employer's experience component shall be set so that the employer's contribution rate for the calendar year affected shall be not less than the highest rate applicable to the number of years of the employer's contribution liability in accordance with section 19(a), and in addition a penalty of 3% of wages paid to an individual with respect to employment, subject to the taxable wage limit, shall be imposed on the employer. An employer whose contribution rate and penalty have been determined under this section may have his or her contribution rate redetermined in accordance with section 19(a) and may have his or her penalty redetermined and removed if the employer files all of the missing reports not later than 30 days after the date of mailing of the notice of determination of contribution rate. An employer who files all of the missing reports after the 30 days but not later than 1 year after the date of mailing of the determination of contribution rate and penalty shall have his or her contribution rate redetermined in accordance with section 19(a) and shall have his or her penalty redetermined to 2%. However, if the commission finds that the employer had good cause for filing the missing reports after the 30 day period but within 1 year, the commission shall redetermine the employer's contribution rate in accordance with section 19(a) and shall redetermine and remove the penalty. The commission may by rule prescribe good cause reasons for removing the penalty. Notwithstanding section 32a, if the employer files all of the missing reports after 1 year, good cause shall not be considered, but the employer's contribution rate shall be redetermined in accordance with section 19(a) and the employer's penalty shall remain at 3%. A penalty paid by an employer pursuant to this section shall not be credited to the employer's experience account nor to the unemployment compensation fund. The penalty shall be credited to the interest and penalty account of the contingent fund. A contribution rate for a tax year may not be redetermined under this subsection if the missing reports for that year are received more than 3 years after the rate determination for the year is issued with respect to taxable years beginning on or after January 1, 1991.

(e) (1) "Cost criterion" means the number arrived at as of each computation date through the following calculations:

(i) With respect to each period of 12 consecutive months starting after 1956, calculate the percentage ratio of the benefits paid during the 12 months to the aggregate amount of the payrolls paid by employers within the most recent calendar year completed before the start of the 12-month period.

(ii) Select the largest percentage ratio, which is referred to as the "cost criterion", to be used as of that computation date.

(2) For purposes of this subsection, "benefits" do not include benefits paid under a federal law or that are reimbursable or have been reimbursed by the federal government, and "payroll" does not include remuneration paid by this state and other employers who make reimbursement payments instead of contributions.

(f) "Payroll" means remuneration paid by a contributing employer for employment.

(g) Notwithstanding the definition of "balance" as applied to the fund and of "adjusted balance" as applied to the nonchargeable benefits account by subsections (b) and (c), if the federal unemployment tax act, 26 U.S.C. 3301 to 3311 or the social security act, 42 U.S.C. 301 to 1397e, is amended to cancel the liability of employers in this state to pay additional federal unemployment taxes under the reduced credit provisions of section 3302(c) of the federal unemployment tax act, 26 U.S.C. 3302(c), otherwise applicable to the then unpaid balance of money advanced to the Michigan unemployment fund since 1974, the amount of that part of the unpaid balance shall be included in the balance of the unemployment fund and in the adjusted balance of the nonchargeable benefits account.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1945, Act 335, Imd. Eff. May 29, 1945-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.18-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1954, Act 197, Imd. Eff. May 7, 1954-Am. 1957, Act 311, Imd. Eff. June 21, 1957-Am. 1963, Act 226, Eff. Sept. 6, 1963-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1968, Act 338, Imd. Eff. July 19, 1968-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1975, Act 110, Eff. June 8, 1975-Am. 1977, Act 155, Imd. Eff. Nov. 8, 1977-Am. 1983, Act 164, Eff. Oct. 1, 1983-Am. 1993, Act 296, Eff. Dec. 31, 1993.

421.19 Contribution rate of contributing employer; determination; reserve fund balance of reorganized employer; distressed employer; irrevocability of excess payments to experience account.

Sec. 19. (a) The commission shall determine the contribution rate of each contributing employer for each calendar year after 1977 as follows:

(1)*(i)* Except as provided in paragraph *(ii),* an employer's rate shall be calculated as described in table A, A-1, or A-2 with respect to wages paid by the employer in each calendar year for employment. If an employer's coverage is terminated under section 24, or at the conclusion of 12 or more consecutive calendar quarters during which the employer has not had workers in covered employment, and if the employer again becomes liable for contributions, the employer shall be considered as newly liable for contributions for the purposes of the tables in this subsection. An employer that becomes liable under section 41(2) will not be assigned the new employer rate but instead the employer's most recent prior rate as a predecessor employer will be assigned to its new account.

(ii) To provide against the high risk of net loss to the fund in such cases, an employing unit that becomes newly liable for contributions under this act in a calendar year beginning on or after January 1, 1983 in which it employs in "employment", not necessarily simultaneously but in any 1 week 2 or more individuals in the performance of 1 or more contracts or subcontracts for construction in the state of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing developments, or similar construction projects, shall be liable for contributions to that employer's account under this act for the first 4 years of operations in this state at a rate equal to the average rate paid by employers engaged in the construction business as determined by contractor type in the manner provided in table B, B-1, or B-2.

For an employer that was a contributing employer before January 1, 2012 and did not convert from a reimbursing to a contributing employer on or after January 1, 2012, the following tables apply:

TABLE A

Year of Contribution Liability	Contribution Rate
1	2.7%
2	2.7%
3	1/3 (chargeable benefits component) + 1.8%
4	2/3 (chargeable benefits component) + 1.0%
5 and over	(chargeable benefits component) + (account building component) + (nonchargeable benefits component)

TABLE B

Year of Contribution Liability	Contribution Rate
1	Average construction contractor rate as determined by the commission
2	Average construction contractor rate as determined by the commission
3	1/3 (chargeable benefits component) + 2/3 average construction contractor rate as determined by the commission
4	2/3 (chargeable benefits component) + 1/3 average construction contractor rate as determined by the commission
5 and over	(chargeable benefits component) + (account building component) + (nonchargeable benefits component)

For an employer that becomes a contributing employer on or after January 1, 2012 and before January 1, 2013, the following tables apply:

TABLE A-1

Year of Contribution Liability	Contribution Rate
1	2.7%
2	2.7% + 1/3 (chargeable benefits component)
3	2.7% + 2/3 (chargeable benefits component)
4 and over	(chargeable benefits component) + (account building component) + (nonchargeable benefits component)

TABLE B-1

Year of Contribution Liability	Contribution Rate
1	average construction contractor rate as determined by the commission
2	average construction contractor rate as determined by the commission + 1/3 (chargeable benefits component)
3	average construction contractor rate as determined by the commission + 2/3 (chargeable benefits component)
4 and over	(chargeable benefits component) + (account building component) + (nonchargeable benefits component)

For an employer that becomes a contributing employer on or after January 1, 2013, the following tables apply:

TABLE A-2

Year of Contribution Liability	Contribution Rate
1	2.7% + 1/3 (chargeable benefits component)
2	2.7% + 2/3 (chargeable benefits component)
3 and over	(chargeable benefits component) + (account building component) +(nonchargeable benefits component)

TABLE B-2

Year of Contribution Liability	Contribution Rate
1	Average construction contractor rate as determined by the commission + 1/3 (chargeable benefits component)
2	Average construction contractor rate as determined by the commission + 2/3 (chargeable benefits component)
3 and over	(chargeable benefits component) + (account building component) +(nonchargeable benefits component)

(2) With the exception of employers who are in the first 4 consecutive years of liability, each employer's contribution rate shall be the sum of the following components, all of which are determined as of the computation date: a chargeable benefits component determined under subdivision (3), an account building component determined under subdivision (4), and a nonchargeable benefits component determined under subdivision (5).

(3) *(i)* For calendar years beginning before January 1, 2012, the chargeable benefits component of an employer's contribution rate is the percentage determined by dividing: the total amount of benefits charged to the employer's experience account within the lesser of 60 consecutive months ending on the computation date or the number of consecutive months ending on the computation date with respect to which the employer has been continuously liable for contributions; by the amount of wages, subject to contributions, paid by the employer within the same period. If the resulting quotient is not an exact multiple of 1/10 of 1%, it shall be increased to the next higher multiple of 1/10 of 1%. For the calendar year 2012, the chargeable benefits component of an employer's contribution rate is the percentage determined by dividing: the total amount of benefits charged to the employer's experience account within the lesser of 48 consecutive months ending on the computation date or the number of consecutive months ending on the computation date with respect to which the employer has been continuously liable for contributions; by the amount of wages, subject to contributions, paid by the employer within the same period. If the resulting quotient is not an exact multiple of 1/10 of 1%, it shall be increased to the next higher multiple of 1/10 of 1%. For each calendar year beginning on or after January 1, 2013, the chargeable benefits component of an employer's contribution rate is the percentage determined by dividing: the total amount of benefits charged to the employer's experience account within the lesser of 36 consecutive months ending on the computation date or the number of consecutive months ending on the computation date with respect to which the employer has been continuously liable for contributions; by the amount of wages, subject to contributions, paid by the employer within the same period. If the resulting quotient is not an exact multiple of 1/10 of 1%, it shall be increased to the next higher multiple of 1/10 of 1%.

(ii) For benefit years established before October 1, 2000, the chargeable benefits component shall not exceed 6.0%, unless there is a statutory change in the maximum duration of regular benefit payments or the statutory ratio of regular benefit payments to credit weeks. In the event of a change in the maximum duration of regular benefit payments, the maximum chargeable benefits component shall increase by the same percentage as the statutory percentage change in the duration of regular benefit payments between computation dates. In the event of an increase in the statutory ratio of regular benefit payments to credit weeks, as described in section 27(d), the maximum chargeable benefits component determined as of the computation dates occurring after the effective date of the increased ratio shall increase by 1/2 the same percentage as the increase in the ratio of regular benefit payments to credit weeks. If the resulting increase is not already an exact multiple of 1/10 of 1%, it shall be adjusted to the next higher multiple of 1/10 of 1%. For benefit years established after October 1, 2000, the chargeable benefits component shall not exceed 6.0%, unless there is a statutory change in the maximum duration of regular benefit payments or the percentage factor of base period wages, which defines maximum duration, as provided in section 27(d). If there is a statutory change in the maximum duration of regular benefit payments, the maximum chargeable benefits component shall increase by the same percentage as the statutory percentage change in the duration of regular benefit payments between computation dates. If there is an increase in the statutory percentage factor of base period wages, as described in section 27(d), the maximum chargeable benefits component determined as of the computation dates occurring after the effective date of the increased ratio shall increase by 1/2 the same percentage as the increase in the percentage factor of base period wages. If the resulting increase is not already an exact multiple of 1/10 of 1%, it shall be adjusted to the next higher multiple of 1/10 of 1%.

(4) The account building component of an employer's contribution rate is the percentage arrived at by the following calculations: *(i)* Multiply the amount of the employer's total payroll for the 12 months ending on the computation date, by the cost criterion; *(ii)* Subtract the amount of the balance in the employer's experience account as of the computation date from the product determined under *(i)*; and *(iii)* if the remainder is zero or a negative quantity, the account building component of the employer's contribution rate shall be zero; but *(iv)* if the remainder is a positive quantity, the account building component of the employer's contribution rate shall be determined by dividing that remainder by the employer's total payroll paid within the 12 months ending on the computation date. The account building component shall not exceed the lesser of 1/4 of the percentage calculated or 2%. However, except as otherwise provided in this subdivision, the account building component shall not exceed the lesser of 1/2 of the percentage calculated or 3%, if on the June 30 of the preceding calendar year the balance in the unemployment compensation fund was less than 50% of an amount equal to the aggregate of all contributing employers' annual payrolls, for the 12 months ending March 31, times the cost criterion. For calendar years after 1993 and before 1996, the account building component shall not exceed the lesser of .69 of the percentage calculated, or 3%, if on the June 30 of the preceding calendar year the balance in the unemployment compensation fund was less than 50% of an amount equal to the aggregate of all contributing employers' annual payrolls, for the 12 months ending March 31, as defined in section 18(f), times the cost criterion; selected for the computation date under section 18(e). If the account building component determined under this subdivision is not an exact multiple of 1/10 of 1%, it shall be adjusted to the next higher multiple of 1/10 of 1%.

(5) The nonchargeable benefits component of employers' contribution rates is the percentage arrived at by the following calculations: *(i)* multiply the aggregate amount of all contributing employers' annual payrolls, for the 12 months ending March 31, as defined in section 18(f), by the cost criterion selected for the computation date under section 18(e); *(ii)* subtract the balance of the unemployment fund on the computation date, net of federal advances, from the product determined under *(i)*; and *(iii)* if the remainder is zero or a negative quantity, the nonchargeable benefits component of employers' contribution rates shall be zero; but *(iv)* if the remainder is a positive quantity, the nonchargeable benefits component of employers' contribution rates shall be determined by dividing that remainder by the total of wages subject to contributions under this act paid by all contributing employers within the 12 months ending on March 31 and adjusting the quotient, if not an exact multiple of 1/10 of 1%, to the next higher multiple of 1/10 of 1%. The maximum nonchargeable benefits component shall be 1%. However, for calendar years after 1993, if there are no benefit charges against an employer's account for the 60 months ending as of the computation date, or for calendar years after 1995, if the employer's chargeable benefits component is less than 2/10 of 1%, the maximum nonchargeable benefit component shall not exceed 1/2 of 1%. For calendar years after 1995, if there are no benefit charges against an employer's account for the 72 months ending as of the computation date, the maximum nonchargeable benefits component shall not exceed 4/10 of 1%. For calendar years after 1996, if there are no benefit charges against an employer's account for the 84 months ending as of the computation date, the maximum nonchargeable benefits component shall not exceed 3/10 of 1%. For calendar years after 1997, if there are no benefit charges against an employer's account for the 96 months ending as of the computation date, the maximum nonchargeable benefits component shall not exceed 2/10 of 1%. For calendar years after 1998, if there are no benefit

charges against an employer's account for the 108 months ending as of the computation date, the maximum nonchargeable benefits component shall not exceed 1/10 of 1%. For calendar years after 2002, the maximum nonchargeable benefits component shall not exceed 1/10 of 1% if there are no benefit charges against an employer's account for the 60 months ending as of the computation date; 9/100 of 1% if there are no benefit charges against an employer's account for the 72 months ending as of the computation date; 8/100 of 1% if there are no benefit charges against an employer's account for the 84 months ending as of the computation date; 7/100 of 1% if there are no benefit charges against an employer's account for the 96 months ending as of the computation date; or 6/100 of 1% if there are no benefit charges against an employer's account for the 108 months ending as of the computation date. For purposes of determining a nonchargeable benefits component under this subsection, an employer account shall not be considered to have had a charge if claim for benefits is denied or determined to be fraudulent pursuant to section 54 or 54c. An employer with a positive balance in its experience account on the June 30 computation date preceding the calendar year shall receive for that calendar year a credit in an amount equal to 1/2 of the extra federal unemployment tax paid in the preceding calendar year under section 3302(c)(2) of the federal unemployment tax act, 26 USC 3302, because of an outstanding balance of unrepaid advances from the federal government to the unemployment compensation fund under section 1201 of title XII of the social security act, 42 USC 1321. However, the credit for any calendar year shall not exceed an amount determined by multiplying the employer's nonchargeable benefit component for that calendar year times the employer's taxable payroll for that year. Contributions paid by an employer shall be credited to the employer's experience account, in accordance with the provisions of section 17(5), without regard to any credit given under this subsection. The amount credited to an employer's experience account shall be the amount of the employer's tax before deduction of the credit provided in this subsection.

(6) The total of the chargeable benefits and account building components of an employer's contribution rate shall not exceed by more than 1% in the 1983 calendar year, 1.5% in the calendar year 1984, or 2% in the 1985 calendar year the higher of 4% or the total of the chargeable benefits and the account building components that applied to the employer during the preceding calendar year. For calendar years after 1985, the total of the chargeable benefits and account building components of the employer's contribution rate shall be computed without regard to the foregoing limitation provided in this subdivision. During a year in which this subdivision limits an employer's contribution rate, the resulting reduction shall be considered to be entirely in the experience component of the employer's contribution rate, as defined in section 18(d).

(b) An employer previously liable for contributions under this act which on or after January 1, 1978 filed a petition for arrangement under the bankruptcy act of July 1, 1898, chapter 541, 30 Stat. 544, or on or after October 1, 1979 filed a petition for reorganization under title 11 of the United States Code, 11 USC 101 to 1330, pursuant to which a plan of arrangement or reorganization for rehabilitation purposes has been confirmed by order of the United States bankruptcy court, shall be considered as a reorganized employer and shall have a reserve fund balance of zero as of the first calendar year immediately following court confirmation of the plan of arrangement or reorganization, but not earlier than the calendar year beginning January 1, 1983, if the employer meets each of the following requirements:

(1) An employer whose plan of arrangement or reorganization has been confirmed as of January 1, 1983 shall, within 60 days after January 1, 1983, notify the commission of its intention to elect the status of a reorganized employer. An employer that has not had a plan of arrangement or reorganization confirmed as of January 1, 1983 shall, within 60 days after the entry by the bankruptcy court of the order of confirmation of the plan of arrangement or reorganization, notify the commission of its intention to elect the status of a reorganized employer. An employer shall not make an election under this subdivision after December 31, 1985.

(2) The employer has paid to the commission all contributions previously owed by the employer pursuant to this act for all calendar years prior to the calendar year as to which the employer elects to begin its status as a reorganized employer.

(3) More than 50% of the employer's total payroll is paid for services rendered in this state during the employer's fiscal year immediately preceding the date the employer notifies the fund administrator of its intention to elect the status of a reorganized employer.

(4) The employer, within 180 days after notifying the commission of its intention to elect the status of a reorganized employer, makes a cash payment to the commission, for the unemployment compensation fund, equal to: .20 times the first $2,000,000.00 of the employer's negative balance, .35 times the amount of the employer's negative balance above $2,000,000.00 and up to $5,000,000.00, and .50 times the amount of the negative balance above $5,000,000.00. The total amount determined by the commission shall be based on the employer's negative balance existing as of the end of the calendar month immediately preceding the calendar year in which the employer will begin its status as a reorganized employer. If the employer fails to pay the amount determined, within 180 days of electing status as a reorganized employer, the commission shall reinstate the employer's negative

balance previously reduced and redetermine the employer's rate on the basis of the reinstated negative balance. The redetermined rate shall then be used to redetermine the employer's quarterly contributions for that calendar year. The redetermined contributions shall be subject to the interest provisions of section 15 as of the date the redetermined quarterly contributions were originally due.

(5) Except as provided in subdivision (6), the employer contribution rates for a reorganized employer beginning with the first calendar year of the employer's status as a reorganized employer shall be as follows:

Year of Contribution Liability	Contribution Rate
1	2.7% of total taxable wages paid
2	2.7%
3	2.7%
4 and over	(chargeable benefits component based upon 3-year experience) plus (account building component based upon 3-year experience) plus (nonchargeable benefits component)

(6) To provide against the high risk of net loss to the fund in such cases, any reorganized employer that employs in "employment", not necessarily simultaneously but in any 1 week 25 or more individuals in the performance of 1 or more contracts or subcontracts for construction in the state of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing developments, or similar major construction projects, shall be liable beginning the first calendar year of the employer's status as a reorganized employer for contribution rates as follows:

Year of Contribution Liability	Contribution Rate
1	average construction contractor rate as determined by the commission
2	average construction contractor rate as determined by the commission
3	1/3 (chargeable benefits component) + 2/3 average construction contractor rate as determined by the commission
4	2/3 (chargeable benefits component) + 1/3 average construction contractor rate as determined by the commission
5 and over	(chargeable benefits component) + (account building component) + (nonchargeable benefits component)

(c) Upon application by an employer to the commission for designation as a distressed employer, the commission, within 60 days after receipt of the application, shall make a determination whether the employer meets the conditions set forth in this subsection. Upon finding that the conditions are met, the commission shall notify the legislature of the determination and request legislative acquiescence in the determination. If the legislature approves the determination by concurrent resolution, the employer shall be considered to be a "distressed employer" as of January 1 of the year in which the determination is made. The commission shall notify the employer of that determination and notify the employer of its contribution rate as a distressed employer and the contribution rate that would apply if the employer was not a distressed employer. The distressed employer shall determine its tax contribution using the 2 rates furnished by the commission and shall pay its tax contribution based on the lower of the 2 rates. If the determination of distressed employer status is made during the calendar year, the employer shall be entitled to a credit on future quarterly installments for any excess contributions paid during that initial calendar year. The employer shall notify the commission of the difference between the amount paid and the amount that would have been paid if the employer were not determined to be a distressed employer and the difference will be owed to the unemployment compensation fund, payable in accordance with this subsection. Cumulative totals of the

difference must be reported to the commission with each return required to be filed. The commission may periodically determine continued eligibility of an employer under this subsection. When the commission makes a determination that an employer no longer qualifies as a distressed employer, the commission shall notify the employer of that determination. After notice by the commission that the employer no longer qualifies as a distressed employer, the employer will be liable for contributions, beginning with the first quarter occurring after receipt of notification of disqualification, on the basis of the rate that would apply if the employer was not a distressed employer. The contribution rate for a distressed employer shall be calculated under the law in effect for the 1982 calendar year except that the rate determined shall be reduced by the applicable solvency tax rate assessed against the employer under section 19a. The distressed employer will pay in 10 equal annual installments the amount of the unpaid contributions owed to the unemployment compensation fund due to the application of this subsection, without interest. Each installment shall be made with the fourth quarterly return for the respective year. As used in this subsection, "distressed employer" means an employer whose continued presence in this state is considered essential to the state's economic well-being and who meets the following criteria:

(1) The employer's average annual Michigan payroll in the 5 previous years exceeded $500,000,000.00.

(2) The employer's average quarterly number of employees in Michigan in the 5 previous years exceeded 25,000.

(3) The employer's business income as defined in section 3 of the single business tax act, 1975 PA 228, MCL 208.3, or section 105 of the Michigan business tax act, 2007 PA 36, MCL 208.1105, as applicable, has resulted in an aggregate loss of $1,000,000,000.00 or more during the 5-year period ending in the second year prior to the year for which the application is being made.

(4) The employer has received from this state loans totaling $50,000,000.00 or more or loan guarantees from the federal government in excess of $500,000,000.00, either of which are still outstanding.

(5) Failure to give an employer designation as a distressed employer would adversely impair the employer's ability to repay the outstanding loans owed to this state or that are guaranteed by the federal government.

(d) An employer may at any time make payments to that employer's experience account in the fund in excess of the requirements of this section, but these payments, when accepted by the commission, shall be irrevocable. A payment made by an employer within 30 days after mailing to the employer by the commission of a notice of the adjusted contribution rate of the employer shall be credited to the employer's account as of the computation date for which the adjusted contribution rate was computed, and the employer's contribution rate shall be further adjusted accordingly. However, a payment made more than 120 days after the beginning of a calendar year shall not affect the employer's contribution rate for that year.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1945, Act 335, Imd. Eff. May 29, 1945-Am. 1946, 1st Ex. Sess., Act 26, Imd. Eff. Feb. 26, 1946-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.19-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1951, 1st Ex. Sess., Act 1, Imd. Eff. Aug. 23, 1951-Am. 1954, Act 197, Imd. Eff. May 7, 1954-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1957, Act 311, Imd. Eff. June 21, 1957-Am. 1959, Act 270, Imd. Eff. Oct. 30, 1959-Am. 1963, Act 226, Eff. Sept. 6, 1963-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1968, Act 338, Imd. Eff. July 19, 1968-Am. 1970, Act 14, Imd. Eff. Apr. 14, 1970-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1974, Act 104, Eff. June 9, 1974-Am. 1977, Act 155, Imd. Eff. Nov. 8, 1977-Am. 1982, Act 535, Eff. Jan. 2, 1983-Am. 1983, Act 164, Imd. Eff. July 24, 1983-Am. 1989, Act 237, Imd. Eff. Dec. 21, 1989-Am. 1993, Act 311, Imd. Eff. Dec. 29, 1993-Am. 1994, Act 162, Imd. Eff. June 17, 1994-Am. 1995, Act 25, Eff. (sine die)-Am. 1995, Act 142, Eff. Mar. 28, 1996-Am. 1996, Act 535, Imd. Eff. Jan. 13, 1997; -Am. 2002, Act 192, Imd. Eff. Apr. 26, 2002-Am. 2007, Act 188, Imd. Eff. Dec. 21, 2007;-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.19a Solvency tax; determination; payment; deferral; appropriation; repayment; payment of amounts obtained into contingent fund; crediting amounts to employers' experience accounts; past due payments; interest and penalties; adjustments and refunds; appeals; qualification for federal interest relief provisions and federal unemployment tax credits; forgiveness or postponement of interest.

Sec. 19a. (1) Except for the first 4 consecutive years of liability, a contributing employer is subject to a solvency tax for a calendar year after 1982 if the employer's experience account has a negative balance on the June 30 preceding that calendar year, and if on the June 30 preceding that calendar year the balance in the unemployment compensation fund is less than the total amount of unrepaid interest bearing advances from the federal government to the fund under section 1201 of the social security act, 42 USC 1321, or the commission projects that interest will be due during the calendar year on federal advances and there will be insufficient solvency tax funds in the contingent fund to meet the federal interest obligations when due or there are outstanding advances from the state treasury from the previous year and any interest thereon and there will be insufficient solvency tax funds in the contingent fund to repay such advances and interest. The solvency tax rate is in addition to the employer's contribution rate and is not subject to the limiting provisions of section 19(a)(6).

(2) The solvency tax rate shall be determined as follows:

(a) If there is a balance on December 31, 2011, of unrepaid interest bearing federal advances, the solvency tax rate for the 2012 calendar year and for each calendar year thereafter shall be calculated in the manner provided in this subdivision until the balance of the interest bearing federal advances on December 31, 2011 has been reduced to zero. By February 1 of the calendar year, the commission shall calculate the sum of the estimated interest due during the calendar on federal loans, without regard to any interest deferral that is permitted under section 1202 of the social security act, 42 USC 1322, the remaining balance on December 31 of the preceding year of the December 31, 2011 balance of unrepaid interest bearing federal advances, and any amounts advanced from the state treasury under subsection (3) during the preceding year and any interest on the balance. For purposes of calculating the remaining balance, any loan repayments during the year shall first be applied toward reducing the December 31, 2011 loan balance. The amount so calculated shall be divided by the estimated total taxable payroll for the calendar year of all active employers who had negative balances in their experience accounts as of June 30 of the previous year. Total taxable payroll shall be estimated by using the total taxable payroll for those employers for the 12-month period ending June 30 of the previous calendar year and adjusting this figure for any change in the taxable wage limit for the calendar year. The quotient shall be adjusted to the next 1/10 of 1%. If this adjusted percentage is 0.8% or less, an employer's solvency tax rate for that calendar year shall be the percentage calculated. If the adjusted percentage is more than 0.8%, the employer's solvency tax rate shall be calculated in the same manner as the account building component of the employer's contribution rate as determined under section 19(a)(4), adjusted to generate sufficient aggregate solvency tax revenues to pay the interest due during the year on federal loans, to pay for the unemployment insurance automation project, to repay the remaining balance of the December 31, 2011 balance of unrepaid federal interest bearing loans, and to repay advances from the state treasury and any interest due thereon, but shall not exceed the lesser of 1/4 of the percentage calculated or 2%.

(b) For any calendar year after the first calendar year that the remaining balance of the December 31, 2011 balance of unrepaid interest bearing federal advances has been reduced to zero by December 31 of that year, an employer's solvency tax rate shall be calculated in the same manner as the account building component of the employer's contribution rate as determined under section 19(a)(4), but shall not exceed the lesser of 1/4 of the percentage calculated or 2%.

(3) Solvency taxes shall become due and payable in the manner, and at the times, specified for contributions in rules promulgated by the commission. However, if the state is permitted to defer interest payments due during a calendar year under section 1202(b)(3) or (8) of the social security act, 42 USC 1322, payment of the solvency tax may likewise be deferred by an employer and paid in installments in a manner prescribed by the commission. If a deferral of interest payment is subsequently disallowed by the United States department of labor, either prospectively or retroactively, amounts of solvency taxes deferred under this section shall become immediately due and payable. Further, if the commission estimates that the solvency taxes to be collected by September 30 of the calendar year will be insufficient to meet the interest obligations due during that calendar year, the percentages of amounts of solvency taxes deferred in any year shall be reduced by the commission in an amount sufficient to meet the interest obligations due in that calendar year. Furthermore, if the amount of solvency taxes to be collected by the time the federal interest obligations are due in any year are insufficient to meet the obligations when due, the commission shall recommend to the legislature that it appropriate an amount sufficient to meet the interest obligations due. Any amount so appropriated and used to pay federal interest obligations, and interest due on such state appropriation, if any, shall be repaid to the state as soon as possible from the solvency tax revenues in the contingent fund.

(4) Amounts obtained pursuant to this section shall be paid into the contingent fund created under section 10 and, except for solvency taxes transferred to the unemployment compensation fund as provided in this subsection, shall not be credited to the employer's experience account. Amounts collected from solvency taxes which are transferred to the unemployment compensation fund and used to repay federal advances to the unemployment compensation fund shall be credited to the employers' experience accounts by June 30 of the year following the calendar year in which the transfer occurred. The amount to be credited to an employer's account shall be determined by the commission, but shall reasonably reflect each employer's pro rata share of the amount transferred. Past due payments of the solvency tax shall be subject to the interest, penalty, assessment, and collection provisions of section 15. Interest and penalties collected shall be paid into the contingent fund. Adjustments and refunds of erroneously collected solvency taxes shall be made in accordance with section 16. Solvency tax determinations are appealable under the appeal process provided for review and appeal of determinations under this act.

(5) If any provision of this section prevents the state from qualifying for any federal interest relief provisions provided under section 1202 of the social security act, 42 USC 1322, or prevents employers in this state from qualifying for the limitation on the reduction of federal unemployment tax act credits as provided under section

3302(f) of the federal unemployment tax act, 26 USC 3302(f), that provision is invalid to the extent necessary to maintain qualification for the interest relief provisions and federal unemployment tax credits.

(6) Notwithstanding any other provision of this section, if interest due during a calendar year on federal advances is forgiven or postponed under federal law and is no longer due during that calendar year, no solvency tax shall be assessed against an employer for that calendar year and any solvency tax already assessed and collected against an employer before the forgiveness or postponement of the interest for that calendar year shall be credited to the employer's experience account.

History: Add. 1982, Act 535, Eff. Jan. 2, 1983-Am. 1983, Act 247, Imd. Eff. Dec. 5, 1983-Am. 2009, Act 1, Imd. Eff. Mar. 11, 2009-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

Compiler's note: In subsection (2)(e)*(ii)* of this section, "interest due during the calendar on federal loans" evidently should read "interest due during the calendar year on federal loans".

421.20 Charging benefits against employer's account; benefits improperly paid; basis; separate determination of amount and duration of benefits; disqualifying act or discharge; order of charges; separating employer; limitation on charges for regular benefits; benefits based on multiemployer credit weeks; training benefits and extended benefits; notice of charges; listing; spouse as full-time member of United States armed forces.

Sec. 20. (a) Benefits paid shall be charged against the employer's account as of the quarter in which the payments are made. If the unemployment agency determines that any benefits charged against an employer's account were improperly paid, an amount equal to the charge based on those benefits shall be credited to the employer's account and a corresponding charge shall be made to the nonchargeable benefits account as of the date of the charge. Benefits paid to an individual as a result of an employer's failure to provide the unemployment agency with separation, employment, and wage data as required by section 32 shall be considered as benefits properly paid to the extent that the benefits are chargeable to the noncomplying employer.

(b) For benefit years established before October 1, 2000, benefits paid to an individual shall be based upon the credit weeks earned during the individual's base period and shall be charged against the experience accounts of the contributing employers or charged to the accounts of the reimbursing employers from whom the individual earned credit weeks. If the individual earned credit weeks from more than 1 employer, a separate determination shall be made of the amount and duration of benefits based upon the total credit weeks and wages earned with each employer. Benefits paid in accordance with the determinations shall be charged against the experience account of a contributing employer or charged to the account of a reimbursing employer beginning with the most recent employer first and thereafter as necessary against other base period employers in inverse order to that in which the claimant earned his or her last credit week with those employers. If there is any disqualifying act or discharge under section 29(1) with an employer, benefits based upon credit weeks earned from that employer before the disqualifying act or discharge shall be charged only after the exhaustion of charges as provided above. Benefits based upon those credit weeks shall be charged first against the experience account of the contributing employer involved or to the account of the reimbursing employer involved in the most recent disqualifying act or discharge and thereafter as necessary in similar inverse order against other base period employers involved in disqualifying acts or discharges. The order of charges determined as of the beginning date of a benefit year shall remain fixed during the benefit year. For benefit years established on or after October 1, 2000, the claimant's full weekly benefit rate shall be charged to the account or experience account of the claimant's most recent separating employer for each of the first 2 weeks of benefits payable to the claimant in the benefit year in accordance with the monetary determination issued pursuant to section 32. However, if the total sum of wages paid by an employer totals $200.00 or less, those wages shall be used for purposes of benefit payment, but any benefit charges attributable to those wages shall be charged to the nonchargeable benefits account. Thereafter, remaining weeks of benefits payable in the benefit year shall be paid in accordance with the monetary determination and shall be charged proportionally to all base period employers, with the charge to each base period employer being made on the basis of the ratio that total wages paid by the employer in the base period bears to total wages paid by all employers in the base period. However, if the claimant did not perform services for the most recent separating employer or employing entity and receive earnings for performing the services of at least 40 times the state minimum hourly wage times 7 during the claimant's most recent period of employment with the employer or employing entity, then all weeks of benefits payable in the benefit year shall be charged proportionally to all base period employers, with the charge to each base period employer being made on the basis of the ratio that total wages paid by the employer in the base period bears to total wages paid by all employers in the base period. If the claimant performed services for the most recent separating employing entity and received earnings for performing the services of at least 40 times the state minimum hourly wage times 7 during the

claimant's most recent period of employment for the employing entity but the separating employing entity was not a liable employer, the first 2 weeks of benefits payable to the claimant shall be charged proportionally to all base period employers, with the charge to each base period employer made on the basis of the ratio that total wages paid by the employer in the base period bears to total wages paid by all employers in the base period. The "separating employer" is the employer that caused the individual to be unemployed as defined in section 48.

(c) For benefit years established before October 1, 2000, and except as otherwise provided in section 11(d) or (g) or section 46a, the charges for regular benefits to any reimbursing employer or to any contributing employer's experience account shall not exceed the weekly benefit rate multiplied by 3/4 the number of credit weeks earned by the individual during his or her base period from that employer. If the resultant product is not an even multiple of 1/2 the weekly benefit rate, the amount shall be raised to an amount equal to the next higher multiple of 1/2 the weekly benefit rate, and in the case of an individual who was employed by only 1 employer in his or her base period and who earned 34 credit weeks with that employer, the product shall be raised to the next higher multiple of the weekly benefit rate.

(d) For benefit years beginning on or after October 1, 2000, and except as otherwise provided in section 11(d) or (g) or section 46, the charges for regular benefits to any reimbursing employer's account or to any contributing employer's experience account shall not exceed either the amount derived by multiplying by 2 the weekly benefit rate chargeable to the employer in accordance with subsection (b) if the employer is the separating employer and is chargeable for the first 2 weeks of benefits, or the amount derived from the percentage of the weekly benefit rate chargeable to the employer in accordance with subsection (b), multiplied by the number of weeks of benefits chargeable to base period employers based on base period wages, to which the individual is entitled as provided in section 27(d), if the employer is a base period employer, or both of these amounts if the employer was both the chargeable separating employer and a base period employer.

(e) For benefit years beginning before October 1, 2000:

(1) If an individual has multiemployer credit weeks in his or her base period, and if it becomes necessary to use those credit weeks as a basis for benefit payments, a single determination shall be made of the individual's weekly benefit rate and maximum amount of benefits based on the individual's multiemployer credit weeks and the wages earned in those credit weeks. Each employer involved in the individual's multiemployer credit weeks shall be an interested party to the determination. The proviso in section 29(2) does not apply to multiemployer credit weeks, nor does the reduction provision of section 29(4) apply to benefit entitlement based upon those credit weeks.

(2) The charge for benefits based on multiemployer credit weeks shall be allocated to each employer involved on the basis of the ratio that the total wages earned during the total multiemployer credit weeks counted under section 50(b) with the employer bears to the total amount of wages earned during the total multiemployer credit weeks counted under section 50(b) with all such employers, computed to the nearest cent. However, if an adjusted weekly benefit rate is determined in accordance with section 27(f), the charge to the employer who has contributed to the financing of the retirement plan shall be reduced by the same amount by which the weekly benefit rate was adjusted under section 27(f). Benefits for a week of unemployment allocated under this subsection to a contributing employer shall be charged to the nonchargeable benefits account if the claimant during that week earns remuneration with that employer that equals or exceeds the amount of benefits allocated to that employer.

(3) Benefits paid in accordance with the determination based on multiemployer credit weeks shall be allocated to each employer involved and charged as of the quarter in which the payments are made. Notice of charges made under this subsection shall be given to each employer by means of a current listing of charges, at least weekly, or of a quarterly statement of charges. The listing or statement shall specify the weeks for which benefits were paid based on multiemployer credit weeks and the amount of benefits paid chargeable to that employer for each week. The notice shall be considered to satisfy the requirements of sections 21(a) and 32(d) that notification be given each employer of benefits charged against that employer's account by means of a listing of the benefit payment, and all protest and appeal rights applicable to benefit payment listings shall also apply to the notice of charges. If an employer receives both a current listing of charges and a quarterly statement of charges under this subsection, all protest and appeal rights shall only apply to the first notice given.

(f) For benefit years beginning on or after October 1, 2000 and before January 1, 2014, if a base period contributing employer notifies the unemployment agency that it paid gross wages to a claimant in a week at least equal to the employer's benefit charge for that claimant for the week, then the unemployment agency shall issue a monetary redetermination noncharging the account of the employer for that week and for the remaining weeks of the benefit year for benefits payable to the claimant that would otherwise be charged to the employer's account. For benefit years beginning on or after January 1, 2014, benefits payable to an individual for a week and for each remaining payable week in the benefit year shall be charged to the nonchargeable benefits account if either of the following occurs:

(1) The individual reports gross earnings in the week with a contributing base period employer at least equal to the employer's benefit charges for that individual for the week.

(2) A contributing base period employer timely protests a determination charging benefits to its account for a week in which the employer paid gross wages to an individual at least equal to the employer's charges for benefits paid to that individual for that week.

(g) For benefit years beginning before October 1, 2000:

(1) Training benefits as provided in section 27(g), and extended benefits as provided in section 64, shall be allocated to each reimbursing employer involved in the individual's base period of the claim to which the benefits are related, on the basis of the ratio that the total wages earned during the total credit weeks counted under section 50(b) with a reimbursing employer bears to the total amount of wages earned during the total credit weeks counted under section 50(b) with all employers.

(2) Training benefits and extended benefits, to the extent that they are not reimbursable by the federal government and have been allocated to a reimbursing employer, shall be charged to that reimbursing employer. A contributing employer's experience account shall not be charged with training benefits. Training benefits based on service with a contributing employer, to the extent that they are not reimbursable by the federal government, shall be charged to the nonchargeable benefits account. Extended benefits paid and based on service with a contributing employer, to the extent that they are not reimbursable by the federal government, shall be charged to that employer's experience account.

(3) If the training benefits or extended benefits are chargeable only to a single reimbursing employer, the benefits shall be charged in accordance with subsection (a). If the training benefits or extended benefits are chargeable to more than 1 reimbursing employer, or to 1 or more reimbursing employers and the nonchargeable benefits account, the benefits shall be charged as of the quarter in which the payments are made.

(4) Notice of charges made under this subsection shall be given to each employer by means of a current listing of charges, at least weekly, and subsequently by a quarterly summary statement of charges. The listing shall specify the name and social security number of each claimant paid benefits during the week, the weeks for which the benefits were paid, and the amount of benefits chargeable to that employer paid for each week. The quarterly statement of charges shall list each claimant by name and social security number and shall show total benefit payments chargeable to that employer and made to each claimant during the calendar quarter. The listing shall be considered to satisfy the requirements of sections 21(a) and 32(d) that notification be given each employer of benefits charged against that employer's account by means of a listing of the benefit payment. All protest and appeal rights applicable to benefit payment listings shall also apply to the notice of charges. If an employer receives both a current listing of charges and a quarterly statement of charges under this subsection, all protest and appeal rights shall only apply to the first notice given.

(h) For benefit years beginning on or after October 1, 2000:

(1) Training benefits as provided in section 27(g), and extended benefits as provided in section 64, shall be charged to each reimbursing employer in the base period of the claim to which the benefits are related, on the basis of the ratio that the total wages paid by a reimbursing employer during the base period bears to the total wages paid by all reimbursing employers in the base period.

(2) Training benefits, and extended benefits to the extent they are not reimbursable by the federal government and have been allocated to a reimbursing employer, shall be charged to that reimbursing employer. A contributing employer's experience account shall not be charged with training benefits. Training benefits based on service with a contributing employer, to the extent they are not reimbursable by the federal government, shall be charged to the nonchargeable benefits account. Extended benefits paid and based on service with a contributing employer, to the extent they are not reimbursable by the federal government, shall be charged to that employer's experience account.

(3) If the training benefits or extended benefits are chargeable only to a single reimbursing employer, the benefits shall be charged in accordance with subsection (a). If the training benefits or extended benefits are chargeable to more than 1 reimbursing employer, or to 1 or more reimbursing employers and the nonchargeable benefits account, the benefits shall be charged as of the quarter in which the payments are made.

(4) Notice of charges made under this subsection shall be given to each employer by means of a current listing of charges, at least weekly, and subsequently by a quarterly summary statement of charges. The listing shall specify the name and social security number of each claimant paid benefits in the week, the weeks for which the benefits were paid, and the amount of benefits chargeable to that employer paid for each week. The quarterly summary statement of charges shall list each claimant by name and social security number and shall show total

benefit payments chargeable to that employer and made to each claimant during the calendar quarter. The listing shall be considered to satisfy the requirements of sections 21(a) and 32(d) that notification be given to each employer of benefits charged against that employer's account by means of a listing of the benefit payment. All protest and appeal rights applicable to benefit payment listings shall also apply to the notice of charges. If an employer receives both a current listing of charges and a quarterly summary statement of charges under this subsection, all protest and appeal rights shall only apply to the first notice given.

(i) If a benefit year is established on or after October 1, 2000, the portion of benefits paid in that benefit year that are based on wages used to establish the immediately preceding benefit year that began before October 1, 2000 shall not be charged to the employer or employers who paid those wages but shall be charged instead to the nonchargeable benefits account.

(j) For benefits years beginning after March 30, 2009, benefits paid to a person who leaves employment to accompany a spouse who is a full-time member of the United States armed forces and is reassigned for military service in a different geographic location are not chargeable to the employer, but shall be charged to the nonchargeable benefits account.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.20-Am. 1949, Act 282, Imd. Eff. June 11, 1949-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1954, Act 197, Imd. Eff. May 7, 1954-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1967, Act 254, Imd. Eff. July 19, 1967-Am. 1968, Act 338, Imd. Eff. July 19, 1968-Am. 1974, Act 104, Eff. June 9, 1974-Am. 1977, Act 277, Eff. Jan. 1, 1978-Am. 1980, Act 388, Imd. Eff. Jan. 6, 1981-Am. 1982, Act 535, Eff. Jan. 2, 1983-Am. 1983, Act 164, Imd. Eff. July 24, 1983-Am. 1994, Act 162, Imd. Eff. June 17, 1994; -Am. 2002, Act 192, Imd. Eff. Apr. 26, 2002-Am. 2003, Act 174, Imd. Eff. Aug. 14, 2003-Am. 2008, Act 479. Imd. Eff. Jan. 12, 2009-Am. 2009, Act 20, Imd. Eff. Apr. 13, 2009;-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.20a Benefits paid under protest or appeal; charge to suspense account; transfer to rating account or solvency account.

Sec. 20a. Benefits paid on or prior to June 30 of any year, under a determination, redetermination or decision which is the subject of timely protest or appeal under this act, on which final disposition has not been made by August 31 of such year, shall be charged to a suspense account within the fund as of the immediately preceding June 30 and credits issued to the appropriate employer's account as of that date. As of the date of final disposition of the protest or appeal, such benefit payments shall be transferred from the suspense account as a charge to the appropriate employer's rating account if the final disposition allows benefits, or otherwise to the solvency account as benefit overpayments.

History: Add. 1971, Act 231, Imd. Eff. Jan. 3, 1972.

421.21 Copies or listings of benefit checks charged against employer's account; copies as final determination; statement of total benefits charged against rating account; notice to employer of contribution rate; finality of statement or determination; extension; review and redetermination; appeal; hearing; adjustment of contribution.

Sec. 21. (a) The commission shall currently provide each employer with copies or listings of the benefit checks charged against that employer's account. An employer determined by the agency to be a successor employer shall begin receiving the listings effective for weeks beginning after the mailing of the determination of successorship. The copies or listings shall show the name and social security account number of the payee, the amount paid, the date of issuance, the week of unemployment for which the check was issued, the name or account number of the chargeable employer, upon request a code designation of the place of employment by the chargeable employer, and additional information as may be deemed pertinent. The copies or listings shall constitute a determination of the charge to the employer's account. The determination shall be final unless further proceedings are taken in accordance with section 32a.

The commission shall furnish at least quarterly, to each employer, a statement summarizing the total of the benefits charged against the employer's account during the period. If the employer requests, the summary shall be broken down by places of employment.

The commission shall notify each employer, not later than 6 months after the computation date, of his rate of contributions as determined for any calendar year pursuant to section 19. The statement or determination shall be final unless further proceedings are taken in accordance with section 32a. However, on request an employer shall be given an extension of 30 days' additional time in which to apply for the review and redetermination.

(b) An employer who is not in agreement with a redetermination of the amount of insured payrolls used in computing the employer's experience account percentage, or the computation of the amount of benefits charged or contributions credited to the experience account, or the computation of the adjusted contribution rate issued under

section 32a may, within 30 days after mailing of the notice of redetermination, file an appeal and request a hearing on the issue before an administrative law judge.

(c) A contribution becoming due and payable while a rate determination is under review or protest may be paid at the rate assessed by the commission for the previous year, but it shall be adjusted by the commission when the proper rate is determined. If an adjustment requires an additional payment from an employer, the additional payment shall be considered as a delinquent contribution as provided by section 15(a).

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.21-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1954, Act 197, Imd. Eff. May 7, 1954-Am. 1957, Act 311, Imd. Eff. June 21, 1957-Am.1975, Act 110, Eff. June 8, 1975-Am. 1983, Act 164, Eff. Oct. 1, 1983-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.21a Allocation of benefit charges and contributions attributable to service performed under CETA-PSE.

Sec. 21a. (1) Notwithstanding any other provision of this act, benefit charges and contributions attributable to services performed under the comprehensive employment and training act of 1973, as amended, 29 U.S.C. 801 to 992, in public service employment, referred to in this section as CETA-PSE services, shall be allocated in accordance with this section.

(2) If an employer's account has been charged with any unemployment benefits attributable to CETA-PSE services paid for weeks of unemployment beginning January 4, 1976, through October 2, 1976, the employer shall receive a credit to its account equal to the amount of those benefits reimbursed to the commission under the emergency jobs programs extension act of 1976 (Public Law 94-444). With respect to a reimbursing employer, the credit may only be used as a credit against the future reimbursement liability of the employer or his total or partial transferee. With respect to a contributing employer, the credit may only be used as a credit to the employer's rating account.

(3) A contributing employer shall receive a credit equal to the amount of contributions the employer paid, to the extent that the contributions were based on CETA-PSE wages paid from January 1, 1975, through October 2, 1976. The credit may only be used as a credit against the employer's future contribution liability.

(4) After October 2, 1976, an employer's account shall not be charged for benefits, based on CETA-PSE services, which are reimbursed to the commission under the emergency jobs programs extension act of 1976 (Public Law 94-444). Furthermore, a contributing employer shall not be liable for contributions on CETA-PSE wages paid after October 2, 1976. If a reimbursing employer's account has been charged for benefits or a contributing employer has made contributions based on CETA-PSE wages paid after October 2, 1976, the commission shall credit the employer's account in the same manner as provided in subsections (2) and (3).

(5) For the purposes of this section, a political subdivision of this state with its own unemployment compensation program under which unemployment benefits have been paid on the basis of CETA-PSE service in its employ, shall be entitled to cash reimbursement of those benefit costs to the extent that those benefit costs are reimbursed to the commission under the emergency jobs programs extension act of 1976 (Public Law 94-444). For purposes of obtaining the federal reimbursement, the commission shall act as agent for the political subdivision.

History: Add. 1977, Act 95, Imd. Eff. Aug. 4, 1977.

421.21b Seamen on American vessel on Great Lakes; benefits; seaman, definition.

Sec. 21b. A seaman employed on an American vessel operating on the Great Lakes shall be entitled to benefits under this act. An offer of employment to a seaman need not be the individual's customary occupation under conditions of employment and remuneration substantially equivalent to those under which the individual has been customarily employed in such occupation.

The term "seaman" as used in this section shall mean an individual who is employed as an officer or member of a crew on an American vessel.

History: Add. 1947, Act 360, Imd. Eff. July 8, 1947;-- CL 1948, 421.21b;-- Am. 1949, Act 282, Imd. Eff. June 11, 1949;-- Am. 1954, Act 131, Eff. Aug. 13, 1954;-- Am. 1965, Act 281, Eff. Sept. 5, 1965;-- Am. 1967, Act 192, Imd. Eff. June 30, 1967.

421.22 Transfer of business.

Sec. 22. (a) If an employer subject to this act transfers any of the assets of the business by any means otherwise than in the ordinary course of trade and there is not substantially common ownership, management, or control of the transferor and the transferee, the transfer shall be deemed a "transfer of business" for the purposes of this section if the commission determines both of the following:

(1) That the transferee is an employer subject to this act on the transfer date, has become subject to this act as of the transfer date under section 41(2)(a) or elects to become subject to this act as of the transfer date under section 25.

(2) That the transferee has acquired and used the transferor's trade name or good will, or that the transferee has continued or within 12 months after the transfer resumed all or part of the business of the transferor either in the same establishment or elsewhere.

(b) Notwithstanding subsection (a), a transfer of assets to a transferee that involves less than 75% of the transferor's assets shall not be deemed a transfer of business unless all of the following occur:

(1) The commission is notified of the transfer of assets by the transferor or transferee within 30 days after the end of the quarter in which the transfer occurred.

(2) The commission receives within 30 days after its request written approval by the transferor and transferee of an experience account transfer determined in accordance with the provisions of subsection (c).

(3) In the case of a transferee who elects under section 25 to become subject as of the transfer date, the commission receives the election within 30 days after the mailing of a notice of the right to elect.

(c) (1) In the case of a transfer of business as defined in subsection (a) or (b), the commission shall assign the transferor's experience account, or a pro rata part of the account, to the transferee. The commission shall make the assignment as of the date on which the business is transferred or as of June 30 of the year in which the business was transferred, whichever date is earlier. The pro rata part of the transferor's experience account to be assigned to the transferee shall be determined on the basis of the percentage relationship to the nearest 1/2 of 1% that the insured payroll for the 4 completed calendar quarters immediately before the date of transfer properly allocable to the transferred portion of the business bears to the insured payroll for the same period allocable to the entire business of the transferor immediately before the date of the transfer.

(2) When the commission transfers an employer's experience account in whole or in part under this section, it shall also transfer a proportionate share of the amount of the total wages and wages subject to contributions under this act paid by the transferor and properly allocable to the transfer of business; and the transferred account shall be chargeable for all benefit payments based on employment in the business or portion of the business transferred.

(3) In determining whether the transferee qualifies for a contribution rate that includes a chargeable benefits component under section 19, the experience of the transferred account shall be included as part of the experience of the transferee's experience account. If on the date of the transfer the transferee qualified for a contribution rate that includes a chargeable benefits component and the transferor did not qualify because of the provisions of section 19(a)(1), the transferee shall not thereby lose the qualified status.

(d) In the case of a transfer of business as defined in subsection (a) or (b) of this section, contribution rates are determined as follows:

(1) The rates of contributions applicable to the transferor and transferee for the calendar year after the calendar year of the transfer shall be respectively determined in accordance with section 19. In case of a transfer of part of an employer's experience account under subsection (c), the rate of contributions applicable to the transferor and transferee shall not be changed for the portion of the current calendar year remaining on the transfer date. In case of a transfer of an employer's entire experience account under subsection (c), all of the following apply:

(i) The transferor shall have no further interest in the experience account.

(ii) The transferor's coverage shall be terminated as of the effective date of the transfer under section 24(b).

(iii) If the transferor again becomes an employer as defined in section 41 in the same calendar year in which coverage is terminated, the transferor's contribution rate for the remainder of the calendar year shall be 2.7% as provided in section 19.

(iv) The rate of contributions applicable to the transferee shall not be changed for the portion of the current calendar year remaining on the transfer date.

(2) A transferee that has no rate of contributions applicable immediately before the transfer date shall, beginning with the first day of the quarter in which the transfer occurs, be assigned the same rate of contributions that applied to the transferor on the date of the transfer and a contribution rate of 2.7% for any portion of the calendar year before the first day of the quarter in which the transfer occurs.

(3) If transfers of businesses simultaneously involve 2 or more transferors and a single transferee who has no rate of contributions applicable immediately before the transfer date, the transferee shall be assigned a contribution rate beginning with the first day of the quarter in which the transfers occur based upon the experience account percentage determined by the transferred experience account balances and the total and insured payrolls properly allocable to the transferee as of the date on which the businesses were transferred, or as of June 30 of the year in which the businesses were transferred, whichever is earlier, and a contribution rate of 2.7% for any portion

of the calendar year before the first day of the quarter in which the transfers occur. If none of the transferors was an employer entitled to an adjusted contribution rate, then a contribution rate of 2.7% shall apply to the transferee for the calendar year in which the transfers occur.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;-- Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937;-- Am. 1941, Act 364, Imd. Eff. July 1, 1941;-- Am. 1943, Act 246, Imd. Eff. June 1, 1943;-- Am. 1947, Act 360, Imd. Eff. July 8, 1947;-- CL 1948, 421.22;-- Am. 1954, Act 197, Imd. Eff. May 7, 1954;-- Am. 1955, Act 281, Eff. July 15, 1955; -- Am. 1957, Act 311, Imd. Eff. June 21, 1957;-- Am. 1965, Act 281, Eff. Sept. 5, 1965;-- Am. 1967, Act 254, Imd. Eff. July 19, 1967;-- Am. 1968, Act 338, Imd. Eff. July 19, 1968;-- Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972;-- Am. 1974, Act 104, Eff. June 9, 1974;-- Am. 1977, Act 155, Imd. Eff. Nov. 8, 1977;-- Am. 2005, Act 17, Eff. July 1, 2005.

Cited in other sections: Section 421.22 is cited in '208.38a.

421.22a Transfer of operations from another state to this state; conditions to being deemed qualified employer; withdrawing request for application of section; furnishing information to commission; wages, contributions, and benefits deemed paid in this state; accounts.

Sec. 22a. (1) Notwithstanding any other provision of this act, an employer who transfers all or a segregable part of his or her operations from another state to this state for the purposes of this section shall be deemed to be a qualified employer within the meaning of section 19(a)(1), as of the computation date applicable to the calendar year within which the transfer occurs, if that employer complies with all of the following:

(a) Pays wages subject to the federal unemployment tax act for 18 consecutive completed calendar quarters immediately preceding the computation date specified in this subsection.

(b) Within 90 days after the transfer of operations, notifies the commission of compliance with subdivision (a) and requests a contribution rate under section 19(a)(1).

(c) Certifies to the commission all information with respect to wages, contributions, and benefit charges in connection with the transferred operations and any other information which the commission determines to be necessary.

(2) The employer has 30 days after receipt of notice of determination of contribution rate computed under section 19(a)(1) within which to withdraw his or her request for application of this section.

(3) The employer shall furnish to the commission at the times the commission prescribes all information which the commission determines to be necessary with respect to those benefits paid, after the transfer and before each succeeding computation date, which were based on wages, applicable to the transferred operations, paid in the other state.

(4) Wages, contributions, and benefits resulting in rating account charges in connection with the transferred operations shall be deemed to have been paid in this state for the purpose of computing rates under section 19. The employer's rating account balance applicable to the transferred operations before the transfer date shall be debited to the nonchargeable benefits account; and benefits subsequently paid based on wages, applicable to the transferred operations, which were paid in the other state shall be charged to the employer's rating account and credited to the nonchargeable benefits account.

History: Add. 1962, Act 36, Eff. Mar. 28, 1963;-- Am. 1965, Act 281, Eff. Sept. 5, 1965;-- Am. 1968, Act 338, Imd. Eff. July 19, 1968;-- Am. 1975, Act 110, Eff. June 8, 1975;-- Am. 1983, Act 164, Eff. Oct. 1, 1983.

421.22b Transferring trade or business with intent to reduce contribution rate or reimbursement payments.

Sec. 22b. (1) A person shall not do either of the following:

(a) Transfer the person's trade or business or a portion of the trade or business to another employer for the sole or primary purpose of reducing the contribution rate or reimbursement payments in lieu of contributions required under this act.

(b) Acquire a trade or business or a part of a trade or business for the sole or primary purpose of obtaining a lower contribution rate than would otherwise apply under this act.

(2) The following provisions apply to assignment of rates and transfer of the unemployment experience of a trade or business to prevent or remedy transfers of trade or business in violation of subsection (1):

(a) If an employer transfers its trade or business or a portion of its trade or business to another employer and there is substantially common ownership, management, or control of the 2 employers at the time of the transfer, the unemployment experience attributable to the transferred trade or business shall be transferred to the transferee employer. The agency shall recalculate the contribution rates of both employers under section 19 and apply the new rates in the same manner as for a transfer of business under section 22(c)(1) and (d)(1). However, if, after a transfer of experience under this subdivision the agency determines that the sole or primary purpose of the transfer of trade or business was to obtain reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to the account.

(b) If the unemployment insurance agency determines that a person who is not an employer under this act at the time of a transfer acquires a trade or business, or a portion of a trade or business, solely or primarily for the purpose of obtaining a lower contribution rate, the unemployment insurance agency shall assign that employer the applicable new employer rate under section 19.

(c) In addition to any sanction available under section 54(b) or 54b, if a person knowingly violates or attempts to violate subsection (1), or if a person knowingly advises another person so as to cause a violation of subsection (1), the person is subject to the following:

(i) If the person is a transferring or acquiring employer, the employer shall be assigned the higher of the following contribution rates:

(A) The highest contribution rate assignable under this act for the rate year during which the violation or attempted violation occurs and for the 3 rate years immediately following that rate year.

(B) If the employer's business is already at the highest rate assignable for a year in which the violation occurs or if the highest rate assignable would result in an increase of less than 2% of taxable wages, an additional penalty rate of 2% of taxable wages for that year.

(ii) If the person is not an employer, the person is subject to a civil fine of not more than $5,000.00.

(d) Notwithstanding the restrictions in section 26(a), the money recovered under this section as contributions, reimbursements in lieu of contributions, civil fines, civil penalties, or interest shall be credited to the unemployment compensation fund.

(e) The unemployment insurance agency shall establish procedures to identify the transfer or acquisition of a trade or business, or part of a trade or business, for purposes of this section. This subdivision does not grant authority to promulgate rules to define SUTA dumping.

(f) Beginning January 1, 2006, the unemployment insurance agency shall provide an annual written report to the chairpersons of the standing committees and the appropriations subcommittees of the house and senate having jurisdiction over legislation pertaining to unemployment compensation. The report shall include all of the following information in a form that does not identify individual employers:

(i) The procedures the agency has adopted to prevent SUTA dumping.

(ii) The number of SUTA dumping investigations opened during the year.

(iii) The average length of time to resolve a SUTA dumping investigation and the number of investigations pending for more than 6 months and for more than 1 year.

(iv) The number of cases brought before an administrative law judge or the board of review and the agency's success rate in those cases.

(v) The amount of money recovered as a result of implementing the provisions of this section.

(vi) The amount of the balance or deficit in the unemployment compensation fund.

(vii) The estimated fiscal impact of SUTA dumping on the unemployment compensation fund balance and the factual basis for the estimate.

(viii) The number of full-time employees assigned to, and the number of employee hours devoted to, SUTA dumping prevention, investigation, and remediation.

(ix) The number of SUTA dumping investigations that involved the transfer of employees to or from an employee leasing company.

(x) The number of investigations in which an employee leasing company was found to have participated in SUTA dumping.

(xi) The number of employee leasing companies operating in Michigan.

(3) For purposes of this section, the unemployment insurance agency shall determine whether a transfer is made for the sole or primary purpose of obtaining a lower contribution rate using objective factors, such as the cost of acquiring the business, continuity in operating the business enterprise of the acquired business, the length of time the business enterprise continues to operate, and the number of new employees hired to perform duties unrelated to the business activity or trade conducted before the acquisition.

(4) Notwithstanding any other provision of this act, the following provisions apply to changes in status between reimbursing employer and contributing employer:

(a) If a contributing employer, including an employer described in section 13l that elected to be a contributing employer, elects to become a reimbursing employer, any negative balance the employer incurred while a contributing employer must be paid to the agency before the employer may become a reimbursing employer.

(b) Any benefit charges incurred as a result of services performed for a contributing employer that are charged to the employer's account after it has become a reimbursing employer shall be transferred to the employer's reimbursing account and paid by means of reimbursement to the agency.

(c) If a reimbursing employer or an employer described in section 13l of this act applies to become a contributing employer and the agency permits the reimbursing employer to become a contributing employer, or if the agency converts a reimbursing employer to a contributing employer, then the employer shall continue to pay the agency as reimbursement payments those benefit charges that were incurred based on wages paid while the employer was a reimbursing employer, and benefit charges incurred based on wages paid after the reimbursing employer became a contributing employer shall be used to calculate the employer's contribution rate.

(5) As used in this section:

(a) "Knowingly" means having actual knowledge of, or acting with deliberate ignorance or reckless disregard for, the prohibition involved.

(b) "Person" means that term as defined in section 7701 of the internal revenue code of 1986, 26 USC 7701.

(c) "SUTA" means state unemployment tax act.

(d) "SUTA dumping" means transferring a trade or business, or a part of a trade or business, soley or primarily for the purpose of reducing the contributioin rate or reimbursement payments in lieu of contributions required under this act.

(e) "Trade or business" includes the employer's employees, but the transfer of some or all of an employer's employees to another employer shall be considered a transfer of trade or business for purposes of this section if, as a result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred employees and that trade or business is performed by the transferee employer.

(6) This section is intended to be interpreted and applied in a manner so as to meet the minimum requirements of the SUTA dumping prevention act of 2004, Public Law 108-295, and implementing federal regulations.

History: Add. 2005, Act 18, Eff. July 1, 2005.

421.23 Coverage of employer; period.

Sec. 23. Except as otherwise provided in sections 24 and 25, any employing unit which becomes an employer subject to this act within any calendar year shall be subject to this act during the whole of such calendar year.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;-- Am. 1939, Act 324, Imd. Eff. June 22, 1939;

421.24 Cessation of employing unit as employer subject to act; termination of coverage; rescission of determination.

Sec. 24. Except as otherwise provided in section 25, an employing unit shall cease to be an employer subject to this act as provided in this section:

(a) If an employing unit that became liable under section 41 makes written application for termination of its coverage under this act, the commission shall issue a determination granting or denying the application. The commission shall grant the application terminating coverage effective as of the last day of the calendar quarter in which the application was received by the commission if it finds that the employing unit did not meet the applicable requirements of an employer specified in section 41 during the preceding calendar year and during the current calendar year, up to the last day of the calendar quarter in which the application was received. If the employing unit requesting termination became an employer under section 41(2) in the preceding calendar year, then the individuals in the employ of any predecessor or predecessors in a chain of successorship shall be considered as if they were employees of the requesting employing unit for the purpose of determining the number of weeks during which 1 or more individuals performed services in employment and in determining total remuneration for employment during the preceding calendar year. If an employing unit liable solely under section 41(7) makes written application for termination of its coverage under this act, the commission shall grant the application terminating coverage effective as of the last day of the calendar quarter in which the application was received by the commission if it finds that the employing unit ceased to have employment in Michigan during the calendar year preceding the receipt of the application for termination and had no employment in Michigan during the current calendar year, up to the last day of the calendar quarter in which the application was received. An employer whose application for termination of coverage is denied may request a redetermination in accordance with section 32a.

(b) The commission shall terminate the coverage of an employing unit as of the effective date on which the employing unit's entire rating account is transferred to another employer under section 22.

(c)(1) The commission may issue a determination terminating the coverage of an employing unit as of January 1 of a calendar year if it finds that the employing unit ceased to exist during the preceding calendar year or met the requirements for termination as specified in subdivision (a). The determination shall be mailed by first-class mail to the last known address of the employing unit involved.

(2) The commission may terminate the coverage of an employing unit as of January 1 of a previous calendar year with respect to which it makes the foregoing findings, if the employing unit has not been previously determined to have been an employer with respect to that specific year.

(3) The commission shall rescind its determination terminating the coverage of an employing unit under this subsection if it has received written objection to the determination from the employing unit within 30 days after the date of mailing by the commission.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;-- Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937;-- Am. 1941, Act 364, Imd. Eff. July 1, 1941;-- CL 1948, 421.24;-- Am. 1949, Act 282, Imd. Eff. June 11, 1949;-- Am. 1951, Act 251, Imd. Eff. June 17, 1951;-- Am. 1954, Act 197, Imd. Eff. May 7, 1954;-- Am. 1957, Act 311, Imd. Eff. June 21, 1957;-- Am. 1967, Act 254, Imd. Eff. July 19, 1967;-- Am. 1968, Act 338, Imd. Eff. July 19, 1968;-- Am. 1975, Act 110, Eff. June 8, 1975;-- Am. 1977, Act 277, Eff. Jan. 1, 1978;-- Am. 1983, Act 164, Eff. Oct. 1, 1983;-- Am. 1996, Act 498, Imd. Eff. Jan. 9, 1997.

421.25 Election that services be deemed employment subject to act; request for termination of coverage; termination of election.

Sec. 25. (1) An employing unit for which services are performed that do not constitute employment as defined in this act may file with the commission a written election that all such services performed by individuals in its employ in 1 or more distinct establishments or places of business shall be deemed to constitute employment for the purposes of this act for not less than 2 calendar years. Upon the written approval of an election by the commission, the services shall be deemed to constitute employment subject to this act beginning with the calendar quarter in which the application is received by the commission. The services shall cease to be deemed employment subject hereto as of the last day of any calendar quarter subsequent to such 2 calendar years, if, during the calendar quarter the employing unit has filed with the commission a written request for termination of coverage.

(2) An employing unit for which services that constitute employment are performed, not otherwise subject to this act, which files with the commission its written election to become an employer subject hereto for not less than 2 calendar years, shall, with the written approval of that election by the commission, become an employer subject hereto to the same extent as all other employers, beginning with the calendar quarter in which the application is received by the commission, and shall cease to be subject hereto as of the last day of any calendar quarter subsequent to such 2 calendar years, if, during that calendar quarter, it has filed with the commission a written request for termination of coverage.

(3) The commission may at any time terminate an election by giving written notification to the employing unit involved.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;-- Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937;-- Am. 1941, Act 364, Imd. Eff. July 1, 1941;-- CL 1948, 421.25 ;-- Am. 1954, Act 197, Imd. Eff. May 7, 1954;-- Am. 1955, Act 281, Eff. July 15, 1955;-- Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972;-- Am. 1974, Act 104, Eff. Jan. 1, 1975.

421.26 Unemployment compensation fund.

Sec. 26. (a) There is established as a special fund, separate and apart from all public money or funds of this state, an unemployment compensation fund, herein referred to as the fund, which shall be administered by the commission exclusively for the purposes of this act. The fund shall consist of (1) all contributions and payments in lieu of contributions collected under the provisions of this act as well as reimbursement payments by the federal government for its portion of sharable extended benefits; (2) interest earned upon any moneys in the fund; (3) any property or securities acquired through the use of money belonging to the fund; (4) all earnings of such property or securities; (5) amounts transferred from the contingent fund pursuant to section 10; (6) all money collected, including fines, civil penalties, and interest, under section 22b; and (7) any other money received by the commission for unemployment compensation, except interest, penalties, and damages collected under other provisions of this act. All money in the fund shall be mingled and undivided.

(b) The commission shall designate a treasurer and custodian of the fund who shall administer the fund in accordance with the directions of the commission and shall issue his or her vouchers upon it in accordance with the regulations as the commission prescribes. The treasurer shall maintain within the fund 3 separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All money payable to the fund,

upon receipt by the commission, shall be forwarded to the treasurer who shall immediately deposit it in the clearing account. Refunds payable pursuant to section 16 may be paid from the clearing account upon vouchers issued by the treasurer under the direction of the commission. After clearance of the vouchers, all other money in the clearing account, except amounts needed for refunds and judgments, shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, 42 USC 1104. The benefit account shall consist of all money requisitioned from this state's account in the unemployment trust fund. Except as otherwise provided in this act, money in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any depository designated by the commission.

(c)(1) Except as provided in paragraph (2) of this subsection, money shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission. The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account in that fund, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt, the treasurer shall deposit the requisitioned money in the benefit account and shall issue his or her vouchers for the payment of benefits solely from the benefit account. All vouchers issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the counter-signature of a member of the commission or its duly authorized agent for that purpose. Any balance of money requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the commission, shall be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in subsection (b).

(2) The commission may requisition from this state's account in the unemployment trust fund such amounts, or portions thereof, as have been specifically appropriated by the legislature for the administration of this act in accordance with the provisions of section 903(c)(2) of the federal social security act, 42 USC 1103(c)(2). Upon receipt, the treasurer shall deposit that money in the administration fund, but it shall remain a part of the unemployment compensation fund until expended.

(d) The provisions of subsections (a), (b), and (c), to the extent that they relate to the unemployment trust fund, shall be operative only while the unemployment trust fund continues to exist and until the secretary of the treasury of the United States of America continues to maintain for this state a separate account of all funds deposited in it by this state for benefit purposes, together with this state's proportionate share of the earnings of the unemployment trust fund, from which no other state is permitted to make withdrawals. If the unemployment trust fund ceases to exist, or the separate account is no longer maintained, all money, properties, or securities therein, belonging to the unemployment compensation fund of this state, shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release the money, properties, or securities in a manner approved by the commission, in bonds or other interest bearing obligations of the United States of America or of this state. The investments shall be so made that all the assets of the fund are readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the commission.

(e) The unemployment compensation fund shall be audited by the auditor general at the times requested by the state administrative board.

(f) The commission may designate an assistant treasurer who, in the absence of the treasurer and custodian as designated by the commission under the authority conferred upon it under subsection (b), may perform the duties conferred upon the treasurer and custodian under this act.

(g) The commission may enter into agreements that are necessary to secure any advance or grant of funds by the secretary of the treasury of the United States in accordance with the authority extended under section 1201 of the social security act, 42 USC 1321, or under any other act of congress extending that authority.

Any amount transferred to the unemployment trust fund by the secretary of the treasury of the United States under the terms of any agreement entered into in accordance with the authority extended in this subsection shall be repaid to the secretary of the treasury of the United States for the unemployment trust fund.

Whenever all interest bearing advances from the federal government have been repaid, if employers will be able to avoid, under the provisions of section 3302(g) of the federal unemployment tax act, 26 USC 3302(g), direct payment of the additional federal unemployment tax imposed under section 3302(c)(2) of the federal unemployment tax act, 26 USC 3302(c)(2), funds sufficient to qualify for avoidance shall be transferred from the account of this state in the federal unemployment trust fund to the federal unemployment account in that trust fund, unless precluded by federal law.

421.26 Any interest required to be paid on advances under title XII of the social security act, 42 USC 1321 to 1324, shall be paid in a timely manner and shall not be paid, directly or indirectly by an equivalent reduction in contributions or payments in lieu of contributions, from amounts in this state's account in the federal unemployment trust fund.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;—Am. 1939, Act 324, Imd. Eff. June 22, 1939;—Am. 1947, Act 360, Imd. Eff. July 8, 1947;—CL 1948, 421.26;—Am. 1951, Act 251, Imd. Eff. June 17, 1951;—Am. 1957, Act 311, Imd. Eff. June 21, 1957;—Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972;—Am. 1982, Act 535, Eff. Jan. 2, 1983;—Am. 1984, Act 172, Imd. Eff. June 29, 1984;–Am. 2005, Act 16, Imd. Eff. July 1, 2005.

421.26a Issuance of notes, bonds, financial instruments, or other evidences of indebtedness; use of proceeds; payment of unemployment obligation assessment; rate; collection; additional special subaccounts; definitions.

Sec. 26a. (1) The director of the department of licensing and regulatory affairs may request the Michigan finance authority to issue notes, bonds, financial instruments, or other evidences of indebtedness, the proceeds of which may be used for any of the following purposes:

(a) To finance, refinance, refund, or advance refund any payment required or obligation arising under this section or under 42 USC 1321 and 1322.

(b) To repay amounts owed or to be owed to the United States treasury resulting from advances made to this state by the federal government under federal law, including 42 USC 1321, together with interest on those advances.

(c) To reimburse funds advanced or loaned under either of the following circumstances:

(i) By this state to the unemployment trust fund and used to make any payment required or obligation described in this section or 42 USC 1321.

(ii) By the unemployment trust fund to the obligation trust fund and used to pay obligations of the Michigan finance authority.

(d) To fund unemployment compensation benefits and this state's account within the federal government unemployment trust fund, including balances in that account.

(e) To fund capitalized interest; debt service reserve funds; and payment of costs of, and administrative expenses in connection with, issuing obligations.

(2) In 2011 and in each year thereafter in which any obligation is outstanding, an employer is subject to, shall be assessed, and shall pay an unemployment obligation assessment, which shall be collected quarterly and shall be deposited to the credit of the obligation trust fund. The obligation assessment is in addition to the employer's required contributions, is not subject to the limiting provisions for contributions required under this act, and is in addition to and separate from the solvency tax imposed under section 19a.

(3) The unemployment obligation assessment rate shall be determined by the state treasurer after consultation with the director of the department of licensing and regulatory affairs and shall be an amount sufficient to ensure timely payment of all of the following:

(a) Principal, interest, and any redemption premium on the obligations.

(b) Administrative expenses, credit enhancement and termination fees, and other fees, if any, in connection with issuing the obligations.

(c) All other amounts required to be maintained and paid under the terms of a resolution, indenture, or authorizing statute under which the obligation is issued.

(d) Amounts necessary to maintain the ratings on the obligations that are assigned by a nationally recognized rating service at a level determined by the state treasurer, in his or her sole discretion.

(4) The obligation assessment rate may take into account the employer's experience rating from the previous year. The obligation assessment rate shall be applied against the taxable wage limit described in section 44, and shall be assessed against all contributing employers.

(5) The obligation assessment is due at the same time, collected in the same manner, and subject to the same penalties and interest as contributions assessed under this act.

(6) The proceeds of obligation assessments received each year are irrevocably pledged and dedicated to the payment of obligations and administrative expenses on those expenses and are subject to the pledge and lien made to the extent and as described in the resolution, indenture, or the authorizing statute under which the obligation is issued.

(7) The director of the department of licensing and regulatory affairs shall administer and cause the obligation assessments to be collected.

(8) The director of the department of licensing and regulatory affairs may request the state treasurer to establish additional special subaccounts within the obligation trust fund for the purpose of identifying more precisely the sources of payments into and disbursements from the obligation trust fund, or as may be required under the resolution or indenture authorizing the obligations.

(9) The director of the department of licensing and regulatory affairs or his or her designee may enter into agreements with the issuer of the obligations or a third party as is necessary to issue the obligations. Nothing in this act or any provision of any document authorized under this section creates or constitutes state indebtedness.

(10) As used in this section and section 10a:

(a) "Michigan finance authority" means the authority created under Executive Order No. 2010-2, MCL 12.194.

(b) "Obligation" means a note, bond, financial instrument or other evidence of indebtedness issued as provided in this section.

(c) "Unemployment obligation assessment" means an assessment on an employer under this section.

(d) "Obligation trust fund" means the fund created in section 10a.

History: Add. 2011, Act 268, Imd. Eff. December 19, 2011.

421.27 Payment of benefits.

Sec. 27. (a)(1) When a determination, redetermination, or decision is made that benefits are due an unemployed individual, the benefits shall become payable from the fund and continue to be payable to the unemployed individual, subject to the limitations imposed by the individual's monetary entitlement, if the individual continues to be unemployed and to file claims for benefits, until the determination, redetermination, or decision is reversed, a determination, redetermination, or decision on a new issue holding the individual disqualified or ineligible is made, or, for benefit years beginning before October 1, 2000, a new separation issue arises resulting from subsequent work.

(2) Benefits shall be paid in person or by mail through Employment offices in accordance with rules promulgated by the commission.

(b)(1) Subject to subsection (f), the weekly benefit rate for an individual, with respect to benefit years beginning before October 1, 2000, shall be 67% of the individual's average after tax weekly wage, except that the individual's maximum weekly benefit rate shall not exceed $300.00. However, with respect to benefit years beginning on or after October 1, 2000, the individual's weekly benefit rate is 4.1% of the individual's wages paid in the calendar quarter of the base period in which the individual was paid the highest total wages, plus $6.00 for each dependent as defined in subdivision (4), up to a maximum of 5 dependents, claimed by the individual at the time the individual files a new claim for benefits, except that the individual's maximum weekly benefit rate shall not exceed $300.00 before April 26, 2002 and $362.00 for claims filed on and after April 26, 2002. The weekly benefit rate for an individual claiming benefits on and after April 26, 2002 shall be recalculated subject to the $362.00 maximum weekly benefit rate. The unemployment agency shall establish the procedures necessary to verify the number of dependents claimed. If a person fraudulently claims a dependent, that person is subject to the penalties set forth in sections 54 and 54c. For benefit years beginning on or after October 2, 1983, the weekly benefit rate shall be adjusted to the next lower multiple of $1.00.

(2) For benefit years beginning before October 1, 2000, the state average weekly wage for a calendar year shall be computed on the basis of the 12 months ending the June 30 immediately before that calendar year. The commission shall prepare a table of weekly benefit rates based on an "average after tax weekly wage" calculated by subtracting, from an individual's average weekly wage as determined in accordance with section 51, a reasonable approximation of the weekly amount required to be withheld by the employer from the remuneration of the individual based on dependents and exemptions for income taxes under 26 USC 3401 to 3406, and under section 351 of the income tax act of 1967, 1967 PA 281, MCL 206.351, and for old age and survivor's disability insurance taxes under the federal insurance contributions act, 26 USC 3101 to 3128. For purposes of applying the table to an individual's claim, a dependent shall be as defined in subdivision (3). The table applicable to an individual's claim shall be the table reflecting the number of dependents claimed by the individual under subdivision (3). The commission shall adjust the tables based on changes in withholding schedules published by the United States department of treasury, internal

revenue service, and by the department of treasury. The number of dependents allowed shall be determined with respect to each week of unemployment for which an individual is claiming benefits.

(3) For benefit years beginning before October 1, 2000, a dependent means any of the following persons who are receiving and for at least 90 consecutive days immediately before the week for which benefits are claimed, or, in the case of a dependent husband, wife, or child, for the duration of the marital or parental relationship, if the relationship has existed less than 90 days, has received more than 1/2 the cost of his or her support from the individual claiming benefits:

(a) A child, including stepchild, adopted child, or grandchild of the individual who is under 18 years of age, or 18 years of age or over if, because of physical or mental infirmity, the child is unable to engage in a gainful occupation, or is a full-time student as defined by the particular educational institution, at a high school, vocational school, community or junior college, or college or university and has not attained the age of 22.

(b) The husband or wife of the individual.

(c) The legal father or mother of the individual if that parent is either more than 65 years of age or is permanently disabled from engaging in a gainful occupation.

(d) A brother or sister of the individual if the brother or sister is orphaned or the living parents are dependent parents of an individual, and the brother or sister is under 18 years of age, or 18 years of age or over if, because of physical or mental infirmity, the brother or sister is unable to engage in a gainful occupation, or is a full-time student as defined by the particular educational institution, at a high school, vocational school, community or junior college, or college or university and is less than 22 years of age.

(4) For benefit years beginning on or after October 1, 2000, a dependent means any of the following persons who received for at least 90 consecutive days immediately before the first week of the benefit year or, in the case of a dependent husband, wife, or child, for the duration of the marital or parental relationship if the relationship existed less than 90 days before the beginning of the benefit year, has received more than 1/2 the cost of his or her support from the individual claiming the benefits:

(a) A child, including stepchild, adopted child, or grandchild of the individual who is under 18 years of age, or 18 years of age and over if, because of physical or mental infirmity, the child is unable to engage in a gainful occupation, or is a full-time student as defined by the particular educational institution, at a high school, vocational school, community or junior college, or college or university and has not attained the age of 22.

(b) The husband or wife of the individual.

(c) The legal father or mother of the individual if that parent is either more than 65 years of age or is permanently disabled from engaging in a gainful occupation.

(d) A brother or sister of the individual if the brother or sister is orphaned or the living parents are dependent parents of an individual, and the brother or sister is under 18 years of age, or 18 years of age and over if, because of physical or mental infirmity, the brother or sister is unable to engage in a gainful occupation, or is a full-time student as defined by the particular educational institution, at a high school, vocational school, community or junior college, or college or university and is less than 22 years of age.

(5) For benefit years beginning before October 1, 2000, dependency status of a dependent, child or otherwise, once established or fixed in favor of an individual continues during the individual's benefit year until terminated. Dependency status of a dependent terminates at the end of the week in which the dependent ceases to be an individual described in subdivision (3)(a), (b), (c), or (d) because of age, death, or divorce. For benefit years beginning on or after October 1, 2000, the number of dependents established for an individual at the beginning of the benefit year shall remain in effect during the entire benefit year.

(6) For benefit years beginning before October 1, 2000, failure on the part of an individual, due to misinformation or lack of information, to furnish all information material for determination of the number of the individual's dependents when the individual files a claim for benefits with respect to a week is good cause to issue a redetermination as to the amount of benefits based on the number of the individual's dependents as of the beginning date of that week. Dependency status of a dependent, child or otherwise, once established or fixed in favor of a person is not transferable to or usable by another person with respect to the same week.

For benefit years beginning on or after October 1, 2000, failure on the part of an individual, due to misinformation or lack of information, to furnish all information material for determination of the number of the individual's dependents is good cause to issue a redetermination as to the amount of benefits based on the number of the individual's dependents as of the beginning of the benefit year.

(c) Subject to subsection (f), all of the following apply to eligible individuals:

(1) Each eligible individual shall be paid a weekly benefit rate with respect to the week for which the individual earns or receives no remuneration. Notwithstanding the definition of week in section 50, if within 2 consecutive weeks in which an individual was not unemployed within the meaning of section 48 there was a period of 7 or more consecutive days for which the individual did not earn or receive remuneration, that period shall be considered a week for benefit purposes under this act if a claim for benefits for that period is filed not later than 30 days after the end of the period.

(2) Each eligible individual shall have his or her weekly benefit rate reduced with respect to each week in which the individual earns or receives remuneration at the rate of 40 cents for each whole $1.00 of remuneration earned or received during that week. Beginning October 1, 2015, an eligible individual's weekly benefit rate shall be reduced at the rate of 50 cents for each whole $1.00 of remuneration in which the eligible individual earns or receives remuneration in that benefit week.

(3) An individual who receives or earns partial remuneration may not receive a total of benefits and earnings that exceeds 1-3/5 times his or her weekly benefit amount. For each dollar of total benefits and earnings that exceeds 1-3/5 times the individual's weekly benefit amount, benefits shall be reduced by $1.00. Beginning October 1, 2015, the total benefits and earnings for an individual who receives or earns partial remuneration shall not exceed 1-1/2 times his or her weekly benefit amount. The individual's benefits shall be reduced by $1.00 for each dollar by which the total benefits and earnings exceed 1-1/2 times the individual's weekly benefit amount.

(4) If the reduction in a claimant's benefit rate for a week in accordance with subdivision (2) or (3) results in a benefit rate greater than zero for that week, the claimant's balance of weeks of benefit payments shall be reduced by 1 week.

(5) All remuneration for work performed during a shift that terminates on 1 day but that began on the preceding day shall be considered to have been earned by the eligible individual on the preceding day.

(6) The unemployment agency shall report annually to the legislature the following information with regard to subdivisions (2) and (3):

(a) The number of individuals whose weekly benefit rate was reduced at the rate of 40 or 50 cents for each whole $1.00 of remuneration earned or received over the immediately preceding calendar year.

(b) The number of individuals who received or earned partial remuneration at or exceeding the applicable limit of 1-1/2 or 1-3/5 times their weekly benefit amount prescribed in subdivision (3) for any 1 or more weeks during the immediately preceding calendar year.

(d) For benefit years beginning before October 1, 2000, and subject to subsection (f) and this subsection, the amount of benefits to which an individual who is otherwise eligible is entitled during a benefit year from an employer with respect to employment during the base period is the amount obtained by multiplying the weekly benefit rate with respect to that employment by 3/4 of the number of credit weeks earned in the employment. For the purpose of this subsection and section 20(c), if the resultant product is not an even multiple of 1/2 the weekly benefit rate, the product shall be raised to an amount equal to the next higher multiple of 1/2 the weekly benefit rate, and, for an individual who was employed by only 1 employer in the individual's base period and earned 34 credit weeks with that employer, the product shall be raised to the next higher multiple of the weekly benefit rate. The maximum amount of benefits payable to an individual within a benefit year, with respect to employment by an employer, shall not exceed 26 times the weekly benefit rate with respect to that employment. The maximum amount of benefits payable to an individual within a benefit year shall not exceed the amount to which the individual would be entitled for 26 weeks of unemployment in which remuneration was not earned or received. The limitation of total benefits set forth in this subsection does not apply to claimants declared eligible for training benefits in accordance with subsection (g). For benefit years beginning on or after October 1, 2000, and subject to subsection (f) and this subsection, the maximum benefit amount payable to an individual in a benefit year for purposes of this section and section 20(d) is the number of weeks of benefits payable to an individual during the benefit year, multiplied by the individual's weekly benefit rate. The number of weeks of benefits payable to an individual shall be calculated by taking 43% of the individual's base period wages and dividing the result by the individual's weekly benefit rate. If the quotient is not a whole or half number, the result shall be rounded down to the nearest half number. However, for each eligible individual filing an initial claim before January 15, 2012, not more than 26 weeks of benefits or less than 14 weeks of benefits shall be payable to an individual in a benefit year. For each eligible individual filing an initial claim on or after January 15, 2012, not more than 20 weeks of benefits or less than 14 weeks of benefits shall be payable to an individual in a benefit year. The limitation of total benefits set forth in this subsection does not apply to claimants declared eligible for training benefits in accordance with subsection (g).

(e) When a claimant dies or is judicially declared insane or mentally incompetent, unemployment compensation benefits accrued and payable to that person for weeks of unemployment before death, insanity, or incompetency, but not paid, shall become due and payable to the person who is the legal heir or guardian of the claimant or to any other person found by the commission to be equitably entitled to the benefits by reason of having incurred expense in behalf of the claimant for the claimant's burial or other necessary expenses.

(f)(1) For benefit years beginning before October 1, 2000, and notwithstanding any inconsistent provisions of this act, the weekly benefit rate of each individual who is receiving or will receive a "retirement benefit", as defined in subdivision (4), shall be adjusted as provided in subparagraphs (a), (b), and (c). However, an individual's extended benefit account and an individual's weekly extended benefit rate under section 64 shall be established without reduction under this subsection unless subdivision (5) is in effect. Except as otherwise provided in this subsection, all other provisions of this act continue to apply in connection with the benefit claims of those retired persons.

(a) If and to the extent that unemployment benefits payable under this act would be chargeable to an employer who has contributed to the financing of a retirement plan under which the claimant is receiving or will receive a retirement benefit yielding a pro rata weekly amount equal to or larger than the claimant's weekly benefit rate as otherwise established under this act, the claimant shall not receive unemployment benefits that would be chargeable to the employer under this act.

(b) If and to the extent that unemployment benefits payable under this act would be chargeable to an employer who has contributed to the financing of a retirement plan under which the claimant is receiving or will receive a retirement benefit yielding a pro rata weekly amount less than the claimant's weekly benefit rate as otherwise established under this act, then the weekly benefit rate otherwise payable to the claimant and chargeable to the employer under this act shall be reduced by an amount equal to the pro rata weekly amount, adjusted to the next lower multiple of $1.00, which the claimant is receiving or will receive as a retirement benefit.

(c) If the unemployment benefit payable under this act would be chargeable to an employer who has not contributed to the financing of a retirement plan under which the claimant is receiving or will receive a retirement benefit, then the weekly benefit rate of the claimant as otherwise established under this act shall not be reduced due to receipt of a retirement benefit.

(d) If the unemployment benefit payable under this act is computed on the basis of multiemployer credit weeks and a portion of the benefit is allocable under section 20(e) to an employer who has contributed to the financing of a retirement plan under which the claimant is receiving or will receive a retirement benefit, the adjustments required by subparagraph (a) or (b) apply only to that portion of the weekly benefit rate that would otherwise be allocable and chargeable to the employer.

(2) If an individual's weekly benefit rate under this act was established before the period for which the individual first receives a retirement benefit, any benefits received after a retirement benefit becomes payable shall be determined in accordance with the formula stated in this subsection.

(3) When necessary to assure prompt payment of benefits, the commission shall determine the pro rata weekly amount yielded by an individual's retirement benefit based on the best information currently available to it. In the absence of fraud, a determination shall not be reconsidered unless it is established that the individual's actual retirement benefit in fact differs from the amount determined by $2.00 or more per week. The reconsideration shall apply only to benefits as may be claimed after the information on which the reconsideration is based was received by the commission.

(4)(a) As used in this subsection, "retirement benefit" means a benefit, annuity, or pension of any type or that part thereof that is described in subparagraph (b) that is both:

(i) Provided as an incident of employment under an established retirement plan, policy, or agreement, including federal social security if subdivision (5) is in effect.

(ii) Payable to an individual because the individual has qualified on the basis of attained age, length of service, or disability, whether or not the individual retired or was retired from employment. Amounts paid to individuals in the course of liquidation of a private pension or retirement fund because of termination of the business or of a plant or department of the business of the employer involved are not retirement benefits.

(b) If a benefit as described in subparagraph (a) is payable or paid to the individual under a plan to which the individual has contributed:

(i) Less than 1/2 of the cost of the benefit, then only 1/2 of the benefit is treated as a retirement benefit.

(ii) One-half or more of the cost of the benefit, then none of the benefit is treated as a retirement benefit.

(c) The burden of establishing the extent of an individual's contribution to the cost of his or her retirement benefit for the purpose of subparagraph (b) is upon the employer who has contributed to the plan under which a benefit is provided.

(5) Notwithstanding any other provision of this subsection, for any week that begins after March 31, 1980, and with respect to which an individual is receiving a governmental or other pension and claiming unemployment compensation, the weekly benefit amount payable to the individual for those weeks shall be reduced, but not below zero, by the entire prorated weekly amount of any governmental or other pension, retirement or retired pay, annuity, or any other similar payment that is based on any previous work of the individual. This reduction shall be made only if it is required as a condition for full tax credit against the tax imposed by the federal unemployment tax act, 26 USC 3301 to 3311.

(6) For benefit years beginning on or after October 1, 2000, notwithstanding any inconsistent provisions of this act, the weekly benefit rate of each individual who is receiving or will receive a retirement benefit, as defined in subdivision (4), shall be adjusted as provided in subparagraphs (a), (b), and (c). However, an individual's extended benefit account and an individual's weekly extended benefit rate under section 64 shall be established without reduction under this subsection, unless subdivision (5) is in effect. Except as otherwise provided in this subsection, all the other provisions of this act apply to the benefit claims of those retired persons. However, if the reduction would impair the full tax credit against the tax imposed by the federal unemployment tax act, 26 USC 3301 to 3311, unemployment benefits shall not be reduced as provided in subparagraphs (a), (b), and (c) for receipt of any governmental or other pension, retirement or retired pay, annuity, or other similar payment that was not includable in the gross income of the individual for the taxable year in which it was received because it was a part of a rollover distribution.

(a) If any base period or chargeable employer has contributed to the financing of a retirement plan under which the claimant is receiving or will receive a retirement benefit yielding a pro rata weekly amount equal to or larger than the claimant's weekly benefit rate as otherwise established under this act, the claimant shall not receive unemployment benefits.

(b) If any base period employer or chargeable employer has contributed to the financing of a retirement plan under which the claimant is receiving or will receive a retirement benefit yielding a pro rata weekly amount less than the claimant's weekly benefit rate as otherwise established under this act, then the weekly benefit rate otherwise payable to the claimant shall be reduced by an amount equal to the pro rata weekly amount, adjusted to the next lower multiple of $1.00, which the claimant is receiving or will receive as a retirement benefit.

(c) If no base period or separating employer has contributed to the financing of a retirement plan under which the claimant is receiving or will receive a retirement benefit, then the weekly benefit rate of the claimant as otherwise established under this act shall not be reduced due to receipt of a retirement benefit.

(g) Notwithstanding any other provision of this act, an individual pursuing vocational training or retraining pursuant to section 28(2) who has exhausted all benefits available under subsection (d) may be paid for each week of approved vocational training pursued beyond the date of exhaustion a benefit amount in accordance with subsection (c), but not in excess of the individual's most recent weekly benefit rate. However, an individual shall not be paid training benefits totaling more than 18 times the individual's most recent weekly benefit rate. The expiration or termination of a benefit year shall not stop or interrupt payment of training benefits if the training for which the benefits were granted began before expiration or termination of the benefit year.

(h) A payment of accrued unemployment benefits shall not be made to an eligible individual or in behalf of that individual as provided in subsection (e) more than 6 years after the ending date of the benefit year covering the payment or 2 calendar years after the calendar year in which there is final disposition of a contested case, whichever is later.

(i) Benefits based on service in employment described in section 42(8), (9), and (10) are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this act, except that:

(1) With respect to service performed in an instructional, research, or principal administrative capacity for an institution of higher education as defined in section 53(2), or for an educational institution other than an institution of higher education as defined in section 53(3), benefits shall not be paid to an individual based on those services for any week of unemployment beginning after December 31, 1977 that commences during the period between 2 successive academic years or during a similar period between 2 regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, to an individual if the individual performs the service in the first of the academic years or terms and if there is a contract or a reasonable assurance that the individual will perform service in an instructional, research, or principal administrative capacity for an institution of higher education or an educational institution other than an institution of higher education in the second of the academic years or terms, whether or not the terms are successive.

(2) With respect to service performed in other than an instructional, research, or principal administrative capacity for an institution of higher education as defined in section 53(2) or for an educational institution other than an institution of higher education as defined in section 53(3), benefits shall not be paid based on those services for any week of unemployment beginning after December 31, 1977 that commences during the period between 2 successive academic years or terms to any individual if that individual performs the service in the first of the academic years or terms and if there is a reasonable assurance that the individual will perform the service for an institution of higher education or an educational institution other than an institution of higher education in the second of the academic years or terms.

(3) With respect to any service described in subdivision (1) or (2), benefits shall not be paid to an individual based upon service for any week of unemployment that commences during an established and customary vacation period or holiday recess if the individual performs the service in the period immediately before the vacation period or holiday recess and there is a contract or reasonable assurance that the individual will perform the service in the period immediately following the vacation period or holiday recess.

(4) If benefits are denied to an individual for any week solely as a result of subdivision (2) and the individual was not offered an opportunity to perform in the second academic year or term the service for which reasonable assurance had been given, the individual is entitled to a retroactive payment of benefits for each week for which the individual had previously filed a timely claim for benefits. An individual entitled to benefits under this subdivision may apply for those benefits by mail in accordance with R 421.210 of the Michigan administrative code as promulgated by the commission.

(5) Benefits based upon services in other than an instructional, research, or principal administrative capacity for an institution of higher education shall not be denied for any week of unemployment commencing during the period between 2 successive academic years or terms solely because the individual had performed the service in the first of the academic years or terms and there is reasonable assurance that the individual will perform the service for an institution of higher education or an educational institution other than an institution of higher education in the second of the academic years or terms, unless a denial is required as a condition for full tax credit against the tax imposed by the federal unemployment tax act, 26 USC 3301 to 3311.

(6) For benefit years established before October 1, 2000, and notwithstanding subdivisions (1), (2), and (3), the denial of benefits does not prevent an individual from completing requalifying weeks in accordance with section 29(3) nor does the denial prevent an individual from receiving benefits based on service with an employer other than an educational institution for any week of unemployment occurring between academic years or terms, whether or not successive, or during an established and customary vacation period or holiday recess, even though the employer is not the most recent chargeable employer in the individual's base period. However, in that case section 20(b) applies to the sequence of benefit charging, except for the employment with the educational institution, and section 50(b) applies to the calculation of credit weeks. When a denial of benefits under subdivision (1) no longer applies, benefits shall be charged in accordance with the normal sequence of charging as provided in section 20(b).

(7) For benefit years beginning on or after October 1, 2000, and notwithstanding subdivisions (1), (2), and (3), the denial of benefits shall not prevent an individual from completing requalifying weeks in accordance with section 29(3) nor shall the denial prevent an individual from receiving benefits based on service with another base period employer other than an educational institution for any week of unemployment occurring between academic years or terms, whether or not successive, or during an established and customary vacation period or holiday recess. However, when benefits are paid based on service with 1 or more base period employers other than an educational institution, the individual's weekly benefit rate shall be calculated in accordance with subsection (b)(1) but during the denial period the individual's weekly benefit payment shall be reduced by the portion of the payment attributable to base period wages paid by an educational institution and the account or experience account of the educational institution shall not be charged for benefits payable to the individual. When a denial of benefits under subdivision (1) is no longer applicable, benefits shall be paid and charged on the basis of base period wages with each of the base period employers including the educational institution.

(8) For the purposes of this subsection, "academic year" means that period, as defined by the educational institution, when classes are in session for that length of time required for students to receive sufficient instruction or earn sufficient credit to complete academic requirements for a particular grade level or to complete instruction in a noncredit course.

(9) In accordance with subdivisions (1), (2), and (3), benefits for any week of unemployment shall be denied to an individual who performed services described in subdivision (1), (2), or (3) in an educational institution while in the employ of an educational service agency. For the purpose of this subdivision, "educational service agency" means a governmental agency or governmental entity that is established and operated exclusively for the purpose of providing the services to 1 or more educational institutions.

(j) Benefits shall not be paid to an individual on the basis of any base period services, substantially all of which consist of participating in sports or athletic events or training or preparing to participate, for a week that commences during the period between 2 successive sport seasons or similar periods if the individual performed the services in the first of the seasons or similar periods and there is a reasonable assurance that the individual will perform the services in the later of the seasons or similar periods.

(k)(1) Benefits are not payable on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purpose of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States under section 212(d)(5) of the immigration and nationality act, 8 USC 1182.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are payable because of their alien status are uniformly required from all applicants for benefits.

(3) If an individual's application for benefits would otherwise be approved, a determination that benefits to that individual are not payable because of the individual's alien status shall not be made except upon a preponderance of the evidence.

(m)(1) An individual filing a new claim for unemployment compensation under this act, at the time of filing the claim, shall disclose whether the individual owes child support obligations as defined in this subsection. If an individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the unemployment agency shall notify the state or local child support enforcement agency enforcing the obligation that the individual has been determined to be eligible for unemployment compensation.

(2) Notwithstanding section 30, the unemployment agency shall deduct and withhold from any unemployment compensation payable to an individual who owes child support obligations by using whichever of the following methods results in the greatest amount:

(a) The amount, if any, specified by the individual to be deducted and withheld under this subdivision.

(b) The amount, if any, determined pursuant to an agreement submitted to the commission under 42 USC 654(19)(b)(i), by the state or local child support enforcement agency.

(c) Any amount otherwise required to be deducted and withheld from unemployment compensation by legal process, as that term is defined in 42 USC 659(i)(5), properly served upon the commission.

(3) The amount of unemployment compensation subject to deduction under subdivision (2) is that portion that remains payable to the individual after application of the recoupment provisions of section 62(a) and the reduction provisions of subsections (c) and (f).

(4) Any amount deducted and withheld under subdivision (2) shall be paid by the commission to the appropriate state or local child support enforcement agency.

(5) Any amount deducted and withheld under subdivision (2) shall be treated for all purposes as if it were paid to the individual as unemployment compensation and paid by the individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

(6) Provisions concerning deductions under this subsection apply only if the state or local child support enforcement agency agrees in writing to reimburse and does reimburse the commission for the administrative costs incurred by the commission under this subsection that are attributable to child support obligations being enforced by the state or local child support enforcement agency. The administrative costs incurred shall be determined by the commission. The commission, in its discretion, may require payment of administrative costs in advance.

(7) As used in this subsection:

(a) "Unemployment compensation", for purposes of subdivisions (1) to (5), means any compensation payable under this act, including amounts payable by the commission pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(b) "Child support obligations" includes only obligations that are being enforced pursuant to a plan described in 42 USC 654 that has been approved by the secretary of health and human services under 42 USC 651 to 669b.

(c) "State or local child support enforcement agency" means any agency of this state or a political subdivision of this state operating pursuant to a plan described in subparagraph (b).

(n) Subsection *(i)*(2) applies to services performed by school bus drivers employed by a private contributing employer holding a contractual relationship with an educational institution, but only if at least 75% of the individual's base period wages with that employer are attributable to services performed as a school bus driver. Subsection *(i)*(1) and (2) but not subsection *(i)*(3) applies to other services described in those subdivisions that are performed by any employees under an employer's contract with an educational institution or an educational service agency.

(o)(1) For weeks of unemployment beginning after July 1, 1996, unemployment benefits based on services by a seasonal worker performed in seasonal employment are payable only for weeks of unemployment that occur during the normal seasonal work period. Benefits shall not be paid based on services performed in seasonal employment for any week of unemployment beginning after March 28, 1996 that begins during the period between 2 successive normal seasonal work periods to any individual if that individual performs the service in the first of the normal seasonal work periods and if there is a reasonable assurance that the individual will perform the service for a seasonal employer in the second of the normal seasonal work periods. If benefits are denied to an individual for any week solely as a result of this subsection and the individual is not offered an opportunity to perform in the second normal seasonal work period for which reasonable assurance of employment had been given, the individual is entitled to a retroactive payment of benefits under this subsection for each week that the individual previously filed a timely claim for benefits. An individual may apply for any retroactive benefits under this subsection in accordance with R 421.210 of the Michigan administrative code.

(2) Not less than 20 days before the estimated beginning date of a normal seasonal work period, an employer may apply to the commission in writing for designation as a seasonal employer. At the time of application, the employer shall conspicuously display a copy of the application on the employer's premises. Within 90 days after receipt of the application, the commission shall determine if the employer is a seasonal employer. A determination or redetermination of the commission concerning the status of an employer as a seasonal employer, or a decision of an administrative law judge, the Michigan compensation appellate commission, or the courts of this state concerning the status of an employer as a seasonal employer, which has become final, together with the record thereof, may be introduced in any proceeding involving a claim for benefits, and the facts found and decision issued in the determination, redetermination, or decision shall be conclusive unless substantial evidence to the contrary is introduced by or on behalf of the claimant.

(3) If the employer is determined to be a seasonal employer, the employer shall conspicuously display on its premises a notice of the determination and the beginning and ending dates of the employer's normal seasonal work periods. The notice shall be furnished by the commission. The notice shall additionally specify that an employee must timely apply for unemployment benefits at the end of a first seasonal work period to preserve his or her right to receive retroactive unemployment benefits if he or she is not reemployed by the seasonal employer in the second of the normal seasonal work periods.

(4) The commission may issue a determination terminating an employer's status as a seasonal employer on the commission's own motion for good cause, or upon the written request of the employer. A termination determination under this subdivision terminates an employer's status as a seasonal employer, and becomes effective on the beginning date of the normal seasonal work period that would have immediately followed the date the commission issues the determination. A determination under this subdivision is subject to review in the same manner and to the same extent as any other determination under this act.

(5) An employer whose status as a seasonal employer is terminated under subdivision (4) may not reapply for a seasonal employer status determination until after a regularly recurring normal seasonal work period has begun and ended.

(6) If a seasonal employer informs an employee who received assurance of being rehired that, despite the assurance, the employee will not be rehired at the beginning of the employer's next normal seasonal work period, this subsection does not prevent the employee from receiving unemployment benefits in the same manner and to the same extent he or she would receive benefits under this act from an employer who has not been determined to be a seasonal employer.

(7) A successor of a seasonal employer is considered to be a seasonal employer unless the successor provides the commission, within 120 days after the transfer, with a written request for termination of its status as a seasonal employer in accordance with subdivision (4).

(8) At the time an employee is hired by a seasonal employer, the employer shall notify the employee in writing if the employee will be a seasonal worker. The employer shall provide the worker with written notice of any subsequent change in the employee's status as a seasonal worker. If an employee of a seasonal employer is denied benefits because that employee is a seasonal worker, the employee may contest that designation in accordance with section 32a.

(9) As used in this subsection:

(a) "Construction industry" means the work activity designated in sector group 23 - construction of the North American classification system - United States office of management and budget, 1997 edition.

(b) "Normal seasonal work period" means that period or those periods of time determined under rules promulgated by the commission during which an individual is employed in seasonal employment.

(c) "Seasonal employment" means the employment of 1 or more individuals primarily hired to perform services during regularly recurring periods of 26 weeks or less in any 52-week period other than services in the construction industry.

(d) "Seasonal employer" means an employer, other than an employer in the construction industry, who applies to the commission for designation as a seasonal employer and who the commission determines is an employer whose operations and business require employees engaged in seasonal employment. A seasonal employer designation under this act need not correspond to a category assigned under the North American classification system — United States office of management and budget.

(e) "Seasonal worker" means a worker who has been paid wages by a seasonal employer for work performed only during the normal seasonal work period.

(10) This subsection does not apply if the United States department of labor finds it to be contrary to the federal unemployment tax act, 26 USC 3301 to 3311, or the social security act, chapter 531, 49 Stat. 620, and if conformity with the federal law is required as a condition for full tax credit against the tax imposed under the federal unemployment tax act, 26 USC 3301 to 3311, or as a condition for receipt by the commission of federal administrative grant funds under the social security act, chapter 531, 49 Stat. 620.

(p) Benefits shall not be paid to an individual based upon his or her services as a school crossing guard for any week of unemployment that begins between 2 successive academic years or terms, if that individual performs the services of a school crossing guard in the first of the academic years or terms and has a reasonable assurance that he or she will perform those services in the second of the academic years or terms.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1942, 2nd Ex. Sess., Act 18, Imd. Eff. Feb. 27, 1942-Am. 1943, Act 246, Imd. Eff. June 1, 1943-Am. 1945, Act 335, Imd. Eff. May 29, 1945-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.27-Am. 1949, Act 282, Imd. Eff. June 11, 1949-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1954, Act 197, Imd. Eff. May 7, 1954-Am. 1954, Ex. Sess., Act 1, Imd. Eff. Aug. 20, 1954-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1957, Act 311, Imd. Eff. June 21, 1957-Am. 1962, Act 196, Eff. Mar. 28, 1963-Am. 1963, Act 226, Eff. Sept. 6, 1963-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1966, Act 226, Imd. Eff. July 11, 1966-Am. 1967, Act 254, Imd. Eff. July 19, 1967-Am. 1968, Act 338, Imd. Eff. July 19, 1968-Am. 1970, Act 14, Imd. Eff. Apr. 14, 1970-Am. 1970, Act 128, Imd. Eff. July 27, 1970-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1974, Act 11, Imd. Eff. Feb. 15, 1974-Am. 1974, Act 104, Eff. June 9, 1974-Am. 1975, Act 42, Imd. Eff. May 12, 1975-Am. 1975, Act 110, Eff. June 8, 1975-Am. 1977, Act 277, Eff. Jan. 1, 1978-Am. 1980, Act 231, Imd. Eff. July 20, 1980-Am. 1980, Act 358, Eff. Mar. 1, 1981-Am. 1982, Act 247, Imd. Eff. Sept. 23, 1982-Am. 1982, Act 535, Eff. Jan. 2, 1983-Am. 1983, Act 219, Imd. Eff. Nov. 16, 1983-Am. 1984, Act 172, Imd. Eff. June 29, 1984-Am. 1993, Act 281, Imd. Eff. Dec. 28, 1993-Am. 1993, Act 311, Imd. Eff. Dec. 29, 1993-Am. 1994, Act 162, Imd. Eff. June 17, 1994-Am. 1995, Act 25, Eff. Mar. 28, 1996-Am. 1995, Act 181, Eff. Mar. 28, 1996; -Am. 2002, Act 192, Imd. Eff. Apr. 26, 2002; -Am. 2010, Act 322, Imd Eff. Dec. 21, 2010-Am. 2011, Act 14, Imd. Eff. Mar. 29, 2011-Am. 2011, Act 216, Imd. Eff. Nov. 10, 2011-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

Compiler's note: In subsection (m)(2)(b), the citation to "42 USC 654(19)(b)(i)", evidently should read "42 USC 654(19)(B)(i)".

421.27a Payment of benefits for certain periods of unemployment; amount; conditions; eligibility; limitation.

Sec. 27a. When an individual has had a period of unemployment: (i) for which he has been paid benefits for 1 or more weeks or has received credit for a waiting week, (ii) which commenced with a layoff by an employing unit that continued with such employing unit for more than 3 weeks, and (iii) which has been terminated by his accepting and engaging in full-time work with any employing unit within the 13 weeks immediately following his last week of employment with such employing unit, such individual shall be paid, for the most recent week in such period for which benefits are payable or were paid to him or for which he was entitled to credit for a waiting week, an amount equal to his applicable weekly benefit rate in addition to any benefits otherwise payable or paid to him for such week. An individual shall be deemed to be engaged in full-time work for an employing unit if he has earned with such employing unit within any period of 7 consecutive days commencing within such 13-week period an amount equal to his currently applicable weekly benefit rate. Benefits shall be payable under this section only to those individuals who had been paid benefits for 1 or more weeks or had received credit for a waiting week in a benefit year which had not expired prior to February 10, 1974, and only for 1 week in an individual's benefit year and only to the extent that the individual is otherwise entitled to benefits under section 27(d). To be eligible for benefits under this section, an individual shall file therefor within 13 calendar weeks after the end of the week for which benefits are payable in accordance with this section, or within 13 weeks after the week this section become effective, whichever is later. No benefits payable in accordance with this section shall be paid for any week of unemployment beginning on or after February 2, 1975.

History: Add. 1974, Act 104, Eff. June 9, 1974 Am.

Compiler's note: Near the end of this section, "section become effective" apparently should read "section becomes effective".

421.27b Deducting and withholding income tax from unemployment benefits.

Sec. 27b. (1) Beginning January 1, 1997, an individual filing a claim for unemployment benefits that establishes a new benefit year shall, at the time of filing the claim, be advised of all of the following:

(a) That unemployment benefits are subject to federal and state income tax.

(b) That some taxpayers are required to make estimated tax payments.

(c) That the individual may elect to have both of the following deducted and withheld from his or her unemployment compensation payments:

(i) Federal income tax in the amount specified under subchapter A of chapter 24 of subtitle C of the internal revenue code of 1986, 26 U.S.C. 3401 to 3406.

(ii) Effective with new claims filed on or after January 1, 1998, state income tax as provided in section 351 of the income tax act of 1967, Act No. 281 of the Public Acts of 1967, being section 206.351 of the Michigan Compiled Laws.

(d) That the individual is permitted to change a previously elected withholding status only once in the individual's benefit year.

(2) If an individual makes an election to have money deducted and withheld from his or her unemployment compensation payments under subsection (1)(c), the commission shall, in accordance with section 351 of Act No. 281 of the Public Acts of 1967, withhold a tax in the same manner that an employer is required under the internal revenue code of 1986 to withhold a tax on the compensation of an individual. For a new claim filed after January 1, 1998, an election by an individual to have income tax withheld from unemployment compensation payments applies to both federal and state income tax. An individual may not elect to have only federal or only state income tax withheld for a new claim filed after January 1, 1998.

(3) Amounts deducted and withheld from unemployment benefits shall remain in the unemployment insurance trust fund until transferred to the internal revenue service of the United States department of treasury, or to the state department of treasury, as appropriate, as a payment of income tax.

(4) The commission shall follow all procedures specified by the United States department of labor, the internal revenue service of the United States department of treasury, and the Michigan department of treasury pertaining to the deducting and withholding of income tax.

(5) Amounts shall be deducted and withheld under this section only after a claimant's weekly benefit rate is reduced based on the pension reduction and earnings offset requirements of section 27, and only after a claimant's benefit payment is adjusted by amounts withheld from it by the commission to satisfy the legal obligations of restitution under section 62(a), fraud penalties under sections 54 and 54a to 54c, child support obligations under section 27, and necessaries under section 30.

(6) This section also applies to the first time a claimant files a claim in an existing benefit year on or after January 1, 1997.

History: Add. 1996, Act 577, Imd. Eff. Jan. 17, 1997.

421.27c Noncharging employer account; monetary redetermination; conditions.

Sec. 27c. Notwithstanding any other provision of this act, for benefit years beginning on or after October 1, 2000 and before January 1, 2014, if a base period contributing employer notifies the agency that it paid gross wages to a claimant in a week at least equal to the employer's benefit charge for that claimant for the week, then the agency shall issue a monetary redetermination noncharging the account of that employer for that week and for the remaining weeks of the benefit year for benefits payable to that claimant that would otherwise be charged to the employer's account. For benefit years beginning on or after January 1, 2014, benefits payable to an individual for a week and for each remaining payable week in the benefit year shall be charged to the nonchargeable benefits account if either of the following occurs:

(a) The individual reports gross earnings in the week with a contributing base period employer at least equal to the employer's benefit charges for that individual for the week.

(b) A contributing base period employer timely protests a determination charging benefits to its account for a week in which the employer paid gross wages to the individual at least equal to the employer's charges for benefits paid to that individual for that week.

History: Add. 2011, Act 281, Imd. Eff. Dec. 20, 2011.

421.27n Repealed. 1965, Act 281, Eff. Sept. 5, 1965.

Compiler's note: The repealed section provided for offset of amounts collected under workmen's compensation act.

421.28 Eligibility to receive benefits; conditions.

Sec. 28. (1) An unemployed individual is eligible to receive benefits with respect to any week only if the unemployment agency finds all of the following:

(a) For benefit years established before October 1, 2000, the individual has registered for work at and thereafter has continued to report at an employment office in accordance with unemployment agency rules and is seeking work. The requirements that the individual must report at an employment office, must register for work, must be available to perform suitable full-time work, and must seek work may be waived by the unemployment agency if the individual is laid off and the employer who laid the individual off notifies the unemployment agency in writing or by computerized data exchange that the layoff is temporary and that work is expected to be available for the individual within a declared number of days, not to exceed 45 calendar days following the last day the individual worked. This waiver shall not be effective unless the notification from the employer has been received by the unemployment agency before the individual has completed his or her first compensable week following layoff. If the individual is not recalled within the specified period, the waiver shall cease to be operative with respect to that layoff. Except for a period of disqualification, the requirement that the individual shall seek work may be waived by the unemployment agency where it finds that suitable work is unavailable both in the locality where the individual resides and in those localities in which the individual has earned base period credit weeks. This waiver shall not apply, for weeks of unemployment beginning on or after March 1, 1981, to a claimant enrolled and attending classes as a full-time student. An individual has satisfied the requirement of personal reporting at an employment office, as applied to a week in a period during which the requirements of registration and seeking work have been waived by the unemployment agency pursuant to this subdivision, if the individual has satisfied the personal reporting requirement with respect to a preceding week in that period and the individual has reported with respect to the week by mail in accordance with the rules promulgated by the unemployment agency. For benefit years established on or after October 1, 2000, the individual has registered for work and has continued to report in accordance with unemployment agency rules and is actively engaged in seeking work. The requirements that the individual must report, must register for work, must be available to perform suitable full-time work, and must seek work may be waived by the unemployment agency if the individual is laid off and the employer who laid the individual off notifies the unemployment agency in writing or by computerized data exchange that the layoff is temporary and that work is expected to be available for the individual within a declared number of days, not to exceed 45 calendar days following the last day the individual worked. This waiver shall not be effective unless the notification from the employer has been received by the unemployment agency before the individual has completed his or her first compensable week following layoff. If the individual is not recalled within the specified period, the waiver shall cease to be operative with respect to that layoff. Except for a period of disqualification, the requirement that the individual shall seek work may be waived by the unemployment agency if it finds that suitable work is unavailable both in the locality where the individual resides and in those localities in which the individual has earned wages during or after the base period. This waiver does not apply to a claimant enrolled and attending classes as a full-time student. An individual is considered to have satisfied the requirement of personal reporting at an employment office, as applied to a week in a period during which the requirements of registration and seeking work have been waived by the unemployment agency pursuant to this subdivision, if the individual has satisfied the personal reporting requirement with respect to a preceding week in that period and the individual has reported with respect to the week by mail in accordance with the rules promulgated by the unemployment agency.

(b) The individual has made a claim for benefits in accordance with section 32 and has provided the unemployment agency with his or her social security number.

(c) The individual is able and available to appear at a location of the unemployment agency's choosing for evaluation of eligibility for benefits, if required, and to perform suitable full-time work of a character which the individual is qualified to perform by past experience or training, which is of a character generally similar to work for which the individual has previously received wages, and for which the individual is available, full time, either at a locality at which the individual earned wages for insured work during his or her base period or at a locality where it is found by the unemployment agency that such work is available. An individual is considered unavailable for work under any of the following circumstances:

(i) The individual fails during a benefit year to notify or update a chargeable employer with telephone, electronic mail, or other information sufficient to allow the employer to contact the individual about available work.

(ii) The individual fails, without good cause, to respond to the unemployment agency within 14 calendar days of the later of the mailing of a notice to the address of record requiring the individual to contact the unemployment agency or of the leaving of a telephone message requesting a return call and providing a return name and telephone number on an automated answering device or with an individual answering the telephone number of record.

(iii) Unless the claimant shows good cause for failure to respond, mail sent to the individual's address of record is returned as undeliverable and the telephone number of record has been disconnected or changed or is otherwise no longer associated with the individual.

(d) In the event of the death of an individual's immediate family member, the eligibility requirements of availability and reporting shall be waived for the day of the death and for 4 consecutive calendar days thereafter. As used in this subdivision, "immediate family member" means a spouse, child, stepchild, adopted child, grandchild, parent, grandparent, brother, or sister of the individual or his or her spouse. It shall also include the spouse of any of the persons specified in the previous sentence.

(e) The individual participates in reemployment services, such as job search assistance services, if the individual has been determined or redetermined by the unemployment agency to be likely to exhaust regular benefits and need reemployment services pursuant to a profiling system established by the unemployment agency.

(2) The unemployment agency may authorize an individual with an unexpired benefit year to pursue vocational training or retraining only if the unemployment agency finds that:

(a) Reasonable opportunities for employment in occupations for which the individual is fitted by training and experience do not exist in the locality in which the individual is claiming benefits.

(b) The vocational training course relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities.

(c) The training course has been approved by a local advisory council on which both management and labor are represented, or if there is no local advisory council, by the unemployment agency.

(d) The individual has the required qualifications and aptitudes to complete the course successfully.

(e) The vocational training course has been approved by the state board of education and is maintained by a public or private school or by the unemployment agency.

(3) Notwithstanding any other provision of this act, an otherwise eligible individual shall not be ineligible for benefits because he or she is participating in training with the approval of the unemployment agency. For each week that the unemployment agency finds that an individual who is claiming benefits under this act and who is participating in training with the approval of the unemployment agency, is satisfactorily pursuing an approved course of vocational training, it shall waive the requirements that he or she be available for work and be seeking work as prescribed in subsection (1)(a) and (c), and it shall find good cause for his or her failure to apply for suitable work, report to a former employer for an interview concerning suitable work, or accept suitable work as required in section 29(1)(c), (d), and (e).

(4) The waiver of the requirement that a claimant seek work, as provided in subsection (1)(a), shall not be applicable to weeks of unemployment for which the claimant is claiming extended benefits if section 64(8)(a)*(ii)* is in effect, unless the individual is participating in training approved by the unemployment agency.

(5) Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be denied benefits for any week beginning after October 30, 1982 solely because the individual is in training approved under section 236(a)(1) of the trade act of 1974, as amended, 19 USC 2296, nor shall the individual be denied benefits by reason of leaving work to enter such training if the work left is not suitable employment. Furthermore, an otherwise eligible individual shall not be denied benefits because of the application to any such week in training of provisions of this act, or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this subsection, "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the trade act of 1974, 19 USC 2101 to 2495, and wages for that work at not less than 80% of the individual's average weekly wage as determined for the purposes of the trade act of 1974.

(6) For purposes of this section, for benefit years beginning on or after January 1, 2013, to be actively engaged in seeking work, an individual must conduct a systematic and sustained search for work in each week the individual is claiming benefits, using any of the following methods to report the details of the work search:

(a) Reporting at monthly intervals on the unemployment agency's online reporting system the name of each employer and physical or online location of each employer where work was sought and the date and method by which work was sought with each employer.

(b) Filing a written report with the unemployment agency by mail or facsimile transmission not later than the end of the fourth calendar week after the end of the week in which the individual engaged in the work search, on a form approved by the unemployment agency, indicating the name of each employer and physical or online location of each employer where work was sought and the date and method by which work was sought with each employer.

(c) Appearing at least monthly in person at a Michigan works agency office to report the name and physical or online location of each employer where the individual sought work during the previous month and the date and method by which work was sought with each employer.

(7) The work search conducted by the claimant is subject to random audit by the unemployment agency.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1942, 2nd Ex. Sess., Act 18, Imd. Eff. Feb. 27, 1942-Am. 1943, Act 246, Imd. Eff. June 1, 1943-Am. 1944, 1st Ex. Sess., Act 9, Imd. Eff. Feb. 19, 1944-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.28-Am. 1949, Act 282, Imd. Eff. June 11, 1949-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1954, Act 197, Imd. Eff. May 7, 1954-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1967, Act 254, Imd. Eff. July 19, 1967-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1974, Act 11, Imd. Eff. Feb. 15, 1974-Am. 1974, Act 104, Eff. June 9, 1974-Am. 1980, Act 358, Eff. Mar. 1, 1981-Am. 1981, Act 107, Imd. Eff. July 17, 1981-Am. 1982, Act 247, Imd. Eff. Sept. 23, 1982-Am. 1982, Act 535, Eff. Jan. 2, 1983-Am. 1983, Act 164, Imd. Eff. July 24, 1983-Am. 1985, Act 197, Imd. Eff. Dec. 26, 1985-Am. 1989, Act 227, Eff. Dec. 21, 1989-Am. 1994, Act 162, Imd. Eff. June 17, 1994-Am. 1994, Act 422, Imd. Eff. Jan. 6, 1995-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

Administrative rules: R 421.1 et seq. of the Michigan Administrative Code.

421.28a Preservation of unused credit weeks or benefit entitlement during period of continuous involuntary disability; request; written statement from physician; copies; extension of benefit year; payment of benefits; "continuous disability" defined; inability to establish benefit year; cessation of entitlement to benefits; applicability; dissemination of information to interested parties; date of request.

Sec. 28a. (1) For benefit years beginning before the conversion date prescribed in section 75, and notwithstanding any other provision of this act, an unemployed individual who has a benefit year in effect and who has not exhausted benefit entitlement may have unused credit weeks preserved during a period of continuous involuntary disability if a written request from the individual to preserve the unused credit weeks is received by the commission within 90 days after the commencement of the period of disability, within 90 days after being advised of his or her rights by the commission, or if the individual is unable to submit the written request due to a medical inability, within 90 days after the end of that medical inability. For benefit years beginning after the conversion date prescribed in section 75, and notwithstanding any other provision of this act, an unemployed individual who has a benefit year in effect and who has not exhausted benefit entitlement may have unused benefit entitlement preserved during a period of continuous involuntary disability if a written request from the individual to preserve the unused benefit entitlement is received by the commission within 90 days after the commencement of the period of disability, within 90 days after being advised of his or her rights by the commission, or if the individual is unable to submit the written request due to a medical inability, within 90 days after the end of that medical inability.

(2) For benefit years beginning before the conversion date prescribed in section 75, unused credit weeks shall not be preserved pursuant to this section unless the commission receives a written statement from the individual's physician within 90 days after the commencement of the disability, within 90 days after the individual is advised of his or her rights by the commission, or if the individual is unable to submit the written statement due to a medical inability, within 90 days after the end of that medical inability the commission receives the written statement from the individual's physician. The written statement from the individual's physician shall certify all of the following:

(a) The nature of the injury, illness, or hospitalization.

(b) That based upon the examination of the physician, the individual is not able and available to perform full-time work as described in section 28(1)(c).

(c) The probable duration of the injury, illness, or hospitalization.

For benefit years beginning after the conversion date prescribed in section 75, unused benefit entitlement shall not be preserved pursuant to this section unless the commission receives a written statement from the individual's physician within 90 days after the commencement of the disability, within 90 days after the individual is advised of his or her rights by the commission, or if the individual is unable to submit the written statement due to a medical inability, within 90 days after the end of that medical inability the commission receives the written statement from the individual's physician. The written statement from the individual's physician shall certify all of the following:

(a) The nature of the injury, illness, or hospitalization.

(b) That based upon the examination of the physician, the individual is not able and available to perform full-time work as described in section 28(1)(c).

(c) The probable duration of the injury, illness, or hospitalization.

(3) The commission immediately shall provide a copy of the statement required by subsection (2) to the individual's last employer and all base period employers.

(4) For benefit years beginning before the conversion date as prescribed in section 75, an individual who has unused credit weeks preserved pursuant to this section shall receive an extension of his or her benefit year equal in weeks to the number of weeks the period of disability continued during the benefit year. The extension shall begin with the week after the week in which the disability terminated. Benefits may be paid for weeks of unemployment after the period of disability if the individual is eligible and qualified but benefits shall not be payable under this section for any week that commences more than 156 weeks after the first week of the benefit year. For benefit years beginning after the conversion date prescribed in section 75, an individual who has unused benefit entitlement preserved pursuant to this section shall receive an extension of his or her benefit year equal in weeks to the number of weeks the period of disability continued during the benefit year. The extension shall begin with the week after the week in which the disability terminated. Benefits may be paid for weeks of unemployment after the period of disability if the individual is eligible and qualified but benefits shall not be payable under this section for any week that commences more than 156 weeks after the first week of the benefit year.

(5) As used in this section, a period of "continuous disability" means a period continuing for more than 14 consecutive days during which an unemployed individual is not able and available to perform full-time work, as described in section 28(1)(c), due to injury, illness, or hospitalization.

(6) For benefit years beginning before the conversion date prescribed in section 75, an unemployed individual who has been unable to establish a benefit year solely due to a period of continuous disability may preserve all credit weeks earned by the individual in the 52 week period preceding the individual's first week of unemployment, as defined in section 48, caused by the disability. However, credit weeks may be preserved if the commission receives a written request and a physician's statement, as described in subsections (1) and (2) within 90 days after the commencement of the unemployment, within 90 days after being advised of his or her rights by the commission, or if the individual is unable to submit the written statement and request due to a medical inability, within 90 days after the end of that medical inability. The individual's benefit year shall begin the first week the individual was both unemployed and disabled, and the benefit year shall be extended pursuant to subsection (4). For benefit years beginning after the conversion date prescribed in section 75, an unemployed individual who has been unable to establish a benefit year solely due to an inability to file a claim because of a period of continuous disability may preserve all unused benefit entitlement in the base period preceding the individual's first week of unemployment, as defined in section 48, caused by the disability. However, benefit entitlement may be preserved if the commission receives a written request and a physician's statement, as described in subsections (1) and (2) within 90 days after the commencement of the unemployment, within 90 days after being advised of his or her rights by the commission, or if the individual is unable to submit the written statement and request due to a medical inability, within 90 days after the end of that medical inability. The individual's benefit year shall begin the first week the individual was both unemployed and disabled, and the benefit year shall be extended pursuant to subsection (4).

(7) For benefit years beginning before the conversion date prescribed in section 75, if an individual has sufficient credit weeks to establish a new benefit year under section 46 after the termination of the period of continuous disability, and is otherwise eligible and qualified for benefits, the individual shall cease to be entitled to benefits under this section. For benefit years beginning after the conversion date prescribed in section 75, if an individual has sufficient base period wages to establish a new benefit year under section 46 after the termination of the period of continuous disability, and is otherwise eligible and qualified for benefits, the individual shall cease to be entitled to benefits under this section.

(8) This section shall apply to all benefit years that commence after the effective date of this section.

(9) The commission shall disseminate information on this section to potential interested parties including the legal profession, employers, and unions.

(10) For benefit years beginning before the conversion date prescribed in section 75, and notwithstanding any other provision of this section, a request for preservation of credit weeks must be made within 3 years after the date the disability began. For benefit years beginning after the conversion date prescribed in section 75, and notwithstanding any other provision of this section, a request for preservation of benefit entitlement must be made within 3 years after the date the disability began.

History: Add. 1979, Act 28, Imd. Eff. June 14, 1979-Am. 1983, Act 164, Imd. Eff. July 24, 1983-Am. 1994, Act 162, Imd. Eff. June 17, 1994.

421.28b Definitions; MCL 421.28c to 421.28m.

Sec. 28b. As used in this section and sections 28c to 28m:

(a) "Affected unit" means a department, shift, or other organizational unit of 2 or more employees that is designated by an employer to participate in a shared-work plan.

(b) "Approved shared-work plan" means an employer's shared-work plan that meets the requirements of section 28d and that the unemployment agency approves in writing.

(c) "Fringe benefit" means health insurance, a retirement benefit received under a pension plan or defined contribution plan, a paid vacation day, a paid holiday, sick leave, or any other similar employee benefit provided by an employer.

(d) "Normal weekly hours of work" means the established standard work times and number of hours in the workweek for the position or, if standard work times and number of hours have not been established for the position, the work times and average number of hours per week actually worked by the employee in that position over the most recent 3 months before the employer files the application for designation as a participating employer.

(e) "Participating employee" means an employee in the affected unit whose hours of work are reduced by the reduction percentage under the shared-work plan. Participating employee does not include a seasonal worker as defined in section 27(o)(9)(e) or a worker employed on a temporary or intermittent basis.

(f) "Participating employer" means an employer that has a shared-work plan in effect.

(g) "Reduction percentage" means the percentage by which each participating employee's normal weekly hours of work are reduced under a shared-work plan in accordance with section 28d(2).

(h) "Shared-work plan" means a plan for reducing unemployment under which employees of an affected unit share a reduced workload through reduction in their normal weekly hours of work.

History: Add. 2012, Act 216, Imd. Eff. Jan. 1, 2013.

421.28c Shared-work plan; application; requirements; manner; approval of more than 1 plan; prohibition.

Sec. 28c. (1) An employer that meets all of the following requirements may apply to the unemployment agency for approval of a shared-work plan:

(a) The employer has filed all quarterly reports and other reports required under this act and has paid all obligation assessments, contributions, reimbursements in lieu of contributions, interest, and penalties due through the date of the employer's application.

(b) If the employer is a contributing employer, the employer's reserve in the employer's experience account as of the most recent computation date preceding the date of the employer's application is a positive number.

(c) The employer has paid wages for the 12 consecutive calendar quarters preceding the date of the employer's application.

(2) An application under this section shall be made in the manner prescribed by the unemployment agency and contain all of the following:

(a) The employer's assurance that it will provide reports to the unemployment agency relating to the operation of its shared-work plan at the times and in the manner prescribed by the unemployment agency and containing all information required by the unemployment agency.

(b) The employer's assurance that it will not hire new employees in, or transfer employees to, the affected unit during the effective period of the shared-work plan.

(c) The employer's assurance that it will not lay off participating employees during the effective period of the shared work plan, or reduce participating employees' hours of work by more than the reduction percentage during the effective period of the shared-work plan, except in cases of holidays, designated vacation periods, equipment maintenance, or similar circumstances.

(d) The employer's certification that it has obtained the approval of any applicable collective bargaining unit representative and has notified all affected employees who are not in a collective bargaining unit of the proposed shared-work plan.

(e) A list of the week or weeks within the requested effective period of the plan during which participating employees are anticipated to work fewer hours than the number of hours determined under section 28d(1)(e) due to circumstances listed in subdivision (c).

(f) The employer's certification that the implementation of a shared-work plan is in lieu of temporary layoffs that would affect at least 15% of the employees in the affected unit and would result in an equivalent reduction in work hours.

(g) The employer's assurance that it will abide by all terms and conditions of sections 28b to 28m.

(h) The employer's certification that, to the best of his or her knowledge, participation in the shared-work plan is consistent with the employer's obligations under federal law and the law of this state.

(i) Any other relevant information required by the unemployment agency.

(3) An employer may apply to the unemployment agency for approval of more than 1 shared-work plan.

(4) An employer shall not apply for and the unemployment agency shall not approve a shared-work plan that begins more than 5 years after the effective date of the amendatory act that added this section.

History: Add. 2012, Act 216, Imd. Eff. Jan. 1, 2013.

421.28d Shared-work plan; approval by unemployment agency; requirements; reduction percentage.

Sec. 28d. (1) The unemployment agency shall approve a shared-work plan only if the plan meets all of the following requirements:

(a) The shared-work plan applies to 1 affected unit.

(b) All employees in the affected unit are participating employees, except that the following employees shall not be participating employees:

(i) An employee who has been employed in the affected unit for less than 3 months before the date the employer applies for approval of the shared-work plan.

(ii) An employee whose hours of work per week determined under subdivision (e) are 40 or more hours.

(c) There are no fewer than 2 participating employees, determined without regard to corporate officers.

(d) The participating employees are identified by name and social security number.

(e) The number of hours a participating employee will work each week during the effective period of the shared work plan is the number of the employee's normal weekly hours of work reduced by the reduction percentage.

(f) The plan includes an estimate of the number of employees who would have been laid off if the plan were not implemented.

(g) The plan indicates the manner in which the employer will give advance notice, if feasible, to an employee whose hours of work per week under the plan will be reduced.

(h) As a result of a decrease in the number of hours worked by each participating employee, there is a corresponding reduction in wages.

(i) The shared-work plan does not affect the fringe benefits of any participating employee.

(j) The specified effective period of the shared-work plan is 52 consecutive weeks or less and the benefits payable under the shared-work plan will not exceed 20 times the weekly benefit amount for each participating employee, calculated without regard to any existing benefit year.

(k) The reduction percentage satisfies the requirements of subsection (2).

(2) The reduction percentage under an approved shared-work plan shall meet all of the following requirements:

(a) The reduction percentage shall be no less than 15% and no more than 45%.

(b) The reduction percentage shall be the same for all participating employees.

(c) The reduction percentage shall not change during the period of the shared-work plan unless the plan is modified in accordance with section 28i.

History: Add. 2012, Act 216, Imd. Eff. Jan. 1, 2013.

421.28e Shared-work plan; approval or disapproval by unemployment agency.

Sec. 28e. The unemployment agency shall approve or disapprove a shared-work plan no later than 15 days after the date the unemployment agency receives an employer's shared-work plan application that meets the requirements of sections 28c and 28d. The unemployment agency's decision shall be expressed in writing and, if the shared-work plan is disapproved, shall include the reasons for the disapproval.

History: Add. 2012, Act 216, Imd. Eff. Jan. 1, 2013.

421.28f Shared-work plan; effective period.

Sec. 28f. (1) A shared-work plan is effective for the number of consecutive weeks indicated in the employer's application, or a lesser number of weeks as approved by the unemployment agency, unless sooner terminated in accordance with section 28j.

(2) The effective period of the shared-work plan shall begin with the first calendar week following the date on which the unemployment agency approves the plan.

History: Add. 2012, Act 216, Imd. Eff. Jan. 1, 2013.

421.28g Compensation.

Sec. 28g. (1) Compensation shall be payable to a participating employee for a week within the effective period of an approved shared-work plan during which the employee works the number of hours determined under section 28d(1)(e) for the participating employer on the same terms, in the same amount, and subject to the same conditions that would apply to the participating employee without regard to sections 28b to 28m, except as follows:

(a) A participating employee shall not be required to be unemployed within the meaning of section 48 or file claims for compensation under section 32.

(b) The benefit rate otherwise payable as prescribed in section 27 shall be modified so that a participating employee shall be paid compensation in an amount equal to the product of his or her weekly benefit rate and the reduction percentage, rounded to the next lower whole dollar amount.

(c) Weeks that a participating employee participates in a shared-work plan are not weeks of unemployment for purposes of establishing limits on the duration of receipt of unemployment benefits under this act, but the dollar amount of benefits received under the shared-work plan applies toward the maximum amount of benefits payable.

(d) The unemployment agency shall not deny compensation to a participating employee for any week during the effective period of the shared-work plan by applying any provision of this act relating to active search for work or refusal to apply for or accept work other than work offered by the participating employer.

(e) A participating employee satisfies the availability and seeking work requirements of section 28 if the employee is available for work during the employee's normal work week with the participating employer.

(f) A participating employee may participate in a training program to enhance the employee's job skills without becoming ineligible for benefits under the approved shared-work plan, if the training is sponsored by the employer or provided under the workforce investment act of 1998 and the employee's participation is approved by the unemployment agency.

(2) For purposes of subsection (1), if a participating employee works fewer hours than the number of hours determined under section 28d(1)(e) for the participating employer during a week within the effective period of the approved shared work plan, but receives remuneration as if the employee had worked the number of hours determined under section 28d(1)(e), the employee is considered to have worked the number of hours determined under section 28d(1)(e) during that week.

(3) A participating employee's eligibility for compensation for a week within the effective period of an approved shared-work plan shall be determined without regard to sections 28b to 28m if the employee receives remuneration for the week from the participating employer that is greater than or less than the amount due for the number of hours determined under section 28d(1)(e).

History: Add. 2012, Act 216, Imd. Eff. Jan. 1, 2013.

421.28h Schedule; filing compensation claims; benefits; funding of benefits.

Sec. 28h. (1) The unemployment agency shall establish a schedule of consecutive 2-week periods within the effective period of the shared-work plan. The unemployment agency may, as necessary, include 1-week periods in the schedule and revise the schedule. At the end of each scheduled period, the participating employer shall file claims for compensation for the week or weeks within the period on behalf of the participating employees. The claims shall be filed no later than the last day of the week immediately following the period, unless an extension of time is granted by the unemployment agency for good cause. The claims shall be filed in the manner prescribed by the unemployment agency and shall contain all information required by the unemployment agency to determine the eligibility of the participating employees for compensation.

(2) The benefits under a shared work plan shall be funded as follows:

(a) If federal funding is available to this state for the purpose of full reimbursement for the cost of funding benefits paid by the unemployment agency pursuant to section 2162 of the layoff prevention act of 2012 and an approved shared work plan under this act, those benefits shall not be charged or expensed to a participating employer. However, the unemployment agency shall not use that federal funding as a reimbursement for compensation paid to a claimant under a shared-work plan if the claimant is employed by the participating employer on a seasonal, temporary, or intermittent basis. In that case, benefits shall be charged to the participating contributing employer's chargeable benefits account or reimbursing payments in lieu of contributions shall be required from the participating reimbursing employer.

(b) If federal funding is available to this state for the purpose of partial reimbursement for the cost of funding benefits paid by the unemployment agency pursuant to an agreement entered into between this state and the United States department of labor pursuant to section 2163 of the layoff prevention act of 2012, any approved shared work plan shall provide that the employer shall make a reimbursing payment in lieu of contributions to this state equal to 1/2 of the benefits paid under the employer's approved shared-work plan. That payment shall be deposited into this state's unemployment compensation fund. Benefit payments or deposits made under this subdivision shall not be used for purposes of calculating an employer's contribution rate under section 19. The unemployment agency shall not use federal funding under this subsection as a reimbursement for compensation paid to a claimant under a shared work plan if the claimant is employed by the participating employer on a seasonal, temporary, or intermittent basis. In that case, benefit payments shall be funded by the employer as reimbursing payments in lieu of contribution.

(c) If full or partial federal funding is not available as provided in subdivision (a) or (b), the benefits paid by the unemployment agency pursuant to an approved shared work plan under this act shall be charged to the participating contributing employer's chargeable benefits account or reimbursing payments in lieu of contributions shall be required from the participating reimbursing employer.

History: Add. 2012, Act 216, Imd. Eff. Jan. 1, 2013.

421.28i Modification of shared-work plan.

Sec. 28i. An employer may apply to the unemployment agency for approval to modify a shared-work plan to meet changed conditions. The unemployment agency shall reevaluate the plan and may approve the modified plan if it meets the requirements for approval under section 28e. If the modifications cause the shared-work plan to fail to meet the requirements for approval, the unemployment agency shall disapprove the proposed modifications.

History: Add. 2012, Act 216, Imd. Eff. Jan. 1, 2013.

421.28j Termination of shared-work plan; good cause.

Sec. 28j. (1) The unemployment agency may terminate a shared-work plan for good cause.

(2) For purposes of subsection (1), good cause includes any of the following:

(a) The plan is not being executed according to its approved terms and conditions.

(b) The participating employer fails to comply with the assurances given in the plan.

(c) The participating employer or a participating employee violates any criteria on which approval of the plan was based.

(3) The employer may terminate a shared-work plan by written notice to the unemployment agency.

History: Add. 2012, Act 216, Imd. Eff. Jan. 1, 2013.

421.28k Authority of unemployment agency to approve, disapprove, modify, or terminate shared-work plan.

Sec. 28k. The decision to approve or disapprove a shared-work plan, to approve or disapprove a modification of a shared-work plan, or to terminate a shared-work plan is at the unemployment agency's discretion. Those decisions are not subject to the appeal provisions of this act.

History: Add. 2012, Act 216, Imd. Eff. Jan. 1, 2013.

421.28*l* Report.

Sec. 28*l*. In addition to other reports required by law, the unemployment agency shall submit to the governor, the secretary of the senate, and the clerk of the house of representatives for referral to the chair and minority vice-chair of the appropriate committees an annual report regarding shared-work plans under sections 28b to 28m. The report shall include the number of approved shared-work plans, the number of participating employers, the number of participating employees, the amount of compensation and aid to participating employees, and any other information that the unemployment agency determines is relevant to assess the impact of shared-work plans on the unemployment compensation fund. The first report shall be submitted on or before the first day of March following the first complete calendar year during which sections 28b to 28m are in effect, and subsequent reports shall be submitted on or before the first day of March of each subsequent year.

History: Add. 2012, Act 216, Imd. Eff. Jan. 1, 2013.

421.28m Effect of approval or disapproval by federal government.

Sec. 28m. (1) Notwithstanding any other provision of this act, if any provision of sections 28b to 28l would otherwise cause the United States department of labor to withhold the approval required to implement a shared-work program under section 3304(a)(4)(e) of the federal unemployment tax act, 26 USC 3304, and section 303(a)(5) of the social security act, 42 USC 503, that provision does not apply.

(2) When the provisions of this section or sections 28b to 28l are approved or disapproved by the United States department of labor, the unemployment agency shall transmit to the secretary of the senate and the clerk of the house of representatives notice of the approval or disapproval.

History: Add 2012, Act 216, Imd. Eff. Jan. 1, 2013.

421.29 Disqualification from benefits.

Sec. 29. (1) Except as provided in subsection (5), an individual is disqualified from receiving benefits if he or she:

(a) Left work voluntarily without good cause attributable to the employer or employing unit. An individual who left work is presumed to have left work voluntarily without good cause attributable to the employer or employing unit. An individual who is absent from work for a period of 3 consecutive work days or more without contacting the employer in a manner acceptable to the employer and of which the individual was informed at the time of hire shall be considered to have voluntarily left work without good cause attributable to the employer. An individual who becomes unemployed as a result of negligently losing a requirement for the job of which he or she was informed at the time of hire shall be considered to have voluntarily left work without good cause attributable to the employer. An individual claiming benefits under this act has the burden of proof to establish that he or she left work involuntarily or for good cause that was attributable to the employer or employing unit. An individual claiming to have left work involuntarily for medical reasons must have done all of the following before the leaving: secured a statement from a medical professional that continuing in the individual's current job would be harmful to the individual's physical or mental health; unsuccessfully attempted to secure alternative work with the employer; and unsuccessfully attempted to be placed on a leave of absence with the employer to last until the individual's mental or physical health would no longer be harmed by the current job. However, if any of the following conditions is met, the leaving does not disqualify the individual:

(i) The individual has an established benefit year in effect and during that benefit year leaves unsuitable work within 60 days after the beginning of that work. Benefits paid after a leaving under this subparagraph shall not be charged to the experience account of the employer the individual left, but shall be charged instead to the nonchargeable benefits account.

(ii) The individual is the spouse of a full-time member of the United States armed forces, and the leaving is due to the military duty reassignment of that member of the United States armed forces to a different geographic location. Benefits paid after a leaving under this subparagraph shall not be charged to the experience account of the employer the individual left, but shall be charged instead to the nonchargeable benefits account.

(iii) The individual is concurrently working part-time for an employer or employing unit and for another employer or employing unit and voluntarily leaves the part-time work while continuing work with the other employer. The portion of the benefits paid in accordance with this subparagraph that would otherwise be charged to the experience account of the part-time employer that the individual left shall not be charged to the account of that employer, but shall be charged instead to the nonchargeable benefits account.

(b) Was suspended or discharged for misconduct connected with the individual's work or for intoxication while at work.

(c) Failed without good cause to apply diligently for available suitable work after receiving notice from the unemployment agency of the availability of that work or failed to apply for work with employers that could reasonably be expected to have suitable work available.

(d) Failed without good cause while unemployed to report to the individual's former employer or employing unit within a reasonable time after that employer or employing unit provided notice of the availability of an interview concerning available suitable work with the former employer or employing unit.

(e) Failed without good cause to accept suitable work offered to the individual or to return to the individual's customary self-employment, if any, when directed by the employment office or the unemployment agency. An employer that receives a monetary determination under section 32 may notify the unemployment agency regarding the availability of suitable work with the employer on the monetary determination or other form provided by the unemployment agency. Upon receipt of the notice of the availability of suitable work, the unemployment agency shall notify the claimant of the availability of suitable work.

(f) Lost his or her job due to absence from work resulting from a violation of law for which the individual was convicted and sentenced to jail or prison. This subdivision does not apply if conviction of an individual results in a sentence to county jail under conditions of day parole as provided in 1962 PA 60, MCL 801.251 to 801.258, or if the conviction was for a traffic violation that resulted in an absence of less than 10 consecutive work days from the individual's place of employment.

(g) Is discharged, whether or not the discharge is subsequently reduced to a disciplinary layoff or suspension, for participation in either of the following:

(i) A strike or other concerted action in violation of an applicable collective bargaining agreement that results in curtailment of work or restriction of or interference with production.

(ii) A wildcat strike or other concerted action not authorized by the individual's recognized bargaining representative.

(h) Was discharged for an act of assault and battery connected with the individual's work.

(i) Was discharged for theft connected with the individual's work.

(j) Was discharged for willful destruction of property connected with the individual's work.

(k) Committed a theft after receiving notice of a layoff or discharge, but before the effective date of the layoff or discharge, resulting in loss or damage to the employer who would otherwise be chargeable for the benefits, regardless of whether the individual qualified for the benefits before the theft.

(l) Was employed by a temporary help firm, which as used in this section means an employer whose primary business is to provide a client with the temporary services of 1 or more individuals under contract with the employer, to perform services for a client of that firm if each of the following conditions is met:

(i) The temporary help firm provided the employee with a written notice before the employee began performing services for the client stating in substance both of the following:

(A) That within 7 days after completing services for a client of the temporary help firm, the employee is under a duty to notify the temporary help firm of the completion of those services.

(B) That a failure to provide the temporary help firm with notice of the employee's completion of services pursuant to sub-subparagraph (A) constitutes a voluntary quit that will affect the employee's eligibility for unemployment compensation should the employee seek unemployment compensation following completion of those services.

(ii) The employee did not provide the temporary help firm with notice that the employee had completed his or her services for the client within 7 days after completion of his or her services for the client.

(m) Was discharged for illegally ingesting, injecting, inhaling, or possessing a controlled substance on the premises of the employer; refusing to submit to a drug test that was required to be administered in a nondiscriminatory manner; or testing positive on a drug test, if the test was administered in a nondiscriminatory manner. If the worker disputes the result of the testing, and if a generally accepted confirmatory test has not been administered on the same sample previously tested, then a generally accepted confirmatory test shall be administered on that sample. If the confirmatory test also indicates a positive result for the presence of a controlled substance, the worker who is discharged as a result of the test result will be disqualified under this subdivision. A report by a drug testing facility showing a positive result for the presence of a controlled substance is conclusive unless there is substantial evidence to the contrary. As used in this subdivision:

(i) "Controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(ii) "Drug test" means a test designed to detect the illegal use of a controlled substance.

(iii) "Nondiscriminatory manner" means administered impartially and objectively in accordance with a collective bargaining agreement, rule, policy, a verbal or written notice, or a labor-management contract.

(n) Theft from the employer that resulted in the employee's conviction, within 2 years of the date of the discharge, of theft or a lesser included offense.

(2) A disqualification under subsection (1) begins the week in which the act or discharge that caused the disqualification occurs and continues until the disqualified individual requalifies under subsection (3), except that for benefit years beginning before October 1, 2000, the disqualification does not prevent the payment of benefits if there are credit weeks, other than multiemployer credit weeks, after the most recent disqualifying act or discharge.

(3) After the week in which the disqualifying act or discharge described in subsection (1) occurs, an individual who seeks to requalify for benefits is subject to all of the following:

(a) For benefit years established before October 1, 2000, the individual shall complete 6 requalifying weeks if he or she was disqualified under subsection (1)(c), (d), (e), (f), (g), or (l), or 13 requalifying weeks if he or she was disqualified under subsection (1)(h), (i), (j), (k), or (m). A requalifying week required under this subdivision is each week in which the individual does any of the following:

(i) Earns or receives remuneration in an amount at least equal to an amount needed to earn a credit week, as that term is defined in section 50.

(ii) Otherwise meets all of the requirements of this act to receive a benefit payment if the individual were not disqualified under subsection (1).

(iii) Receives a benefit payment based on credit weeks subsequent to the disqualifying act or discharge.

(b) For benefit years established before October 1, 2000, if the individual is disqualified under subsection (1)(a) or (b), he or she shall requalify, after the week in which the disqualifying discharge occurred by earning in employment for an employer liable under this act or the unemployment compensation act of another state an amount equal to, or in excess of, 7 times the individual's potential weekly benefit rate, calculated on the basis of employment with the employer involved in the disqualification, or by earning in employment for an employer liable under this act or the unemployment compensation act of another state an amount equal to, or in excess of, 40 times the state minimum hourly wage times 7, whichever is the lesser amount.

(c) For benefit years established before October 1, 2000, a benefit payable to an individual disqualified under subsection (1)(a) or (b) shall be charged to the nonchargeable benefits account, and not to the account of the employer with whom the individual was involved in the disqualification.

(d) For benefit years beginning on or after October 1, 2000, after the week in which the disqualifying act or discharge occurred, an individual shall complete 13 requalifying weeks if he or she was disqualified under subsection (1)(c), (d), (e), (f), (g), or (l), or 26 requalifying weeks if he or she was disqualified under subsection (1)(h), (i), (j), (k), (m), or (n). A requalifying week required under this subdivision is each week in which the individual does any of the following:

(i) 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.

(ii) Otherwise meets all of the requirements of this act to receive a benefit payment if the individual was not disqualified under subsection (1).

(e) For benefit years beginning on or after October 1, 2000 and beginning before April 26, 2002, if the individual is disqualified under subsection (1)(a) or (b), he or she shall requalify, after the week in which the disqualifying act or discharge occurred by earning in employment for an employer liable under this act or the unemployment compensation law of another state at least the lesser of the following:

(i) Seven times the individual's weekly benefit rate.

(ii) Forty times the state minimum hourly wage times 7.

(f) For benefit years beginning on or after April 26, 2002, if the individual is disqualified under subsection (1)(a), he or she shall requalify, after the week in which the disqualifying act or discharge occurred by earning in employment for an employer liable under this act or the unemployment compensation law of another state at least 12 times the individual's weekly benefit rate.

(g) For benefit years beginning on or after April 26, 2002, if the individual is disqualified under subsection (1)(b), he or she shall requalify, after the week in which the disqualifying act or discharge occurred by earning in employment for an employer liable under this act or the unemployment compensation law of another state at least 17 times the individual's weekly benefit rate.

(h) A benefit payable to the individual disqualified or separated under disqualifying circumstances under subsection (1)(a) or (b), shall be charged to the nonchargeable benefits account, and not to the account of the employer with whom the individual was involved in the separation. Benefits payable to an individual determined by the unemployment agency to be separated under disqualifying circumstances shall not be charged to the account of the employer involved in the disqualification for any period after the employer notifies the unemployment agency of the claimant's possible ineligibility or disqualification. However, an individual filing a new claim for benefits who reports the reason for separation from a base period employer as a voluntary leaving shall be presumed to have voluntarily left without good cause attributable to the employer and shall be disqualified unless the individual provides substantial evidence to rebut the presumption. If a disqualifying act or discharge occurs during the individual's benefit year, any benefits that may become payable to the individual in a later benefit year based on employment with the employer involved in the disqualification shall be charged to the nonchargeable benefits account.

(4) The maximum amount of benefits otherwise available under section 27(d) to an individual disqualified under subsection (1) is subject to all of the following conditions:

(a) For benefit years established before October 1, 2000, if the individual is disqualified under subsection (1)(c), (d), (e), (f), (g), or (l) and the maximum amount of benefits is based on wages and credit weeks earned from an employer before an act or discharge involving that employer, the amount shall be reduced by an amount equal to the individual's weekly benefit rate as to that employer multiplied by the lesser of either of the following:

(i) The number of requalifying weeks required of the individual under this section.

(ii) The number of weeks of benefit entitlement remaining with that employer.

(b) If the individual has insufficient or no potential benefit entitlement remaining with the employer involved in the disqualification in the benefit year in existence on the date of the disqualifying determination, a reduction of benefits described in this subsection applies in a succeeding benefit year with respect to any benefit entitlement based upon credit weeks earned with the employer before the disqualifying act or discharge.

(c) For benefit years established before October 1, 2000, an individual disqualified under subsection (1)(h), (i), (j), (k), or (m) is not entitled to benefits based on wages and credit weeks earned before the disqualifying act or discharge with the employer involved in the disqualification.

(d) The benefit entitlement of an individual disqualified under subsection (1)(a) or (b) is not subject to reduction as a result of that disqualification.

(e) A denial or reduction of benefits under this subsection does not apply to benefits based upon multiemployer credit weeks.

(f) For benefit years established on or after October 1, 2000, if the individual is disqualified under subsection (1)(c), (d), (e), (f), (g), or (l), the maximum number of weeks otherwise applicable in calculating benefits for the individual under section 27(d) shall be reduced by the lesser of the following:

(i) The number of requalifying weeks required of the individual under this section.

(ii) The number of weeks of benefit entitlement remaining on the claim.

(g) For benefit years beginning on or after October 1, 2000, the benefits of an individual disqualified under subsection (1)(h), (i), (j), (k), (m), or (n) shall be reduced by 13 weeks and any weekly benefit payments made to the claimant thereafter shall be reduced by the portion of the payment attributable to base period wages paid by the base period employer involved in a disqualification under subsection (1)(h), (i), (j), (k), (m), or (n).

(5) 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, or if an individual leaves work to accept a recall from a former employer, all of the following apply:

(a) Subsection (1) does not apply.

(b) Wages earned with the employer whom the individual last left, including wages previously transferred under this subsection to the last employer, for the purpose of computing and charging benefits, are wages earned from the employer with whom the individual accepted work or recall, and benefits paid based upon those wages shall be charged to that employer.

(c) When issuing a determination covering the period of employment with a new or former employer described in this subsection, the unemployment agency shall advise the chargeable employer of the name and address of the other employer, the period covered by the employment, and the extent of the benefits that may be charged to the account of the chargeable employer.

(6) In determining whether work is suitable for an individual, the unemployment agency shall consider 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, and the distance of the available work from the individual's residence. Additionally, the unemployment agency shall consider the individual's experience and prior earnings, but an unemployed individual who refuses an offer of work determined to be suitable under this section shall be denied benefits if the pay rate for that work is at least 70% of the gross pay rate he or she received immediately before becoming unemployed. Beginning January 15, 2012, after an individual has received benefits for 50% of the benefit weeks in the individual's benefit year, work shall not be considered unsuitable because it is outside of the individual's training or experience or unsuitable as to pay rate if the pay rate for that work meets or exceeds the minimum wage; is at least the prevailing mean wage for similar work in the locality for the most recent full calendar year for which data are available as published by the department of technology, management, and budget as "wages by job title", by standard metropolitan statistical area; and is 120% or more of the individual's weekly benefit amount.

(7) Work is not suitable and benefits shall not be denied under this act to an otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.

(b) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(c) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.

(8) All of the following apply to an individual who seeks benefits under this act:

(a) An individual is disqualified from receiving benefits for a week in which the individual's total or partial unemployment is due to either of the following:

(i) A labor dispute in active progress at the place at which the individual is or was last employed, or a shutdown or start-up operation caused by that labor dispute.

(ii) A labor dispute, other than a lockout, in active progress or a shutdown or start-up operation caused by that labor dispute in any other establishment within the United States that is both functionally integrated with the establishment described in subparagraph *(i)* and operated by the same employing unit.

(b) An individual's disqualification imposed or imposable under this subsection is terminated if the individual performs services in employment with an employer in at least 2 consecutive weeks falling wholly within the period of the individual's total or partial unemployment due to the labor dispute, and in addition earns wages in each of those weeks in an amount equal to or greater than the individual's actual or potential weekly benefit rate.

(c) An individual is not disqualified under this subsection if the individual is not directly involved in the labor dispute. An individual is not directly involved in a labor dispute unless any of the following are established:

(i) At the time or in the course of a labor dispute in the establishment in which the individual was then employed, the individual in concert with 1 or more other employees voluntarily stopped working other than at the direction of the individual's employing unit.

(ii) The individual is participating in, financing, or directly interested in the labor dispute that causes the individual's total or partial unemployment. The payment of regular union dues, in amounts and for purposes established before the inception of the labor dispute, is not financing a labor dispute within the meaning of this subparagraph.

(iii) At any time a labor dispute in the establishment or department in which the individual was employed does not exist, and the individual voluntarily stops working, other than at the direction of the individual's employing unit, in sympathy with employees in some other establishment or department in which a labor dispute is in progress.

(iv) The individual's total or partial unemployment is due to a labor dispute that was or is in progress in a department, unit, or group of workers in the same establishment.

(d) As used in this subsection, "directly interested" shall be construed and applied so as not to disqualify individuals unemployed as a result of a labor dispute the resolution of which may not reasonably be expected to affect their wages, hours, or other conditions of employment, and to disqualify individuals whose wages, hours, or conditions of employment may reasonably be expected to be affected by the resolution of the labor dispute. A "reasonable expectation" of an effect on an individual's wages, hours, or other conditions of employment exists, in the absence of a substantial preponderance of evidence to the contrary, in any of the following situations:

(i) If it is established that there is in the particular establishment or employing unit a practice, custom, or contractual obligation to extend within a reasonable period to members of the individual's grade or class of workers in the establishment in which the individual is or was last employed changes in terms and conditions of employment that are substantially similar or related to some or all of the changes in terms and conditions of employment that are made for the workers among whom there exists the labor dispute that has caused the individual's total or partial unemployment.

(ii) If it is established that 1 of the issues in or purposes of the labor dispute is to obtain a change in the terms and conditions of employment for members of the individual's grade or class of workers in the establishment in which the individual is or was last employed.

(iii) If a collective bargaining agreement covers both the individual's grade or class of workers in the establishment in which the individual is or was last employed and the workers in another establishment of the same employing unit who are actively participating in the labor dispute, and that collective bargaining agreement is subject by its terms to modification, supplementation, or replacement, or has expired or been opened by mutual consent at the time of the labor dispute.

(e) In determining the scope of the grade or class of workers, evidence of the following is relevant:

(i) Representation of the workers by the same national or international organization or by local affiliates of that national or international organization.

(ii) Whether the workers are included in a single, legally designated, or negotiated bargaining unit.

(iii) Whether the workers are or within the past 6 months have been covered by a common master collective bargaining agreement that sets forth all or any part of the terms and conditions of the workers' employment, or by separate agreements that are or have been bargained as a part of the same negotiations.

(iv) Any functional integration of the work performed by those workers.

(v) Whether the resolution of those issues involved in the labor dispute as to some of the workers could directly or indirectly affect the advancement, negotiation, or settlement of the same or similar issues in respect to the remaining workers.

(vi) Whether the workers are currently or have been covered by the same or similar demands by their recognized or certified bargaining agent or agents for changes in their wages, hours, or other conditions of employment.

(vii) Whether issues on the same subject matter as those involved in the labor dispute have been the subject of proposals or demands made upon the employing unit that would by their terms have applied to those workers.

(9) Notwithstanding subsections (1) to (8), if the employing unit submits notice to the unemployment agency of possible ineligibility or disqualification beyond the time limits prescribed by unemployment agency rule, the notice shall not form the basis of a determination of ineligibility or disqualification for a claim period compensated before the receipt of the notice by the unemployment agency.

(10) An individual is disqualified from receiving benefits for any week or part of a week in which the individual has received, is receiving, or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States. If the appropriate agency of the other state or of the United States finally determines that the individual is not entitled to unemployment benefits, the disqualification described in this subsection does not apply.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1942, 2nd Ex. Sess., Act 18, Imd. Eff. Feb. 27, 1942-Am. 1943, Act 246, Imd. Eff. June 1, 1943-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.29-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1954, Act 197, Imd. Eff. May 7, 1954-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1963, Act 226, Eff. Sept. 6, 1963-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1967, Act 254, Imd. Eff. July 19, 1967-Am. 1970, Act 14, Imd. Eff. Apr. 14, 1970-Am. 1974, Act 11, Imd. Eff. Feb. 15, 1974-Am. 1974, Act 104, Eff. June 9, 1974-Am. 1975, Act 110, Eff. June 8, 1975-Am. 1980, Act 358, Eff. Mar. 1, 1981-Am. 1982, Act 535, Eff. Jan. 2, 1983-Am. 1983, Act 164, Imd. Eff. July 24, 1983-Am. 1994, Act 162, Imd. Eff. June 17, 1994-Am. 1995, Act 25, Eff. Mar. 28, 1996; -Am. 2002, Act 192, Imd. Eff. Apr. 26, 2002-Am. 2008, Act 480, Imd. Eff. Jan 12, 2009-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

Constitutionality: Subsection (8), which disqualifies employees who are locked out by their employer for a labor dispute in which they are directly involved but which does not disqualify locked out employees where the labor dispute occurs in a functionally integrated establishment operated by the same employer does not violate the equal protection clause. Smith v Employment Security Commission, 410 Mich 231, 301 NW2d 285 (1981).

Claimant's failure to pay agency shop fees after receiving notice from her employer showed a wilful disregard of the employer's interest. The claimant did not have a constitutional right not to pay the required fees, and any effect on her First Amendment interests was outweighed by the state's interest in not using its moneys to pay unemployment benefits to persons who are disqualified under the act. Parks v Employment Security Commission, 427 Mich 224, 398 NW2d 275 (1986).

421.29m, 421.29n Repealed. 1965, Act 281, Eff. Sept. 5, 1965.

Compiler's note: The repealed sections provided for disqualification for benefits by reason of a jail sentence and by reason of a disciplinary layoff or suspension.

21.30 Benefits inalienable.

Sec. 30. Benefits inalienable. All rights to benefits shall be absolutely inalienable by any assignment, sale, garnishment, execution or otherwise, and, in case of bankruptcy, the benefits shall not pass to or through any trustees or other persons acting on behalf of creditors: Provided, That this section shall not prohibit the use of any remedy provided by law insofar as the collection of obligations incurred for necessaries furnished to the recipient of such benefits or his dependents during the time when such individual was unemployed is concerned.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;—CL 1948, 421.30.

421.31 Waiver of rights; limitation of fees.

Sec. 31. No agreement by an individual to wave, release, or commute his rights to benefits or any other rights under this act from an employer shall be valid. No agreements by an individual in the employ of any person or concern to pay all or any portion of the contributions of an employer, required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of any individual in his employ to finance the contributions of the employer required from him, or require or accept any waiver of any right hereunder by any individual in his employ.

No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the commission or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the commission.

Any employer may be represented in any proceeding before the commission by counsel or other duly authorized agent.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;-CL 1948, 421.31-Am. 1968, Act 338, Imd. Eff. July 19, 1968.

Compiler's note: Near the beginning of this section, "wave" evidently should read "waive".

421.32 Claims for benefits; examination; determination; notice.

Sec. 32. (a) Claims for benefits shall be made pursuant to regulations prescribed by the unemployment agency. The unemployment agency shall designate representatives who shall promptly examine claims and make a determination on the facts. The unemployment agency may establish rules providing for the examination of claims, the determination of the validity of the claims, and the amount and duration of benefits to be paid. The claimant and other interested parties shall be promptly notified of the determination and the reasons for the determination.

(b)(1) For benefit years established before the conversion date prescribed in section 75, the unemployment agency may prescribe regulations for notifying and shall notify the employer, whose experience account may be charged, and the employing unit where the claimant last worked that the claimant has filed an application for benefits. The notice shall require the employer and employing unit to furnish information to the unemployment agency necessary to determine the claimant's benefit rights.

(2) Upon receipt of the employer's reports, the unemployment agency shall promptly make a determination based upon the available information. The claimant and the employer, whose experience account may be charged pursuant to the determination, shall be promptly notified of the determination. The notice shall show the name and account number of the employer whose experience account may be charged pursuant to the determination, the weekly benefit amount and the maximum number of credit weeks against which the claimant may draw benefits, and whether or not the claimant is eligible and qualified to draw benefits. An employer may designate in writing to the unemployment agency an individual or another employer or an employing unit to receive any notice required to be

given by the unemployment agency to that employer or to represent that employer in any proceeding before the unemployment agency as provided in section 31.

(3) If an employer or employing unit fails to respond within 10 days after mailing of the request for information, the unemployment agency shall make a determination upon the available information. In the absence of a showing by the employer satisfying the unemployment agency that the employer reasonably could not submit the requested information, the determination shall be final as to the noncomplying employer, as to benefits paid before the week following the receipt of the employer's reply, and chargeable against the employer's experience account as a result of the employer's late reply, and the payments shall be considered to have been proper payments. The unemployment agency may require an employer who consistently fails to meet the unemployment agency's requirements, as to submission of reports covering employment of individuals, to provide the reports automatically upon the separation of individuals from employment, in the manner and within the time limits the unemployment agency prescribes by regulation necessary to carry out this section. An employer may be permitted to provide the reports automatically upon separation of individuals from employment, in the manner and within the time limits prescribed by the unemployment agency.

(4) After an application for benefits is filed, the unemployment agency's determination shall include only the most recent employer. Subsequently, as necessary, the unemployment agency shall issue determinations covering other base period employers, individually in inverse order to that in which the claimant earned his or her last credit week with the employers.

(5) For benefit years established after the conversion date prescribed in section 75, the unemployment agency shall mail to the claimant, to each base period employer or employing unit, and to the separating employer or employing unit, a monetary determination. The monetary determination shall notify each of these employers or employing units that the claimant has filed an application for benefits and the amount the claimant reported as earned with the separating employer or employing unit, and shall state the name of each employer or employing unit in the base period and the name of the separating employer or employing unit. The monetary determination shall also state the claimant's weekly benefit rate, the amount of base period wages paid by each base period employer, the maximum benefit amount that could be charged to each employer's account or experience account, and the reason for separation reported by the claimant. The monetary determination shall also state whether the claimant is monetarily eligible to receive unemployment benefits. Except for separations under section 29(1)(a), no further reconsideration of a separation from any base period employer will be made unless the base period employer notifies the unemployment agency of a possible disqualifying separation within 30 days of the separation in accordance with this subsection. Benefits paid in accordance with the monetary determination shall be considered proper payments and shall not be changed unless the unemployment agency receives new, corrected, or additional information from the employer, within 10 calendar days after the mailing of the monetary determination, and the information results in a change in the monetary determination. New, additional, or corrected information received by the unemployment agency after the 10-day period shall be considered a request for reconsideration by the employer of the monetary determination and shall be reviewed as provided in section 32a.

(6) For the purpose of determining a claimant's nonmonetary eligibility and qualification for benefits, if the claimant's most recent base period or benefit year separation was for a reason other than the lack of work, then a determination shall be issued concerning that separation to the claimant and to the separating employer. If a claimant is not disqualified based on his or her most recent separation from employment and has satisfied the requirements of section 29, the unemployment agency shall issue a nonmonetary determination as to that separation only. If a claimant is not disqualified based on his or her most recent separation from employment and has not satisfied the requirements of section 29, the unemployment agency shall issue 1 or more nonmonetary determinations necessary to establish the claimant's qualification for benefits based on any prior separation in inverse chronological order. The unemployment agency shall consider all base period separations involving disqualifications under section 29(1)(h), (j), (l), or (m) in determining a claimant's nonmonetary eligibility and qualification for benefits. An employer may designate in writing to the unemployment agency an individual or another employer or an employing unit to receive any notice required to be given by the unemployment agency to that employer or to represent that employer in any proceeding before the unemployment agency as provided in section 31.

(7) If the unemployment agency requests additional monetary or nonmonetary information from an employer or employing unit and the unemployment agency fails to receive a written response from the employer or employing unit within 10 calendar days after the date of mailing the request for information, the unemployment agency shall make a determination based upon the available information at the time the determination is made. The determination shall be final and any payment made shall be considered a proper payment with respect to benefits paid before the week following the receipt of the employer's reply and chargeable against the employer's account or experience account as a result of the employer's late reply.

(c) The claimant or interested party may file an application with an office of the unemployment agency for a redetermination in accordance with section 32a.

(d) The issuance of each benefit check shall be considered a determination by the unemployment agency that the claimant receiving the check was covered during the compensable period, and eligible and qualified for benefits. A chargeable employer, upon receipt of a listing of the check as provided in section 21(a), may protest by requesting a redetermination of the claimant's eligibility or qualification as to at period and a determination as to later weeks and benefits still unpaid that are affected by the protest. Upon receipt of the protest or request, the unemployment agency shall investigate and redetermine whether the claimant is eligible and qualified as to that period. If, upon the redetermination, the claimant is found ineligible or not qualified, the unemployment agency shall investigate and determine whether the claimant obtained benefits, for 1 or more preceding weeks within the series of consecutive weeks that includes the week covered by the redetermination, improperly as the result of administrative error, false statement, misrepresentation, or nondisclosure of a material fact, the unemployment agency shall proceed under the appropriate provisions of section 62.

(e) If a claimant commences to file continued claims through a different state claim office in this state or elsewhere, the unemployment agency promptly shall issue written notice of that fact to the chargeable employer.

(f) If a claimant refuses an offer of work, or fails to apply for work of which the claimant has been notified, as provided in section 29(1)(c) or (e), the unemployment agency shall promptly make a written determination as to whether or not the refusal or failure requires disqualification under section 29. Notice of the determination, specifying the name and address of the employing unit offering or giving notice of the work and of the chargeable employer, shall be sent to the claimant, the employing unit offering or giving notice of the work, and the chargeable employer.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.32-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1954, Act 197, Imd. Eff. May 7, 1954-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1982, Act 535, Eff. Jan. 2, 1983-Am. 1983, Act 164, Imd. Eff. July 24, 1983-Am. 1994, Act 162, Imd. Eff. June 17, 1994-Am. 1996, Act 503, Imd. Eff. Jan. 9, 1997; -Am. 2002, Act 192, Imd. Eff. Apr. 26, 2002.

421.32a Review of determination; redetermination; notice; reconsideration; applicability of disqualification or ineligibility to compensable period; finality of redetermination; additional transfer provisions.

Sec. 32a. (1) Upon application by an interested party for review of a determination, upon request for transfer to an administrative law judge for a hearing filed with the unemployment agency within 30 days after the mailing or personal service of a notice of determination, or upon the unemployment agency's own motion within that 30-day period, the unemployment agency shall review any determination. After review, the unemployment agency shall issue a redetermination affirming, modifying, or reversing the prior determination and stating the reasons for the redetermination, or may in its discretion transfer the matter to an administrative law judge for a hearing. If a redetermination is issued, the unemployment agency shall promptly notify the interested parties of the redetermination, the redetermination is final unless within 30 days after the mailing or personal service of a notice of the redetermination an appeal is filed with the unemployment agency for a hearing on the redetermination before an administrative law judge in accordance with section 33.

(2) The unemployment agency may, for good cause, including any administrative clerical error, reconsider a prior determination or redetermination after the 30-day period has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to an administrative law judge for a hearing. A reconsideration shall not be made unless the request is filed with the unemployment agency, or reconsideration is initiated by the unemployment agency with notice to the interested parties, within 1 year from the date of mailing or personal service of the original determination on the disputed issue.

(3) If an interested party fails to file a protest within the 30-day period and the unemployment agency for good cause reconsiders a prior determination or redetermination and issues a redetermination, a disqualification, or an ineligibility imposed thereunder, other than an ineligibility imposed due to receipt of retroactive pay, the redetermination, disqualification, or ineligibility does not apply to a compensable period for which benefits were paid or are payable unless the benefits were obtained as a result of an administrative clerical error, a false statement, or a nondisclosure or misrepresentation of a material fact by the claimant. However, the redetermination is final unless within 30 days after the date of mailing or personal service of the notice of redetermination an appeal is filed for a hearing on the redetermination before an administrative law judge in accordance with section 33.

(4) In addition to the transfer provisions in subsections (1) and (2), both of the following apply:

(a) If both the claimant and the employer agree, the matter may be transferred directly to an administrative law judge in a case involving the payment of unemployment benefits.

(b) If both the unemployment agency and the employer agree, the matter may be transferred directly to an admiative law judge in a case involving unemployment contributions or reimbursements in lieu of contributions.

History: Add. 1941, Act 364, Imd. Eff. July 1, 1941;-CL 1948, 421.32a-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1957, Act 311, Imd. Eff. June 21, 1957-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1974, Act 11, Imd. Eff. Feb. 15, 1974-Am. 1975, Act 110, Eff. June 8, 1975-Am. 1983, Act 164, Eff. Oct. 1, 1983-Am. 1996, Act 503, Imd. Eff. Jan. 9, 1997-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

Compiler's note: In subsection (1), in the last sentence, after the second appearance of the word "redetermination", the comma should evidently be a period, and the following word "the" should evidently be capitalized.

421.32b Internet site; establishment; access; purpose; protest or appeal.

Sec. 32b. (1) The unemployment agency shall establish and provide access to a secure internet site to enable employers to determine if correspondence sent to the unemployment agency by the employer has been received.

(2) Within 10 days of receiving a protest or appeal from an employer or employing unit, the unemployment agency shall post a statement confirming receipt of the protest or appeal from that employer or employing unit on the internet site required under subsection (1).

(3) A protest or appeal shall be signed or verified in a manner prescribed by administrative rule and shall be transmitted to the agency by mail, facsimile, or other electronic method approved by the agency. If a party submits an unsigned or unverified protest or appeal, the unemployment agency shall notify the party of the defect that prevents the agency from accepting the protest or appeal.

History: Add. 2002, Act 192, Imd. Eff. Apr. 26, 2002-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.33 Assignment to administrative law judge; appeals and transferred matters; consolidation of cases; procedure for appeal to Michigan compensation appellate commission.

Sec. 33. (1) An appeal from a redetermination issued by the agency in accordance with section 32a or a matter transferred for hearing and decision in accordance with section 32a shall be referred to the Michigan administrative hearing system for assignment to an administrative law judge. If the agency transfers a matter, or an interested party requests a hearing before an administrative law judge on a redetermination, all matters pertinent to the claimant's benefit rights or to the liability of the employing unit under this act shall be referred to the administrative law judge. The administrative law judge shall afford all interested parties a reasonable opportunity for a fair hearing and, unless the appeal is withdrawn, the administrative law judge shall decide the rights of the interested parties and shall notify the interested parties of the decision, setting forth the findings of fact upon which the decision is based, together with the reasons for the decision. With respect to an appeal from a denial of redetermination, if the administrative law judge finds that there was good cause for the issuance of a redetermination, the denial shall be a redetermination affirming the determination and the appeal from the denial shall be an appeal from that affirmance. Unless an interested party would be unduly prejudiced, an administrative law judge may consolidate cases involving the same or substantially similar evidence or issues, hear the consolidated cases at the same date and time, create a single record of proceedings, and consider evidence introduced in 1 of those cases in the other cases. If the appellant fails to appear or prosecute the appeal, the administrative law judge may dismiss the proceedings or take other action considered advisable. An administrative law judge may, either upon application for rehearing by an interested party or on his or her own motion, proceed to rehear, affirm, modify, set aside, or reverse a prior decision on the basis of the evidence previously submitted in the case, or on the basis of additional evidence. The application or motion shall be made within 30 days after the date of mailing of the decision. The administrative law judge may, for good cause, reopen and review a prior decision and issue a new decision after the 30-day appeal period has expired. A request for review shall be made within 1 year after the date of mailing of the prior decision. An administrative law judge shall not participate in a case in which he or she has a direct or indirect interest.

(2) Within 30 days after the mailing of a copy of a decision of the administrative law judge or of a denial of a motion for rehearing, an interested party may file an appeal to the Michigan compensation appellate commission, and unless such an appeal is filed, the decision or denial by the administrative law judge is final.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.33-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1963, Act 190, Eff. Sept. 6, 1963-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1975, Act 110, Eff. June 8, 1975-Am. 1977, Act 52, Imd. Eff. July 5, 1977-Am. 1977, Act 202, Imd. Eff. Nov. 17, 1977-Am. 1983, Act 164, Eff. Oct. 1, 1983-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.34 Appeal to Michigan compensation appellate commission from findings of fact and decision or from denial of motion for rehearing or reopening.

Sec. 34. (1) The Michigan compensation appellate commission created in Executive Reorganization Order No. 2011-6, MCL 445.2032, has full authority to handle, process, and decide appeals filed under section 33(2).

(2) An appeal to the Michigan compensation appellate commission from the findings of fact and decision of the administrative law judge or from a denial by the administrative law judge of a motion for a rehearing or reopening shall be a matter of right by an interested party. The Michigan compensation appellate commission, on the basis of evidence previously submitted and additional evidence as it requires, shall affirm, modify, set aside, or reverse the findings of fact and decision of the administrative law judge or a denial by the administrative law judge of a motion for rehearing or reopening.

(3) The agency is an interested party in a matter before an administrative law judge, the Michigan compensation appellate commission, or a court, but notice of hearing is not required to be provided to the agency for a hearing before an administrative law judge or the Michigan compensation appellate commission.

(4) The Michigan compensation appellate commission shall conduct an oral hearing in a matter before it only after an application for the hearing is made by an interested party and the application is approved by 2 or more members of the Michigan compensation appellate commission assigned to review the appeal. If an application for an oral hearing is not approved, the Michigan compensation appellate commission may consider a written argument if an application for written argument is approved by 2 or more members of the Michigan compensation appellate commission assigned to review the appeal and all parties are represented or all parties agree that written argument should be considered. If neither an oral hearing is held nor written argument considered, the Michigan compensation appellate commission shall decide the case on the record before the administrative law judge.

(5) The Michigan compensation appellate commission, in its discretion, may omit the basis for its decision in cases in which it affirms the decision of an administrative law judge without alteration or modification.

(6) If the appellant fails to appear, the Michigan compensation appellate commission may dismiss the proceedings or take other action it considers advisable.

(7) The Michigan compensation appellate commission may, either upon application by an interested party for rehearing or on its own motion, proceed to rehear, affirm, modify, set aside, or reverse a prior decision on the basis of the evidence previously submitted in that case, or on the basis of additional evidence if the application or motion is made within 30 days after the date of mailing of the prior decision. The Michigan compensation appellate commission may, for good cause, reopen and review a prior decision of the Michigan compensation appellate commission and issue a new decision after the 30-day appeal period has expired, but a review shall not be made unless the request is filed with the Michigan compensation appellate commission, or review is initiated by the Michigan compensation appellate commission with notice to the interested parties, within 1 year after the date of mailing of the prior decision. Unless an interested party, within 30 days after mailing of a copy of a decision of the Michigan compensation appellate commission or of a denial of a motion for a rehearing, files an appeal from the decision or denial, or seeks judicial review as provided in section 38, the decision shall be final.

(8) The Michigan compensation appellate commission may on its own motion affirm, modify, set aside, or reverse a decision or order of an administrative law judge on the basis of the evidence previously submitted in the case; direct the taking of additional evidence; or permit a party to the decision or order to initiate further appeals before it. The Michigan compensation appellate commission shall permit a further appeal by a party interested in a decision or order of an administrative law judge or by the Michigan compensation appellate commission if its initial ruling has been overruled or modified. The Michigan compensation appellate commission may remove to itself or direct the Michigan administrative hearing system to transfer to another administrative law judge the proceedings on appeal, rehearing, or review pending before an administrative law judge. The Michigan compensation appellate commission shall promptly notify the interested parties of its findings and decisions.

(9) A member of the Michigan compensation appellate commission may administer oaths and take depositions.

(10) The testimony at a hearing before an administrative law judge or the Michigan compensation appellate commission shall be recorded, but need not be transcribed unless requested by the majority of the panel of the Michigan compensation appellate commission assigned to hear the claim. If an interested party wants a copy of a transcript of a hearing held before an administrative law judge or the Michigan compensation appellate commission,

an interested party may request and shall be provided a transcript. An interested party who requests a transcript is responsible for the cost of the transcript.

(11) The manner in which an appeal to an administrative law judge and the Michigan compensation appellate commission shall be presented, the appeal reports required from an interested party, and the procedure governing the appeal shall be in accordance with rules promulgated by the Michigan administrative hearing system.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941;-CL 1948, 421.34-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1975, Act 110, Eff. June 8, 1975-Am. 1977, Act 52, Imd. Eff. July 5, 1977-Am. 1983, Act 164, Eff. Oct. 1, 1983-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.35, 421.36 Repealed. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

Compiler's note: The repealed sections pertained to powers and duties of board of review and appeals to referees and board of review.

421.37 Fees for subpoenaed witnesses; fees and expenses of proceedings; issuance of subpoena.

Sec. 37. (1) Witnesses subpoenaed pursuant to this act shall be allowed fees at the rate fixed by law. The fees and expenses of proceedings involving disputed determinations, decisions, or notices of assessments before an administrative law judge or the Michigan compensation appellate commission shall be considered a part of the expense of administering this act.

(2) If an interested party to a hearing formally requests an administrative law judge or the Michigan compensation appellate commission to obtain a subpoena for witnesses whose evidence it considers necessary, an administrative law judge or the Michigan compensation appellate commission shall promptly issue the subpoena as provided in this act, unless the request is determined to be unreasonable.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1941, Act 364, Imd. Eff. July 1, 1941;-CL 1948, 421.37-Am. 1967, Act 254, Imd. Eff. July 19, 1967-Am. 1977, Act 52, Imd. Eff. July 5, 1977-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.38 Review by circuit court; direct appeal of order or decision of administrative law judge; unemployment agency as party; manner of appeal.

Sec. 38. (1) The circuit court in the county in which the claimant resides or the circuit court in the county in which the claimant's place of employment is or was located, or, if a claimant is not a party to the case, the circuit court in the county in which the employer's principal place of business in this state is located, may review questions of fact and law on the record made before the administrative law judge and the Michigan compensation appellate commission involved in a final order or decision of the Michigan compensation appellate commission, and may make further orders in respect to that order or decision as justice may require, but the court may reverse an order or decision only if it finds that the order or decision is contrary to law or is not supported by competent, material, and substantial evidence on the whole record. Application for review shall be made within 30 days after the mailing of a copy of the order or decision by any method permissible under the rules and practices of the circuit court of this state.

(2) An order or decision of an administrative law judge that involves a claim for unemployment benefits may be appealed directly to the circuit court if the claimant and the employer or their authorized agents or attorneys agree to do so by written stipulation filed with the administrative law judge. An administrative law judge's order or decision involving an employer's contributions or payments in lieu of contributions under this act may be appealed directly to the circuit court based on a written stipulation agreeing to the direct appeal to the circuit court.

(3) The unemployment agency is a party to any judicial action involving an order or decision of the Michigan compensation appellate commission or an administrative law judge.

(4) The decision of the circuit court may be appealed in the manner provided by the laws of this state for appeals from the circuit court.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941;-CL 1948, 421.38-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1967, Act 254, Imd. Eff. July 19, 1967-Am. 1975, Act 110, Eff. June 8, 1975-Am. 1977, Act 52, Imd. Eff. July 5, 1977-Am. 1983, Act 164, Imd. Eff. July 24, 1983-Am. 1996, Act 503, Imd. Eff. Jan. 9, 1997-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.39 Employment security act; definitions.

Sec. 39. Definitions. As used in this act, unless the context clearly requires otherwise, the terms defined in this act shall be construed to have the meaning as prescribed and set forth in the several definitions.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936–CL 1948, 421.39.

421.40 "Employing unit" defined.

Sec. 40. "Employing unit" means any individual or type of organization, including, but not limited to, a governmental entity as defined in section 50a, a partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to this amendatory act, had in its employ 1 or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains 2 or more separate establishments within this state shall be considered to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be considered to be employed by that employing unit for all the purposes of this act, whether the individual was hired or paid directly by that employing unit or by the agent or employee, provided the employing unit had actual or constructive knowledge of the work.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;-- CL 1948, 421.40;-- Am. 1954, Act 197, Imd. Eff. May 7, 1954;-- Am. 1955, Act 281, Eff. July 15, 1955;-- Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972;-- Am. 1977, Act 277, Eff. Jan. 1, 1978.

421.41 "Employer" defined.

Sec. 41. "Employer" means any of the following:

(1) An employing unit that in each of 20 different calendar weeks within a calendar year, whether or not the weeks were consecutive, has or had in employment 1 or more individuals irrespective of whether the same individual was employed in each week, or by which total remuneration of $1,000.00 or more for employment was paid or payable within the calendar year.

(2)(a) Any individual, legal entity, or employing unit that acquires the organization, trade, or business, or 75% or more of the assets of another organization, trade, or business, which at the time of the acquisition was an employer subject to this act.

(b) Any individual, legal entity, or employing unit that becomes a transferee of business assets by any means otherwise than in the ordinary course of trade from an employer, if there is substantially common ownership, management, or control of the transferor and transferee at the time of transfer.

(3) Any employing unit that has become an employer under subdivision (1), (2), (4), (5), (6), (7), or (9) but has not, under section 24 or 25, ceased to be an employer subject to this act.

(4) For the effective period of its election pursuant to section 25, any other employing unit that has elected to become fully subject to this act.

(5)(a) An employing unit that for some portion of a day in each of 20 different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding calendar year, employed 10 or more individuals performing agricultural service, regardless of whether the individuals were employed at the same moment of time, or that, during any calendar quarter in either the current or the preceding calendar year, paid remuneration in cash of $20,000.00 or more to employees performing agricultural service.

(b) For the purposes of this subdivision an individual who is a member of a crew furnished by a farm labor contractor to perform agricultural service for any farm operator shall be treated as an employee of that farm labor contractor if the farm labor contractor holds a valid certificate of registration under the migrant and seasonal agricultural worker protection act, 29 USC 1801 to 1872; or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by the farm labor contractor; and if the farm labor contractor is not an employee of the farm operator within the meaning of this act.

(c) For the purposes of this subdivision, in the case of an individual who is furnished by a farm labor contractor to perform agricultural service for a farm operator and who is not treated as an employee of the farm labor contractor under paragraph (b), the farm operator and not the farm labor contractor shall be treated as the employer of the individual, and the farm operator shall be treated as having paid cash remuneration to the individual in an amount

equal to the amount of cash remuneration paid to the individual by the farm labor contractor, either on the farm labor contractor's own behalf or on behalf of the farm operator, for the agricultural service performed for the farm operator.

(d) For the purposes of this subdivision, the term "farm labor contractor" means an individual who does all of the following:

(i) Furnishes individuals to perform agricultural service for a farm operator.

(ii) Pays, either on the individual's own behalf or on behalf of a farm operator, the individuals furnished by the individual for the agricultural service performed by them.

(iii) Has not entered into a written agreement with the farm operator under which the farm labor contractor is designated as an employee of the farm operator.

(6) An employing unit that paid cash remuneration of $1,000.00 or more for domestic service in any calendar quarter in the current calendar year or the preceding calendar year. An employing unit that is determined to be an employer under this subdivision shall not be considered an employer of other covered services unless it meets the test of being an employer under another subdivision of this section.

(7) Any employing unit not an employer by reason of any other paragraph of this section for which services in employment are performed with respect to which the employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; but services performed for the employing unit shall constitute employment for the purposes of this act only to the extent that those services constitute employment with respect to which the federal tax is payable.

(8) For purposes of this section, a week that falls in 2 calendar years shall be considered to fall entirely within the calendar year that contains the majority of days of that week.

(9) Notwithstanding subdivision (1), after December 31, 1977, "employer" includes any employing unit for which services are performed as defined in section 42(8) or (9).

(10) For the purpose of determining the amount of contributions due pursuant to section 44(2), the provisions of subdivisions (5) and (6) shall first apply with respect to remuneration paid after December 31, 1977, for services performed after that date.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937-Am. 1941, Act 364, Imd. Eff. July 1, 1941;-CL 1948, 421.41-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1968, Act 338, Imd. Eff. July 19, 1968-Am. 1974, Act 104, Eff. June 9, 1974-Am. 1977, Act 277, Eff. Jan. 1, 1978-Am. 2005, Act 19, Imd. Eff. July 1, 2005.

421.41a Repealed. 1951, Act 251, Imd. Eff. June 17, 1951.

Compiler's note: The repealed section provided for limitation by commission of retroactive effect of its rulings or decisions.

421.42 "Employment" defined.

Sec. 42. (1) "Employment" means service, including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, express or implied.

(2) "Employment" includes an individual's entire service, performed within or both within and without this state if any of the following apply:

(a) The service is localized in this state. Service shall be deemed to be localized within a state if the service is performed entirely within the state; or the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state, such as service which is temporary or transitory in nature or consists of isolated transactions.

(b) The service is not localized in a state but some of the service performed in this state and the base of operations, or, if there is not a base of operations, then the place from which the service is directed or controlled, is in this state; or the base of operations or place from which the service is directed or controlled is not in a state in which some part of the service is performed, but the individual's residence is in this state.

(c) After December 31, 1964, the service is not localized in any state but is performed by an employee on or in connection with an American aircraft, if either the contract of service is entered into within this state or if the contract of service is not entered into within this state or within any other state and during the performance of the contract of service and while the employee is employed on the aircraft, it touches at an airfield in this state, and the employee is employed on and in connection with the aircraft when outside the United States. The unemployment agency may enter into reciprocal agreements with other states with respect to aircraft which touch airfields in more than 1 state.

(3) Service performed within this state but not covered under subsection (2) and not excluded under section 43 shall be deemed to be employment subject to this act if contributions are not required and paid with respect to those services under an unemployment compensation law of any other state or of the federal government.

(4) Services, not covered under subsection (2), performed entirely without this state, for which contributions are not required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act if the unemployment agency approves the election of the employer for whom the services are performed that the entire service of the individual shall be deemed to be employment subject to this act. Such an election may be canceled by the employer by filing a written notice with the unemployment agency before January 30 of any year stating the employer's desire to cancel the election or at any time by submitting to the unemployment agency satisfactory proof that the services designated in the election are covered by an unemployment compensation law of another state or of the federal government, or if the services are covered by an arrangement pursuant to section 11 between the unemployment agency and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within the state, shall be deemed to be employment if the unemployment agency has approved an election of the employing unit for which the services are performed, pursuant to which the entire service of the individual during the period covered by the election is deemed to be employment.

(5) Before January 1, 2013, services performed by an individual for remuneration are not employment subject to this act, unless the individual is under the employer's control or direction as to the performance of the services both under a contract for hire and in fact. Service performed by an individual for remuneration under an exclusive contract that provides for the individual's control and direction by a person, firm, or corporation possessing a public service permit or by a certificated motor carrier transporting goods or property for hire are employment subject to this act. Service is employment under this act if it is performed by an individual who by lease, contract, or arrangement places at the disposal of a person, firm, or corporation a piece of motor vehicle equipment and under a contract of hire that provides for the individual's control and direction, is engaged by the person, firm, or corporation to operate the motor vehicle equipment. On and after January 1, 2013, services are employment if the services are performed by an individual who the agency determines to be in an employer-employee relationship using the 20-factor test announced by the internal revenue service of the United States department of treasury in revenue ruling 87-41, 1987-1 C.B. 296. An individual from whom an employer is required to withhold federal income tax is prima facie considered to perform services in employment under this act.

(6) Notwithstanding section 43, services performed for an employing unit, for which the employing unit is liable for federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund, shall be deemed to constitute employment for the purposes of this act, but only to the extent that the services constitute employment with respect to which federal tax is payable. Notwithstanding any other provision of this act or any amendatory act, services performed for an employing unit which are required to be covered under this act, as a condition for its certification by the United States secretary of labor, shall constitute employment for the purposes of this act. The unemployment agency may waive the provisions of this subsection with respect to services performed within this state if the employing unit is an employer solely by reason of section 41(7) and establishes that the services are covered by the election of the employing unit under any other state unemployment compensation law. This subsection shall not apply to the exceptions provided in section 43(q).

(7) Notwithstanding subsection (2) all service performed after December 31, 1964, by an officer or member of the crew of an American vessel on or in connection with the vessel is deemed to be employment subject to this act if the operating office, from which the operations of the vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled, is within this state.

(8)(a) Service performed before January 1, 1978, by an individual in the classified civil service of this state and service performed by an individual for a school district, a community college district, a school or educational facility owned or operated by the state other than an institution of higher education, or a political subdivision of the state, except a political subdivision which has a local unemployment compensation system as provided in section 13j, is employment subject to this act

(b) Service performed after December 31, 1977, in the employ of a governmental entity as defined in section 50a is employment subject to this act.

(9) "Employment" includes service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities for a state hospital or state institution of higher education, or in the employ

of this state and 1 or more other states or their instrumentalities for a hospital or institution of higher education located in this state. Coverage of services performed for these hospitals and institutions of higher education after December 31, 1977, shall be determined pursuant to section 42(8)(b).

(10) "Employment" includes service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization which is excluded from the term "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c)(8) of the unemployment tax act.

(11) "Employment" includes service performed after December 31, 1971, by an individual for his principal as an agent driver or commission driver engaged in distributing beverages, meat, vegetable, fruit, bakery, dairy, or other food products, or laundry or dry cleaning services; or as a traveling or city salesman, other than as an agent driver or commission driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations. For purposes of this subsection, "employment" includes services performed after December 31, 1971, only if all of the following apply:

(a) The contract of service contemplates that substantially all of the services are to be performed personally by the individual.

(b) The individual does not have a substantial investment in facilities used in connection with the performance of the services other than in facilities for transportation.

(c) The services are not in the nature of a single transaction which is not part of a continuing relationship with the person for whom the services are performed.

(12) "Employment" includes service performed by a United States citizen outside the United States after December 31, 1971, except in Canada, and in the Virgin Islands after December 31, 1971, and before January 1 of the year following the year in which the United States secretary of labor approves the unemployment compensation law of the Virgin Islands under section 3304(a) of the internal revenue code, while in the employ of an American employer and is other than service which is employment pursuant to subsection (2) or a parallel provision of another state's law, if the requirements of subdivision (a), (b), or (c) are met:

(a) The employer's principal place of business in the United States is located in this state.

(b) The employer does not have a place of business in the United States, but the employer is any of the following:

(i) An individual who is a resident of this state.

(ii) A corporation which is organized under the laws of this state.

(iii) A partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state.

(c) None of the criteria of subdivisions (a) and (b) is met but the employer elected coverage of the service under this act, or the employer failed to elect coverage in any state and the individual filed a claim for benefits based on the service under the law of this state.

(d) An "American employer", for purposes of this subsection, means a person who is one of the following:

(i) An individual who is a resident of the United States.

(ii) A partnership if 2/3 or more of the partners are residents of the United States.

(iii) A trust, if all of the trustees are residents of the United States.

(iv) A corporation organized under the laws of the United States or of any state.

(e) As used in this subsection, "United States" includes the states, the District of Columbia, and the Commonwealth of Puerto Rico.

(13) Notwithstanding any other provision of this act, the term "employment" shall include an individual's service, wherever performed within the United States, the Virgin Islands, or Canada, if the service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada, and the place from which the service is directed or controlled is in this state.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1942, 2nd Ex. Sess., Act 18, Imd. Eff. Feb. 27, 1942-Am. 1943, Act 246, Imd. Eff. June 1, 1943-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.42-Am. 1949, Act 282, Imd. Eff. June 11, 1949-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1957, Act 311, Imd. Eff. June 21, 1957-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1966, Act 226, Imd. Eff. July 11, 1966-Am. 1967, Act 192, Imd. Eff. June 30, 1967-Am. 1968, Act 338, Imd. Eff. July 19, 1968-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1974, Act 104, Eff. June 9, 1974-Am. 1975, Act 303, Eff. Dec. 22, 1975-Am. 1977, Act 277, Eff. Jan. 1, 1978-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

Compiler's note: For effective date of subsection (8), see MCL 421.66(3).

421.42a Coverage of services; determination; penalties and interests.

Sec. 42a. If a business entity requests the unemployment agency to determine whether 1 or more individuals performing services for the entity in this state are in covered employment, the unemployment agency shall issue a determination of coverage of services performed by those individuals and any other individuals performing similar services under similar circumstances. If the unemployment agency determines that the services are in covered employment and the unemployment agency received the request on or after the effective date of the amendatory act that added this section and before January 1, 2013, wages paid for those services are qualifying wages to determine benefit entitlement with respect to the first 4 of the last 5 calendar quarters ending before the date of the determination. Benefits paid based on amounts determined as a result of this section to be wages in those calendar quarters and that are otherwise chargeable to the experience account of a contributing employer shall be charged instead to the nonchargeable benefits account. Penalties and interest accrue only on contributions or reimbursements in lieu of contributions that are assessed based on wages paid on or after the date of the determination. On and after January 1, 2013, services will be determined in employment in accordance with the provision of section 42 that applies on and after that date.

History: Add. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.43 Services excluded from term "employment."

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

(a) Agricultural service performed by an individual who is an alien admitted to the United States to perform that service according to sections 214(c) and 101(a)(15)(H) of the immigration and nationality act, 8 USC 1184 and 8 USC 1101.

(b) Service performed in the employ of another state or its political subdivisions, or of an instrumentality of another state or its political subdivisions, except as otherwise provided in section 42(9); and service performed in the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this act. However, to the extent that the congress of the United States permits states to require instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, this act applies to the instrumentalities and to services performed for the instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services. If this state is not certified for any year by the appropriate agency of the United States under section 3304(c) of the federal unemployment tax act, chapter 23 of subtitle C of the internal revenue code of 1986, 26 USC 3304, the payments required of the instrumentalities with respect to the year shall be refunded by the commission from the fund in the same manner and within the same period as provided in section 16 with respect to contributions erroneously collected.

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

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

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

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

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

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

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

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

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

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

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

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

(f) Service as an officer or member of a crew of an American vessel performed on or in connection with the vessel, except a vessel of less than 200 horsepower, if the operating office from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly supervised, managed, directed, and controlled is without this state; and service performed by an individual in or as an officer or member of the crew of a vessel while it is engaged in the catching, taking, or harvesting of any kind of fish including service performed by an individual as an ordinary incident to that activity, except service performed on or in connection with a vessel of more than 10 net tons determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States.

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

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

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

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

(k) Service performed by an individual in a calendar quarter in the employ of an organization exempt from income tax under section 501(a) of the internal revenue code of 1986, 26 USC 501, other than an organization described in section 401(a) of the internal revenue code of 1986, 26 USC 401, or under section 521 of the internal revenue code of 1986, 26 USC 521, if the remuneration earned is less than $50.00.

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

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

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

(m) Service performed by an individual less than 22 years of age who is enrolled, at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at the institution, which program combines academic instruction with work experience, if the service is an integral part of the program and the institution has certified that fact to the employer. This subdivision does not apply to service performed in a program established for or on behalf of an employer or group of employers.

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

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

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

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

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

(A) As an elected official.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(r) Subject to subdivision (s), services performed as a direct seller, if the person is engaged in either of the following:

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

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

(s) The exclusion of services under subdivision (r) applies only if both of the following are me

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

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

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

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

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

(iii) Determines the method of performing the service.

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

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

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

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

(viii) As used in this subdivision:

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

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

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

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

(i) The individual performed the service under a contract or agreement providing for a guaranteed stipend opportunity.

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

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937;-CL 1948, 421.43-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1974, Act 104, Eff. Jan. 1, 1975-Am. 1976, Act 77, Imd. Eff. Apr. 11, 1976-Am. 1977, Act 277, Eff. Jan. 1, 1978-Am. 1982, Act 535, Eff. Jan. 2, 1983-Am. 1983, Act 71, Imd. Eff. June 2, 1983-Am. 1983, Act 164, Imd. Eff. July 24, 1983-Am. 1986, Act 70, Imd. Eff. Apr. 7, 1986-Am. 1995, Act 25, Eff. Mar. 28, 1996-Am. 1996, Act 145, Imd. Eff. Mar. 25, 1996; CAm. 2000, Act 490, Imd. Eff. Jan. 11, 2001- Am. 2004, Act 243, Imd. Eff. July 23, 2004.

421.44 "Remuneration" and "wages" defined.

Sec. 44. (1) "Remuneration" means all compensation paid for personal services, including commissions and bonuses, and except for agricultural and domestic services, the cash value of all compensation payable in a medium other than cash. Any remuneration payable to an individual that has not been actually received by that individual within 21 days after the end of the pay period in which the remuneration was earned, shall, for the purposes of subsections (2) to (5) and section 46, be considered to have been paid on the twenty-first day after the end of that pay period. For benefit years beginning on or after October 1, 2000, if back pay is awarded to an individual and is allocated by an employer or legal authority to a period of weeks within 1 or more calendar quarters, the back pay shall be considered paid in that calendar quarter or those calendar quarters for purposes of section 46. The reasonable cash value of compensation payable in a medium other than cash shall be estimated and determined in accordance with rules promulgated by the unemployment agency. Beginning January 1, 1986, remuneration shall include tips actually reported to an employer under section 6053(a) of the internal revenue code by an employee who receives tip income. Remuneration does not include either of the following:

(a) Money paid an individual by a unit of government for services rendered as a member of the national guard of this state, or for similar services to another state or the United States.

(b) Money paid by an employer to a worker under a supplemental unemployment benefit plan consistent with the criteria for a supplemental unemployment benefit plan as described in internal revenue service publication 15-A, employer's supplemental tax guide, regardless of whether the benefits are paid from a trust or by the employer.

(2) "Wages", subject to subsections (3) to (5), means remuneration paid by employers for employment and, beginning January 1, 1986, includes tips actually reported to an employer under section 6053(a) of the internal revenue code by an employee who receives tip income. If any provision of this subsection prevents this state from qualifying for any federal interest relief provisions provided under section 1202 of title XII of the social security act, 42 USC 1322, or prevents employers in this state from qualifying for the limitation on the reduction of federal unemployment tax act credits as provided under section 3302(f) of the federal unemployment tax act, 26 USC 3302, that provision is invalid to the extent necessary to maintain qualification for the interest relief provisions and federal unemployment tax credits.

(3) For the purpose of determining the amount of contributions due from an employer under this act, wages shall be limited by the taxable wage limit applicable under subsection (4). For this purpose, wages shall exclude all remuneration paid within a calendar year to an individual by an employing unit after the individual was paid within that year by that employing unit remuneration equal to the taxable wage limit on which unemployment taxes were paid or were payable in this state and in any other states. If an employing unit, hereinafter referred to as successor, during any calendar year becomes a transferee in a transfer of business as defined in section 22 of another, hereinafter referred to as a predecessor, and immediately after the transfer employs in his or her trade or business an individual who immediately before the transfer was employed in the trade or business of the predecessor, then for the purpose of determining whether the successor has paid remuneration with respect to employment equal to the taxable wage limit to that individual during the calendar year, any remuneration with respect to employment paid to that individual by the predecessor during the calendar year and before the transfer shall be considered as having been paid by the successor.

(4) The taxable wage limit for each calendar year is $8,000.00 in the 1983 calendar year, $8,500.00 in the 1984 calendar year, $9,000.00 in the 1985 calendar year, $9,500.00 in the calendar years 1986 through 2002, and $9,000.00 for calendar years after 2002 and before 2012, or the maximum amount of remuneration paid within a calendar year by an employer subject to the federal unemployment tax act, 26 USC 3301 to 3311, to an individual with respect to employment as defined in that act that is subject to tax under that act during that year for each calendar year, whichever is greater. For calendar years beginning 2012, the taxable wage limit is $9,500.00, but if at the beginning of a calendar quarter the balance in the unemployment compensation fund equals or exceeds $2,500,000,000.00 and the agency projects that the balance will remain at or above $2,500,000,000.00 for the remainder of the calendar quarter and for the entire succeeding calendar quarter, the taxable wage limit for that calendar quarter and the succeeding calendar quarter is $9,000.00 for an employer that is not delinquent in the payment of unemployment contributions, penalties, or interest.

(5) For the purposes of this act, the term “wages” shall not include any of the following:

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

(b) A payment made to an employee, including an amount paid by an employer for insurance or annuities, or into a fund, to provide for such a payment, on account of retirement.

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

(d) A payment made to, or on behalf of, an employee or the employee’s beneficiary from or to a trust described in section 401(a) of the internal revenue code of 1986 that is exempt from tax under section 501(a) of the internal revenue code of 1986 at the time of the payment, unless the payment is made to an employee of the trust as remuneration for services rendered as an employee and not as a beneficiary of the trust, or under or to an annuity plan which, at the time of the payment, is a plan described in section 403(a) of the internal revenue code of 1986, or under or to a bond purchase plan that at the time of the payment, is a qualified bond purchase plan described in former section 405(a) of the internal revenue code.

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

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

(g) A payment, other than vacation or sick pay, made to an employee after the month in which the employee attains the age of 65, if the employee did not work for the employer in the period for which the payment is made.

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

(6) The amendments made to this section by amendatory act 1977 PA 155 apply to all remuneration paid after December 31, 1977.

(7) The amendments made in subsection (1) by the amendatory act that added this subsection shall first apply to remuneration paid after December 31, 1977.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1943, Act 246, Imd. Eff. June 1, 1943-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.44-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1963, Act 226, Eff. Sept. 6, 1963-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1967, Act 254, Imd. Eff. July 19, 1967-Am. 1968, Act 215, Imd. Eff. June 24, 1968-Am. 1968, Act 338, Imd. Eff. July 19, 1968-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1975, Act 110, Eff. June 8, 1975-Am. 1977, Act 155, Imd. Eff. Nov. 8, 1977-Am. 1977, Act 277, Eff. Jan. 1, 1978-Am. 1982, Act 535, Eff. Jan. 2, 1983-Am. 1985, Act 223, Imd. Eff. Jan. 10, 1986-Am. 1994, Act 162, Imd. Eff. June 17, 1994-Am. 1996, Act 504, Imd. Eff. Jan. 9, 1997; -Am. 2002, Act 192, Imd. Eff. Apr. 26, 2002-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

Administrative rules: R 421.112 of the Michigan Administrative Code.

421.44a "Previously uncovered services" defined; wages to include remuneration for previously uncovered services; limitation on use of remuneration and on charging of benefits; claims to which section applicable; retroactive claims; remuneration for previously uncovered services; identification and notification of individuals entitled to benefits; charging certain amounts of benefits to state only; reimbursement of commission.

Sec. 44a. (1) As used in this section, "previously uncovered services" means services which meet all of the following criteria:

(a) Which were not performed in employment, as defined in section 42, and were not services covered pursuant to section 25 at any time during the 1-year period ending December 31, 1975.

(b) Are agricultural services performed for an employer, as defined in section 41(5), or domestic services performed for an employer, as defined in section 41(6), or are services performed as an employee of a governmental entity, as defined in section 50a or services performed by an employee of a nonprofit educational institution other than an institution of higher education, as defined in section 53(3).

(2) For purposes of qualifying for, computing, or paying benefits with respect to benefit years beginning on or after January 1, 1978, wages for insured work shall include remuneration paid or payable for previously uncovered services. However, to the extent that benefits were paid or are payable, on the basis of previously uncovered services, under title II of the emergency jobs and unemployment assistance act of 1974, 26 U.S.C. 3304nt., or under a local unemployment compensation system, the remuneration for those services shall not be used for purposes of qualifying for, computing, or paying benefits under this act.

(3) Benefits shall not be charged to a contributing employer's account or to a reimbursing employer's account to the extent that the commission is reimbursed for those benefits pursuant to section 121 of the unemployment compensation amendments of 1976 and pursuant to subsections (7) and (8).

(4) This section shall apply to new claims filed after December 31, 1977. For purposes of this section, a claim filed after the effective date of this section, but before 90 days after the effective date of this section, shall be considered to have been timely filed. For purposes of retroactive claims filed pursuant to the transitional provisions of this section, the eligibility requirements of section 28(1)(a) shall be waived with respect to those weeks retroactively claimed.

(5) Remuneration paid or payable for previously uncovered services shall not be considered wages subject to contribution or reimbursement liability under this act.

(6) The commission shall attempt to ascertain the identity of and shall notify each individual who may be entitled to benefits under this section and who has had a claim rejected before the effective date of this section that he or she may be eligible to receive benefits under this section.

(7) Notwithstanding any other provision of this act, if an individual has not earned sufficient wages in covered employment to qualify for unemployment benefits except by combining such wages with remuneration paid or payable for previously uncovered services, benefits shall be charged only to the state but only for the amounts such benefits are not reimbursed under section 121 of the unemployment compensation amendments of 1976.

(8) To the extent that the commission is not reimbursed by the federal government under section 121 of the unemployment compensation amendments of 1976 for benefits paid based on previously uncovered services or under subsection (7), the commission shall be reimbursed from the general treasury of the state of Michigan.

History: Add. 1978, Act 355, Imd. Eff. July 20, 1978.

421.45 Base periods; definition.

Sec. 45. For benefit years beginning before the conversion date prescribed in section 75, "Base period" means the period of 52 consecutive calendar weeks ending with the day immediately preceding the first day of an individual's benefit year. For benefit years beginning after the conversion date prescribed in section 75, base period means the first 4 of the last 5 completed calendar quarters before the first day of the individual's benefit year. However, if an individual has not been paid sufficient wages in the first 4 of the last 5 completed calendar quarters to entitle the individual to establish a benefit year, then base period means the 4 most recent completed calendar quarters before the first day of the individual's benefit year.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.45-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1994, Act 162, Imd. Eff. June 17, 1994.

421.46 "Benefit year" defined; conditions; rights of claimant.

Sec. 46. (a) Subject to subsections (d) through (f), for benefit years beginning before October 1, 2000, "benefit year" means the period of 52 consecutive calendar weeks beginning the first calendar week in which an individual files a claim in accordance with section 32 and meets all of the following conditions:

(1) The individual has earned 20 credit weeks in the 52 consecutive calendar weeks before the week he or she files the claim for benefits.

(2) The individual is unemployed and meets all requirements of section 28 for the week for which he or she files a claim for benefits.

(3) Except for a disqualification under section 29 (8) involving a labor dispute during the individual's most recent period of employment with the most recent employer with whom the individual earned a credit week, the individual is not disqualified or subject to disqualification for the week for which he or she files a claim.

(4) The individual does not have a benefit year already in effect at the time of the claim.

(b) For benefit years beginning on or after October 1, 2000, "benefit year" means the period of 52 consecutive calendar weeks beginning the first calendar week in which an individual files a claim in accordance with section 32. However, a benefit year shall not be established unless the individual meets either of the following conditions:

(1) The total wages paid to the individual in the base period of the claim equals not less than 1.5 times the wages paid to the individual in the calendar quarter of the base period in which the individual was paid the highest wages.

(2) The individual was paid wages in 2 or more calendar quarters of the base period totaling at least 20 times the state average weekly wage as determined by the unemployment agency.

(c) For benefit years beginning after October 1, 2000, the state average weekly wage for a calendar year shall be computed on the basis of the 12 months ending the June 30 preceding that calendar year. A benefit year shall not be established if the individual was not paid wages of at least the state minimum hourly wage multiplied by 388.06 rounded down to the nearest dollar in at least 1 calendar quarter of the base period. A benefit year shall not be established based on base period wages previously used to establish a benefit year that resulted in the payment of benefits. However, if a calendar quarter of the base period contains wages that were previously used to establish a benefit year that resulted in the payment of benefits, a claimant may establish a benefit year using the wages in the remaining calendar quarters from among the first 4 of the last 5 completed calendar quarters, or if a benefit year cannot be established using those quarters, then by using wages from among the last 4 completed calendar quarters. A benefit year shall not be established unless, after the beginning of the immediately preceding benefit year during which the individual received benefits, the individual worked and received remuneration in an amount equal to at least 5 times the individual's most recent state weekly benefit rate in effect during the individual's immediately preceding

benefit year. If a quarterly wage report has not been submitted in a timely manner by the employer as provided in section 13 for any of the quarters of the base period, or if wage information is not available for use by the unemployment agency for the most recent completed calendar quarter, the unemployment agency shall obtain and use the claimant's statement of wages paid during the calendar quarters for which the wage reports are missing to establish a benefit year. However, the claimant's statement of wages shall only be used to establish a benefit year if the claimant also provides to the unemployment agency documentary or other evidence of those wages that is satisfactory to the unemployment agency. A determination based on the claimant's statement of wages paid during any of these calendar quarters shall be redetermined if the quarterly wage report from the employer is later received and would result in a change in the claimant's weekly benefit amount or duration, or both, or if the quarterly wage report from the employer later becomes available for use by the unemployment agency and would result in a change in the claimant's benefit amount or duration, or both. If the redetermination results from the employer's failure to submit the quarterly wage report in a timely manner, the redetermination shall be effective as to benefits payable for weeks beginning after the receipt of information not previously submitted by the employer.

(d) If an individual files a claim for a 7-day period under section 27(c), his or her benefit year begins the calendar week containing the first day of that 7-day period.

(e) If all or part of a claimant's right to benefits during his or her benefit year is canceled under section 62(b), the benefit year is terminated on the effective date of the cancellation.

(f) An individual may request a redetermination of his or her benefit rights and cancellation of a previously established benefit year if he or she has not completed a compensable period. Under circumstances described in this subsection, the benefit year begins the first day of the first week in which the request for redetermination of benefit rights is duly filed.

History: Am. 2012, Act 218, Imd. Eff. June 28, 2012

421.46a Establishment of benefit year where individual unable to establish benefit year under MCL 421.46; conditions; calculation of average weekly wage; charge to employers; extended benefits; claim.

Sec. 46a. (1) If an individual is not able to establish a benefit year under section 46 because of insufficient credit weeks, a benefit year may be established under this section if the individual has at least 14 credit weeks in his or her base period, and has base period wages in excess of 20 times the state average weekly wage, applicable to the calendar year in which the individual's benefit year is established, as computed under section 27(b)(2).

(2) With respect to a benefit year established under this section, an individual's average weekly wage shall be calculated by dividing the claimant's base period wages by 20. The resultant quotient will be the individual's average weekly wage for purposes of establishing the individual's weekly benefit rate under section 27. Notwithstanding section 27(d), for benefit years established under this section the individual will be entitled to 15 full weekly benefit payments at the established weekly benefit rate.

(3) Employers will be charged for benefits paid under this section based upon the ratio of wages earned with each employer to the total base period wages earned by the claimant. This ratio will be multiplied by the weekly benefit rate calculated for the claimant, and the resultant product will be the weekly charge to the employer's account.

(4) When payable pursuant to section 64, 7-1/2 full week payments of extended benefits will be paid at the weekly benefit rate established under this section to a claimant who exhausts his or her entitlement to the regular weekly benefits established under this section.

(5) A claim established under this section is subject to all provisions of this act which are not in conflict with this section.

History: Add. 1982, Act 535, Eff. Jan. 2, 1983.

421.47 Calendar quarter; definition.

Sec. 47. "Calendar quarter" means a period of 3 consecutive calendar months, ending with the last day of March, June, September or December.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937;-CL 1948, 421.47-Am. 1951, Act 251, Imd. Eff. June 17, 1951.

421.48 "Unemployed" explained; amounts considered wages or remuneration; leave of absence; elected layoff.

Sec. 48. (1) An individual shall be considered unemployed for any week during which he or she performs no services and for which remuneration is not payable to the individual, or for any week of less than full-time work if the remuneration payable to the individual is less than 1-1/2 times his or her weekly benefit rate, except that for payable weeks of benefits beginning after the effective date of the amendatory act that added section 15a and before October 1, 2015, an individual is considered unemployed for any week or less of full-time work if the remuneration payable to the individual is less than 1-3/5 times his or her weekly benefit rate. However, any loss of remuneration incurred by an individual during any week resulting from any cause other than the failure of the individual's employing unit to furnish full-time, regular employment shall be included as remuneration earned for purposes of this section and section 27(c). The total amount of remuneration lost shall be determined pursuant to regulations prescribed by the unemployment agency. For the purposes of this act, an individual's weekly benefit rate means the weekly benefit rate determined pursuant to section 27(b).

(2) All amounts paid to a claimant by an employing unit or former employing unit for a vacation or a holiday, and amounts paid in the form of retroactive pay, pay in lieu of notice, severance payments, salary continuation, or other remuneration intended by the employing unit as continuing wages or other monetary consideration as the result of the separation, excluding SUB payments as described in section 44, shall be considered remuneration in determining whether an individual is unemployed under this section and also in determining his or her benefit payments under section 27(c), for the period designated by the contract or agreement providing for the payment, or if there is no contractual specification of the period to which payments shall be allocated, then for the period designated by the employing unit or former employing unit. However, payments for a vacation or holiday, or the right to which has irrevocably vested, after 14 days following a vacation or holiday shall not be considered wages or remuneration within the meaning of this section.

(3) An individual shall not be considered to be unemployed during any leave of absence from work granted by an employer either at the request of the individual or pursuant to an agreement with the individual's duly authorized bargaining agent, or in accordance with law. An individual shall neither be considered not unemployed nor on a leave of absence solely because the individual elects to be laid off, pursuant to an option provided under a collective bargaining agreement or written employer plan that permits an election, if there is a temporary layoff because of lack of work and the employer has consented to the election.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1942, 2nd Ex. Sess., Act 18, Imd. Eff. Feb. 27, 1942-Am. 1943, Act 246, Imd. Eff. June 1, 1943-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.48-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1954, Act 197, Imd. Eff. May 7, 1954-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1983, Act 164, Imd. Eff. July 24, 1983; -Am. 2002, Act 192, Imd. Eff. Apr. 26, 2002-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.48a Transmission or receipt by mail.

Sec. 48a. A reference in this act to transmission or receipt by mail shall include any form of electronic transmission or receipt approved by the agency.

History: Add. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.49 Last day of protest or appeal period falling on Saturday, Sunday, or legal holiday; running of statutory periods.

Sec. 49. (1) When the last day of the 30-day protest or appeal period, as provided for in this act, falls on a Saturday, Sunday, or legal holiday, the 30-day period shall run until the end of the next day which is not a Saturday, Sunday, nor legal holiday.

(2) The 30-day protest or appeal period after the mailing of a notice of determination or redetermination as provided in sections 14 and 32a and the 1 year period from the date of mailing of the original determination as provided in section 32a shall begin to run from either the date of mailing or from the date of personal service of the determination or redetermination.

History: Add. 1955, Act 281, Eff. July 15, 1955-Am. 1957, Act 311, Imd. Eff. June 21, 1957-Am. 1975, Act 110, Eff. June 8, 1975-Am. 1983, Act 164, Eff. Oct. 1, 1983.

Compiler's note: Former §421.49, defining "partial employment," was repealed by Act 251 of 1951.

421.50 "Week" defined.

Sec. 50. "Week" means calendar week, ending at midnight Saturday, but all work performed and wages earned during a working shift which starts before midnight Saturday shall be included in the week in which that shift begins.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1947, Act 360, Eff. Jan. 1, 1948;-CL 1948, 421.50-Am. 1949, Act 282, Imd. Eff. June 11, 1949-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1954, Act 197, Imd. Eff. May 7, 1954-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1967, Act 254, Imd. Eff. July 19, 1967-Am. 1970, Act 14, Imd. Eff. Apr. 14, 1970-Am. 1974, Act 104, Eff. Jan. 1, 1975-Am. 1975, Act 303, Eff. Dec. 22, 1975-Am. 1977, Act 277, Eff. Jan. 1, 1978-Am. 1980, Act 358, Eff. Mar. 1, 1981-Am. 1982, Act 535, Eff. Jan. 2, 1983-Am. 1994, Act 162, Imd. Eff. June 17, 1994-Am. 1995, Act 25, Eff. Mar. 28, 1996-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.50a "Governmental entity" defined.

Sec. 50a. (1) As used in this act, "governmental entity" means this state or any of its instrumentalities, a county, city, township, village, school district, community college district, community hospital district, any agency authorized to exercise a governmental function in a limited geographical area, or other political subdivision, any instrumentality of 1 or more of these units, or any of these units and 1 or more other states or political subdivisions of those states.

(2) An entity shall be considered a governmental entity if the entity has either of the following characteristics:

(a) The entity is organized under state law with power to hire, supervise, and discharge its employees.

(b) The entity may enter into contracts and sue and be sued.

History: Add. 1974, Act 104, Eff. Jan. 1, 1975-Am. 1977, Act 277, Eff. Jan. 1, 1978.

421.51 "Benefits" and "average weekly wage" defined.

Sec. 51. "Benefits" means the money payments payable to an eligible and qualified individual, as provided in this act, with respect to unemployment.

For benefit years established before the conversion date prescribed in section 75, an individual's "average weekly wage", with respect to a base period employer, shall be the amount determined by dividing his or her total wages for credit weeks earned from that employer by the number of such credit weeks.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.51-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1994, Act 162, Imd. Eff. June 17, 1994.

421.51a Repealed. 1951, Act 251, Imd. Eff. June 17, 1951.

Compiler's note: The repealed section defined terms "benefits" and "average weekly wage".

421.52 State; definition.

Sec. 52. "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico and the Virgin Islands of the United States.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;-CL 1948, 421.52-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1968, Act 338, Imd. Eff. July 19, 1968-Am. 1970, Act 14, Imd. Eff. Apr. 14, 1970.

421.53 "Hospital," "institution of higher education," and "educational institution other than institution of higher education," defined.

Sec. 53. (1) "Hospital" means an institution which has been licensed, certified or approved by the department of public health, bureau of medical care administration, as a hospital.

(2) "Institution of higher education", for the purposes of this act means a public or nonprofit educational institution which does any of the following:

(a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate.

(b) Is legally authorized in this state to provide a program of education beyond high school.

(c) Provides an educational program for which it awards a bachelor's or higher degree; provides a program which is acceptable for full credit toward such a degree; provides a program of postgraduate or postdoctoral studies; or provides a program of training to prepare students for gainful employment in a recognized occupation.

(d) Notwithstanding any of the foregoing provisions of this subsection, all recognized public and nonprofit colleges and universities in this state are institutions of higher education for purposes of this subsection.

(3) "Educational institution other than an institution of higher education" for the purposes of this act means a public or nonprofit educational institution that does not meet the requirements of subsection (2) and:

(a) Offers to participants, trainees, or students an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher; or

(b) Is approved, licensed or issued a permit to operate as a school by the state board of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school; or

(c) Offers a course of study or training which is academic, technical, trade or preparation for gainful employment in a recognized occupation.

(d) Notwithstanding any of the foregoing provisions of this subsection, any recognized public or nonprofit educational institution, other than defined in subsection (2), is an "educational institution other than an institution of higher education" for purposes of this subsection.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937;-CL 1948, 421.53-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1977, Act 277, Eff. Jan. 1, 1978.

421.54 Sanctions; penalties.

Sec. 54. (a) A person, including a claimant for unemployment benefits, an employing entity, or an owner, director, or officer of an employing entity, who willfully violates or intentionally fails to comply with any of the provisions of this act, or a regulation of the unemployment agency promulgated under the authority of this act for which a penalty is not otherwise provided by this act is subject to the following sanctions, notwithstanding any other statute of this state or of the United States:

(i) If the unemployment agency determines that an amount has been obtained or withheld as a result of the intentional failure to comply with this act, the unemployment agency may recover the amount obtained as a result of the intentional failure to comply plus damages equal to 3 times that amount.

(ii) The unemployment agency may refer the matter to the prosecuting attorney of the county in which the alleged violation occurred for prosecution. If the unemployment agency has not made its own determination under subdivision *(i)*, the recovery sought by the prosecutor shall include the amount described in subdivision *(i)* and shall also include 1 or more of the following penalties:

(A) Subject to redesignation under subsection (m), if the amount obtained or withheld from payment as a result of the intentional failure to comply is less than $25,000.00, then 1 of the following:

(I) Imprisonment for not more than 1 year.

(II) The performance of community service of not more than 1 year but not to exceed 2,080 hours.

(III) A combination of (I) and (II) that does not exceed 1 year.

(B) If the amount obtained or withheld from payment as a result of the intentional failure to comply is $25,000.00 or more but less than $100,000.00, then 1 of the following:

(I) Imprisonment for not more than 2 years.

(II) The performance of community service of not more than 2 years but not to exceed 4,160 hours.

(III) A combination of (I) and (II) that does not exceed 2 years.

(C) If the amount obtained or withheld from payment as a result of the intentional failure to comply is more than $100,000.00, then 1 of the following:

(I) Imprisonment for not more than 5 years.

(II) The performance of community service of not more than 5 years but not to exceed 10,400 hours.

(III) A combination of (I) and (II) that does not exceed 5 years.

(iii) If the unemployment agency determines that an amount has been obtained or withheld as a result of a knowing violation of this act, the unemployment agency may recover the amount obtained as a result of the knowing violation and may also recover damages equal to 3 times that amount.

(iv) The unemployment agency may refer a matter under subdivision *(iii)* to the prosecuting attorney of the county in which the alleged violation occurred for prosecution. If the unemployment agency has not made its own determination under subdivision *(iii)*, the recovery sought by the prosecutor shall include the amount described in subdivision *(iii)* and shall also include 1 or more of the following penalties:

(A) Subject to redesignation under subsection (m), if the amount obtained or withheld from payment as a result of the knowing violation is $100,000.00 or less, then 1 of the following:

(I) Imprisonment for not more than 1 year.

(II) The performance of community service of not more than 1 year but not to exceed 2,080 hours.

(III) A combination of (I) and (II) that does not exceed 1 year.

(B) If the amount obtained or withheld from payment as a result of the knowing violation is more than $100,000.00, then 1 of the following:

(I) Imprisonment for not more than 2 years.

(II) The performance of community service of not more than 2 years but not to exceed 4,160 hours.

(III) A combination of (I) and (II) that does not exceed 2 years.

(b) Any employing unit or an owner, director, officer, or agent of an employing unit, a claimant, an employee of the unemployment agency, or any other person who makes a false statement or representation knowing it to be false, or knowingly and willfully with intent to defraud fails to disclose a material fact, to obtain or increase a benefit or other payment under this act or under the unemployment compensation law of any state or of the federal government, either for himself or herself or any other person, to prevent or reduce the payment of benefits to an individual entitled thereto or to avoid becoming or remaining a subject employer, or to avoid or reduce a contribution or other payment required from an employing unit under this act or under the unemployment compensation law of any state or of the federal government, as applicable, is subject to administrative fines and is punishable as follows, notwithstanding any other penalties imposed under any other statute of this state or of the United States:

(i) If the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is less than $500.00, the unemployment agency may recover the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact and may also recover damages equal to 2 times that amount. For a second or subsequent violation described in this subdivision, the unemployment agency may recover damages equal to 4 times the amount obtained.

(ii) If the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is $500.00 or more, the unemployment agency shall attempt to recover the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact and may also recover damages equal to 4 times that amount. The unemployment agency may refer the matter to the prosecuting attorney of the county in which the alleged violation occurred for prosecution. If the unemployment agency has not made its own determination under this subdivision, the recovery sought by the prosecutor shall include the amount described in this subdivision and shall also include 1 or more of the following penalties if the amount obtained is $1,000.00 or more:

(A) Subject to redesignation under subsection (m), if the amount obtained or withheld from payment as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is $1,000.00 or more but less than $25,000.00, then 1 of the following:

(I) Imprisonment for not more than 1 year.

(II) The performance of community service of not more than 1 year but not to exceed 2,080 hours.

(III) A combination of (I) and (II) that does not exceed 1 year.

(B) If the amount obtained or withheld from payment as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is $25,000.00 or more, then 1 of the following:

(I) Imprisonment for not more than 2 years.

(II) The performance of community service of not more than 2 years but not to exceed 4,160 hours.

(III) A combination of (I) and (II) that does not exceed 2 years.

(C) If the knowing false statement or representation or the knowing and willful failure to disclose a material fact made to obtain or withhold an amount from payment does not result in a loss to the commission, then a recovery shall be sought equal to 3 times the amount that would have been obtained by the knowing false statement or representation or the knowing and willful failure to disclose a material fact, but not less than $1,000.00, and 1 of the following:

(I) Imprisonment for not more than 2 years.

(II) The performance of community service of not more than 2 years but not to exceed 4,160 hours.

(III) A combination of (I) and (II) that does not exceed 2 years.

(c) (1) Any employing unit or an owner, director, officer, or agent of an employing unit or any other person failing to submit, when due, any contribution report, wage and employment report, or other reports lawfully prescribed and required by the unemployment agency shall be subject to the assessment of an administrative fine for each report not submitted within the time prescribed by the unemployment agency, as follows: In the case of contribution reports not received within 10 days after the end of the reporting month the fine shall be 10% of the contributions due on the reports but not less than $5.00 or more than $25.00 for a report. However, if the tenth day falls on a Saturday, Sunday, legal holiday, or other unemployment agency nonwork day, the 10-day period shall run until the end of the next day which is not a Saturday, Sunday, legal holiday, or other unemployment agency nonwork day. In the case of all other reports referred to in this subsection, the fine shall be $10.00 for a report.

(2) Notwithstanding subdivision (1), any employer or an owner, director, officer, or agent of an employer or any other person failing to submit, when due, any quarterly wage detail report required by section 13(2), or submitting an incomplete or erroneous report, is subject to an administrative fine of $50.00 for each untimely report, incomplete report, or erroneous report if the report is filed not later than 30 days after the date the report is due, $250.00 if the report is filed more than 1 calendar quarter after the date the report is due, and an additional $250.00 for each additional calendar quarter that the report is late, except that no penalty shall apply if the employer files a corrected report within 14 days after notification of an error by the agency.

(3) If a report is filed after the prescribed time and it is shown to the satisfaction of the commission that the failure to submit the report was due to reasonable cause, a fine shall not be imposed. The assessment of a fine as provided in this subsection constitutes a final determination unless the employer files an application with the unemployment agency for a redetermination of the assessment in accordance with section 32a.

(d) If any employee or agent of the unemployment agency or member of the Michigan compensation appellate commission willfully discloses confidential information obtained from any employing unit or individual in the administration of this act for any purpose inconsistent with or contrary to the purposes of this act, or a person who obtains a list of applicants for work or of claimants or recipients of benefits under this act uses or permits use of that list for a political purpose or for a purpose inconsistent with or contrary to the purposes of this act, he or she is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $1,000.00, or both. Notwithstanding the preceding sentence, if any unemployment agency employee, agent of the unemployment agency, or member of the Michigan compensation appellate commission knowingly, intentionally, and for financial gain, makes an illegal disclosure of confidential information obtained under section 13(2), he or she is guilty of a felony, punishable by imprisonment for not more than 1 year and 1 day.

(e) A person who, without proper authority from the unemployment agency, represents himself or herself to be an employee of the unemployment agency for the purpose of securing information regarding the unemployment or employment record of an individual is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $1,000.00, or both.

(f) A person associated with a college, university, or public agency of this state who makes use of any information obtained from the unemployment agency in connection with a research project of a public service nature, in a manner as to reveal the identity of any individual or employing unit from or concerning whom the information was obtained by the unemployment agency, or for any purpose other than use in connection with that research project, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $1,000.00, or both.

(g) As used in this section, "person" includes an individual; owner, director, or officer of an employing entity; copartnership; joint venture; corporation; receiver; or trustee in bankruptcy.

(h) This section applies even if the amount obtained or withheld from payment has been reported or reported and paid by an individual involved in a violation of subsection (a) or (b).

(i) If a determination is made that an individual has violated this section, the individual is subject to the sanctions of this section and, if applicable, the requirements of section 62.

(j) Amounts recovered by the commission under subsection (a) shall be credited first to the unemployment compensation fund and thereafter amounts recovered that are in excess of the amounts obtained or withheld as a result of the violation of subsection (a) shall be credited to the penalty and interest account of the contingent fund. Amounts recovered by the commission under subsections (c), (d), (e), and (f) shall be credited to the penalty and interest account of the contingent fund in accordance with section 10(6).

(k) Amounts recovered by the unemployment agency under subsection (b) shall be credited as follows:

(i) Deductions from unemployment insurance benefits shall be applied solely to the amount of the benefits liable to be repaid under this section.

(ii) All other recoveries shall be applied first to repayment amounts owed, which shall be deposited in the unemployment compensation fund; then to administrative sanctions and damages; and then to interest. The amounts applied to administrative sanctions, damages, and interest shall be credited to the contingent fund.

(l) The revisions in the penalties in subsections (a) and (b) provided by the 1991 amendatory act that added this subsection apply to conduct that began before April 1, 1992, but that continued on or after April 1, 1992, and to conduct that began on or after April 1, 1992.

(m) A person who obtains or withholds an amount of unemployment benefits or payments exceeding $3,500.00 but less than $25,000.00 as a result of a knowing false statement or representation or the knowing and willful failure to disclose a material fact is guilty of a felony punishable as provided in section (a)*(ii)*(A) or *(iv)*(A) or section (b)*(ii)* (A).

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.54-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1965, Act 398, Imd. Eff. Oct. 26, 1965-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1974, Act 104, Eff. June 9, 1974-Am. 1983, Act 164, Imd. Eff. July 24, 1983-Am. 1985, Act 197, Imd. Eff. Dec. 26, 1985-Am. 1989, Act 225, Eff. Mar. 29, 1990-Am. 1991, Act 10, Eff. Apr. 1, 1992-Am. 1993, Act 280, Imd. Eff. Dec. 28, 1993-Am. 1994, Act 162, Imd. Eff. June 17, 1994; -Am. 2002, Act 192, Imd. Eff. Apr. 26, 2002-Am. 2011, Act 14, Imd. Eff. Mar. 29, 2011-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.54a Requiring individual to make false statement or representation regarding benefit or other payment as condition of employment; remedies; applicability; disposition of amounts recovered; effective date of section.

Sec. 54a. (1) Any employing unit or an officer or agent of an employing unit, an employee of the commission, or a third party shall not require an individual, as a condition of employment, to make a false statement or representation knowing it to be false to obtain or increase a benefit or other payment under this act or to avoid or reduce a contribution or other payment required from an employing unit under this act.

(2) If the commission determines that an employing unit or an officer or agent of an employing unit, an employee of the commission, or a third party has violated this section, the commission may recover an amount equal to the amount of benefits or increase in benefits or other payment received or an amount equal to the amount of contributions or other payments from an employing unit avoided or reduced based on the violation of this section plus an amount equal to 3 times that amount but not less than $5,000.00.

(3) The commission may refer the matter to the prosecuting attorney of the county in which the alleged violation occurred for prosecution. If the commission has not made its own determination under subsection (2), the penalty sought by the prosecutor shall include the amount described in subsection (2) and both a fine of not less than $5,000.00 and 1 of the following:

(a) Imprisonment for not more than 10 years.

(b) The performance of community service of not more than 10 years but not to exceed 20,800 hours.

(c) A combination of (a) and (b) that does not exceed 10 years.

(4) This section applies to conduct that began before April 1, 1992 but that continued on or after April 1, 1992 and to conduct that began on or after April 1, 1992.

(5) The amount recovered by the commission pursuant to subsection (2) or (3) shall be credited first to the unemployment compensation fund and thereafter amounts recovered that are in excess of the amounts obtained, increased, avoided, or reduced as a result of the violation of this section shall be credited to the penalty and interest account of the contingent fund.

(6) This section shall take effect April 1, 1992.

History: Add. 1991, Act 5, Eff. Apr. 1, 1992-Am. 1993, Act 278, Imd. Eff. Dec. 28, 1993.

421.54b Conspiracy; applicability; penalties; disposition of amounts recovered; effective date of section.

Sec. 54b. (1) An employing unit or an officer or agent of an employing unit, a claimant for unemployment benefits, an employee of the commission, or a third party that has conspired with 1 or more persons to commit an offense prohibited by this act or to commit an act permitted by this act in an illegal manner shall be guilty of conspiracy punishable by 1 or more of the following:

(a) If the commission determines that an individual conspired to commit an illegal act under this act, the commission may recover the amount of money so obtained or withheld from payment as a result of the illegal act, and may also recover damages equal to 3 times that amount.

(b) The commission may refer the matter to the prosecuting attorney of the county in which the alleged violation occurred for prosecution. If the commission has not made its own determination under subdivision (a), the penalty sought by the prosecutor shall include the amount described in subdivision (a) and shall also include 1 or more of the following penalties:

(i) If the amount obtained or withheld from payment as a result of the conspiracy is $25,000.00 or less, then 1 of the following:

(A) Imprisonment for not more than 2 years.

(B) The performance of community service of not more than 2 years but not to exceed 4,160 hours.

(C) A combination of (A) and (B) that does not exceed 2 years.

(ii) If the amount obtained or withheld from payment as a result of the conspiracy is more than $25,000.00, then 1 of the following:

(A) Imprisonment for not more than 5 years.

(B) The performance of community service of not more than 5 years but not to exceed 10,400 hours.

(C) A combination of (A) and (B) that does not exceed 5 years.

(iii) If a conspiracy to obtain or withhold an amount from payment does not result in a loss to the commission, then both a fine equal to 3 times the amount involved in the conspiracy, but not less than $1,000.00 and 1 of the following:

(A) Imprisonment for not more than 2 years.

(B) The performance of community service for not more than 2 years but not to exceed 4,160 hours.

(C) A combination of (A) and (B) that does not exceed 2 years.

(2) This section shall apply even if the amount obtained or withheld from payment has been reported or reported and paid by an individual involved in a conspiracy.

(3) This section applies to conduct that began before April 1, 1992 but that continued on or after April 1, 1992 and to conduct that began on or after April 1, 1992.

(4) The penalties provided in this section shall be in addition to any penalty provided in this act for a late filing.

(5) If a determination is made that an individual has violated this section, the individual is subject to the penalty provisions of this section and, where applicable, the requirements of section 62.

(6) The amount recovered by the commission pursuant to subsection (1) shall be credited first to the unemployment compensation fund and thereafter amounts recovered that are in excess of the amounts obtained or withheld as a result of the conspiracy shall be credited to the penalty and interest account of the contingent fund.

(7) This section shall take effect April 1, 1992.

History: Add. 1991, Act 4, Eff. Apr. 1, 1992-Am. 1993, Act 276, Imd. Eff. Dec. 28, 1993.

421.54c Embezzlement; penalties; applicability; disposition of amounts recovered; effective date of section.

Sec. 54c. (1) An employing unit or an officer or agent of an employing unit, a claimant for unemployment benefits, an employee of the commission, or a third party that has knowingly or willfully appropriated or converted to his, her, or its own use money to be used for the payment of benefits under this act or money received as the payment of contribution liability under this act is guilty of embezzlement punishable as follows:

(a) If the amount obtained as a result of the knowing or willful appropriation or conversion of money is less than $500.00, the commission may recover the amount obtained as a result of the knowing or willful appropriation or conversion of money and may also recover damages equal to 2 times that amount.

(b) If the amount obtained as a result of the knowing or willful appropriation or conversion of money is $500.00 or more, the commission shall attempt to recover the amount obtained as a result of the knowing or willful appropriation or conversion of money and may also recover damages equal to 4 times that amount. The commission may refer the matter to the prosecuting attorney of the county in which the alleged violation occurred for prosecution. If the commission has not made its own determination under this subdivision, the penalty sought by the prosecutor shall include the amount described in this subdivision and shall also include 1 of the following applicable penalties if the amount obtained is $1,000.00 or more:

(i) If the amount obtained or withheld from payment as a result of the knowing or willful appropriation or conversion of money is $1,000.00 or more but less than $25,000.00, then 1 of the following:

(A) Imprisonment for not more than 1 year.

(B) The performance of community service of not more than 1 year but not to exceed 2,080 hours.

(C) A combination of (A) and (B) that does not exceed 1 year.

(ii) If the amount obtained or withheld from payment as a result of the knowing or willful appropriation or conversion of money is $25,000.00 or more but less than $100,000.00, then 1 of the following:

(A) Imprisonment for not more than 2 years.

(B) The performance of community service of not more than 2 years but not to exceed 4,160 hours.

(C) A combination of (A) and (B) that does not exceed 2 years.

(iii) If the amount obtained or withheld from payment as a result of the knowing or willful appropriation or conversion of money is $100,000.00 or more, then 1 of the following:

(A) Imprisonment for not more than 5 years.

(B) The performance of community service of not more than 5 years but not to exceed 10,400 hours.

(C) A combination of (A) and (B) that does not exceed 5 years.

(iv) If the knowing or willful appropriation or conversion of money made to obtain or withhold an amount from payment does not result in a loss to the commission, then a penalty shall be sought equal to 3 times the amount that would have been obtained by the knowing or willful appropriation or conversion of money, but not less than $1,000.00, and 1 of the following:

(A) Imprisonment for not more than 2 years.

(B) The performance of community service of not more than 2 years but not to exceed 4,160 hours.

(C) A combination of (A) and (B) that does not exceed 2 years.

(2) This section shall apply even if the amount obtained or withheld from payment has been reported or reported and paid by an individual involved in the embezzlement.

(3) This section applies to conduct that began before April 1, 1992 but that continued on or after April 1, 1992 and to conduct that began on or after April 1, 1992.

(4) The penalties provided in this section shall be in addition to any penalty provided in this act for a late filing.

(5) If a determination is made that an individual has violated this section, the individual is subject to the penalty provisions of this section and, where applicable, the requirements of section 62.

(6) The amount recovered by the commission pursuant to subsection (1)(a) or (b) shall be credited first to the unemployment compensation fund and thereafter amounts recovered that are in excess of the amounts obtained as a result of the embezzlement shall be credited to the penalty and interest account of the contingent fund.

(7) This section shall take effect April 1, 1992.

History: Add. 1991, Act 8, Eff. Apr. 1, 1992-Am. 1993, Act 277, Imd. Eff. Dec. 28, 1993; -Am. 2002, Act 192, Imd. Eff. Apr. 26, 2002.

421.55 Catchline headings of section not part of act.

Sec. 55. Catchline headings of sections not part of act. The catchline headings of the sections of this act shall in no way be considered to be a part of the respective sections or of this act but are inserted herein for purposes of convenience.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;-CL 1948, 421.55.

421.56 American vessel, American aircraft; definitions.

Sec. 56. "American vessel" as used in this act means a vessel documented or numbered under the laws of the United States, or a vessel which is neither documented nor numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by 1 or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state. "American aircraft" means an aircraft registered under the laws of the United States.

History: Add. 1965, Act 281, Eff. Sept. 5, 1965.
Former law: See section 56 of Act 1 of 1936 Ex. Sess., which was repealed by Act 267 of 1945.

421.57 Amendment or repeal of act.

Sec. 57. Amendment or repeal of act. All the rights, privileges or immunities conferred under or by virtue of the provisions of this act, or acts done pursuant thereto, shall exist subject to the power of amendment or repeal of this act by the legislature.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;-CL 1948, 421.57.

421.58 Suspension of provisions.

Sec. 58. Suspension of certain provisions. If at any time the governor shall find that the provisions of this act requiring the payment of contributions and benefits have been held invalid under the constitution of this state by the supreme court of this state, or under the United States constitution by the supreme court of the United States, in such manner that any person or concern required to pay contributions under this act might secure a similar decision, the governor shall publicly so proclaim and upon the date of such proclamation, the provisions of this act requiring the payment of contributions and benefits shall be suspended. The commission shall thereupon requisition from the unemployment trust fund all moneys therein standing to its credit and shall direct the treasurer of the unemployment compensation fund to deposit such moneys, together with any other moneys in the fund, as a special fund in any banks or public depositories in this state in which general funds of the state may be deposited and to hold such moneys for such disposition as the legislature may prescribe.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937;-CL 1948, 421.58.

421.59 Repeal.

Sec. 59. Repeal. All acts and parts of acts in so far as inconsistent with the provisions of this act are hereby repealed, and whenever provisions of a general act are inconsistent with this act, then the provisions of this act only shall prevail in so far as this act is concerned.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936-Am. 1941, Act 364, Imd. Eff. July 1, 1941;-CL 1948, 421.59.

421.60 Advance from federal fund; repayment.

Sec. 60. Upon request of the commission acting under the authority of section 26 (g) of this act, the governor may apply under section 1201 of the federal social security act to the secretary of labor of the United States for an advance to the unemployment compensation fund of this state; and, upon request of the commission, the governor shall request, under section 1202 (a) of the social security act, a transfer from the account of the state of Michigan in the federal unemployment trust fund to the federal unemployment account in said trust fund in repayment of part or all of any remaining balance of such advances to the unemployment compensation fund of this state.

History: Add. 1949, Act 282, Imd. Eff. June 11, 1949-Am. 1951, Act 251, Imd. Eff. June 17, 1951-Am. 1954, Act 197, Imd. Eff. May 7, 1954-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1957, Act 311, Imd. Eff. June 21, 1957-Am. 1958, Act 230, Imd. Eff. June 13, 1958-Am. 1959, Act 270, Imd. Eff. Oct. 30, 1959-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1970, Act 14, Imd. Eff. Apr. 14, 1970.

Former law: See Act 1 of 1936 Ex. Sess., which was repealed by Act 360 of 1947; and Act 324 of 1939.

421.60a Protection of deaf.

Sec. 60a. The commission shall exercise and perform all the powers and duties in relation to the protection of the deaf and deafened, as are presently held and exercised by the department of labor under the provisions of Act No. 72 of the Public Acts of 1937, being sections 408.201 to 408.205 of the Compiled Laws of 1948.

History: Add. 1957, Act 311, Imd. Eff. June 21, 1957.

421.61 Repealed. 1951, Act 251, Imd. Eff. June 17, 1951.

Compiler's note: The repealed section provided for disqualification due to other benefits.

421.62 Recovery of improperly paid benefits.

Sec. 62. (a) If the unemployment agency determines that a person has obtained benefits to which that person is not entitled, it may recover a sum equal to the amount received plus interest by 1 or more of the following methods: deduction from benefits or wages payable to the individual, payment by the individual in cash, or deduction from a tax refund payable to the individual as provided under section 30a of 1941 PA 122, MCL 205.30a. Deduction from benefits or wages payable to the individual is limited to not more than 50% of each payment due the claimant. The unemployment agency shall issue a determination requiring restitution within 3 years after the date of finality of a determination, redetermination, or decision reversing a previous finding of benefit entitlement. The unemployment agency shall not initiate administrative or court action to recover improperly paid benefits from an individual more than 3 years after the date that the last determination, redetermination, or decision establishing restitution is final. The unemployment agency shall issue a determination on an issue within 3 years from the date the claimant first received benefits in the benefit year in which the issue arose, or in the case of an issue of intentional false statement, misrepresentation, or concealment of material information in violation of section 54(a) or (b) or sections 54a to 54c, within 6 years after the receipt of the improperly paid benefits unless the unemployment agency filed a civil action in a court within the 3-year or 6-year period; the individual made an intentional false statement, misrepresentation, or concealment of material information to obtain the benefits; or the unemployment agency issued a determination requiring restitution within the 3-year or 6-year period. Except in a case of an intentional false statement, misrepresentation, or concealment of material information, the unemployment agency may waive recovery of an improperly paid benefit if the payment was not the fault of the individual and if repayment would be contrary to equity and good conscience and shall waive any interest. If the agency or an appellate authority waives collection of restitution and interest, the waiver is prospective and does not apply to restitution and interest payments already made by the individual.

(b) For benefit years beginning before October 1, 2000, if the unemployment agency determines that a person has intentionally made a false statement or misrepresentation or has concealed material information to obtain benefits, whether or not the person obtains benefits by or because of the intentional false statement, misrepresentation, or concealment of material information, the person shall, in addition to any other applicable interest and penalties, have all of his or her uncharged credit weeks with respect to the benefit year in which the act occurred canceled as of the date the unemployment agency receives notice of, or initiates investigation of, the possible false statement, misrepresentation, or concealment of material information, whichever date is earlier. Before receiving benefits in a benefit year established within 2 years after cancellation of uncharged credit weeks under this subsection, the individual, in addition to making the restitution of benefits established under subsection (a), may be liable for an additional amount as determined by the unemployment agency under this act, which may be paid by cash, deduction from benefits, or deduction from a tax refund. Restitution resulting from the intentional false statement, misrepresentation, or concealment of material information is not subject to the 50% limitation provided in subsection (a). For benefit years beginning on or after October 1, 2000, if the unemployment agency determines that a person has intentionally made a false statement or misrepresentation or has concealed material information to obtain benefits, whether or not the person obtains benefits by or because of the intentional false statement, misrepresentation, or concealment of material information, the person shall, in addition to any other applicable interest and penalties, have his or her rights to benefits for the benefit year in which the act occurred canceled as of the date the unemployment agency receives notice of, or initiates investigation of, a possible false statement, misrepresentation, or concealment of material information, whichever date is earlier, and wages used to establish that benefit year shall not be used to establish another benefit year. Before receiving benefits in a benefit year established within 4 years after cancellation of rights to benefits under this subsection, the individual, in addition to making the restitution of benefits established under subsection (a), may be liable for an additional amount as otherwise determined by the unemployment agency under this act, which may be paid by cash, deduction from benefits, or deduction from a tax refund. Restitution resulting from the intentional false statement, misrepresentation, or concealment of material information is not subject to the 50% limitation provided in subsection (a).

(c) Any determination made by the unemployment agency under this section is final unless an application for a redetermination is filed in accordance with section 32a.

(d) The unemployment agency shall take the action necessary to recover all benefits improperly obtained or paid under this act, and to enforce all interest and penalties under subsection (b). The unemployment agency may conduct an amnesty program for a designated period under which penalties and interest assessed against an individual owing restitution for improperly paid benefits may be waived if the individual pays the full amount of restitution owing within the period specified by the agency.

(e) Interest recovered under this section shall be deposited in the contingent fund.

History: Add. 1939, Act 324, Imd. Eff. June 22, 1939-Am. 1941, Act 364, Imd. Eff. July 1, 1941-Am. 1947, Act 360, Imd. Eff. July 8, 1947;-CL 1948, 421.62-Am. 1955, Act 281, Eff. July 15, 1955-Am. 1965, Act 281, Eff. Sept. 5, 1965-Am. 1967, Act 254, Imd. Eff. July 19, 1967-Am. 1970, Act 14, Imd. Eff. Apr. 14, 1970-Am. 1974, Act 104, Eff. June 9, 1974-Am. 1975, Act 272, Imd. Eff. Nov. 14, 1975-Am. 1977, Act 133, Imd. Eff. Oct. 28, 1977-Am. 1980, Act 404, Imd. Eff. Jan. 8, 1981-Am. 1983, Act 164, Imd. Eff. July 24, 1983-Am. 1991, Act 3, Eff. Apr. 1, 1992-Am. 1994, Act 162, Imd. Eff. June 17, 1994-Am. 1995, Act 125, Imd. Eff. June 30, 1995-Am. 2011, Act 14, Imd. Eff. Mar. 29, 2011-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.63 Repealed. 1971, Act 231, Imd. Eff. Jan. 3, 1972.

Compiler's note: The repealed section pertained to the effective date and applicability of 1970 amendments to the employment security act.

421.64 Payment of extended benefits.

Sec. 64. (1)(a) Payment of extended benefits under this section shall be made at the individual's weekly extended benefit rate, for any week of unemployment that begins in the individual's eligibility period, to each individual who is fully eligible and not disqualified under this act, who has exhausted all rights to regular benefits under this act, who is not seeking or receiving benefits with respect to that week under the unemployment compensation law of Canada, and who does not have rights to benefits under the unemployment compensation law of any other state or the United States or to compensation or allowances under any other federal law, such as the trade expansion act, the automotive products trade act, or the railroad unemployment insurance act; however, if the individual is seeking benefits and the appropriate agency finally determines that the individual is not entitled to benefits under another law, the individual shall be considered to have exhausted the right to benefits. For the purpose of the preceding sentence, an individual shall have exhausted the right to regular benefits under this section with respect to any week of unemployment in the individual's eligibility period under either of the following circumstances:

(i) When payments of regular benefits may not be made for that week because the individual has received all regular benefits available based on his or her employment or wages during the base period for the current benefit year.

(ii) When the right to the benefits has terminated before that week by reason of the expiration or termination of the benefit year with respect to which the right existed; and the individual has no, or insufficient, wages or employment to establish a new benefit year. However, for purposes of this subsection, an individual shall be considered to have exhausted the right to regular benefits with respect to any week of unemployment in his or her eligibility period when the individual may become entitled to regular benefits with respect to that week or future weeks, but the benefits are not payable at the time the individual claims extended benefits because final action on a pending redetermination or on an appeal has not yet been taken with respect to eligibility or qualification for the regular benefits or when the individual may be entitled to regular benefits with respect to future weeks of unemployment, but regular benefits are not payable with respect to any week of unemployment in his or her eligibility period by reason of seasonal limitations in any state unemployment compensation law.

(b) Except where inconsistent with the provisions of this section, the terms and conditions of this act that apply to claims for regular benefits and to the payment of those benefits apply to claims for extended benefits and to the payment of those benefits.

(c) An individual shall not be paid additional compensation and extended compensation with respect to the same week. If an individual is potentially eligible for both types of compensation in this state with respect to the same week, the unemployment agency may pay extended compensation instead of additional compensation with respect to the week. If an individual is potentially eligible for extended compensation in 1 state and potentially eligible for additional compensation for the same week in another state, the individual may elect which of the 2 types of compensation to claim.

(2) The unemployment agency shall establish, for each eligible individual who files an application, an extended benefit account with respect to that individual's benefit year. The amount established in the account shall be determined as follows:

(a) If subdivision (b) does not apply, whichever of the following is smaller:

(i) Fifty percent of the total amount of regular benefits payable to the individual under this act during the benefit year.

(ii) Thirteen times the individual's weekly extended benefit rate.

(b) With respect to a week beginning in a period in which the average rate of total unemployment as described in subsection (5)(c)*(ii)* equals or exceeds 8%, but no later than the end of the week in which extended benefits payable under this section cease to be funded under section 2005 of the American recovery and reinvestment act of 2009, Public Law 111-5, whichever of the following is smaller:

(i) Eighty percent of the total amount of regular benefits payable to the individual under this act during the benefit year.

(ii) Twenty times the individual's weekly extended benefit rate.

If an amount determined under this subsection is not an exact multiple of 1/2 of the individual's weekly extended benefit rate, the amount shall be decreased to the next lower such multiple.

(3) All of the following apply to an extended benefit period:

(a) The period begins with the third week after whichever of the following weeks first occurs:

(i) A week for which there is a national "on" indicator as determined by the United States secretary of labor.

(ii) A week for which there is a Michigan "on" indicator.

(b) The period ends with the third week after the first week for which there is both a national "off" indicator and a Michigan "off" indicator.

(c) The period is at least 13 consecutive weeks long, and does not begin by reason of a Michigan "on" indicator before the fourteenth week after the close of a prior extended benefit period under this section. However, an extended benefit period terminates with the week preceding the week for which no extended benefit payments are considered to be shareable compensation under the federal-state extended unemployment compensation act of 1970, section 3304 nt of the internal revenue code of 1986, 26 USC 3304 nt.

(4) An individual's "eligibility period" consists of the weeks in his or her benefit year that begin in an extended benefit period, and if his or her benefit year ends within the extended benefit period, any weeks thereafter that begin in the period.

(5) (a) With respect to weeks beginning after September 25, 1982, a national "on" indicator for a week shall be determined by the United States secretary of labor.

(b) A national "off" indicator for a week shall be determined by the United States secretary of labor.

(c) There is a Michigan "on" indicator for a week if 1 or both of the following apply:

(i) The rate of insured unemployment under this act for the period consisting of that week and the immediately preceding 12 weeks equaled or exceeded 120% of the average of the insured unemployment rates for the corresponding 13-week period ending in each of the preceding 3 calendar years, and equaled or exceeded 5%. With respect to compensation for each week of unemployment beginning after December 17, 2010 and ending December 31, 2011, the rate of insured unemployment under this act for the period consisting of that week and the immediately preceding 12 weeks equaled or exceeded 120% of the average of the insured unemployment rates for the corresponding 13-week period ending in each of the preceding 3 calendar years, and equaled or exceeded 5%.

(ii) For weeks beginning after December 17, 2010 and ending with the week ending 4 weeks before the last week of unemployment for which 100% federal sharing is available under section 2005(a) of Public Law 111-5, without regard to the extension of federal sharing for certain claims as provided under section 2005(c) of that law, the average rate of total unemployment in this state, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent 3 months for which data for all states are published before the close of the week equaled or exceeded both of the following:

(A) Six and one-half percent.

(B) One hundred ten percent of the average rate of total unemployment in this state, seasonally adjusted, for the period consisting of the corresponding 3-month period in any or all of the preceding 3 calendar years.

(d) There is a Michigan "off" indicator for a week if, for the period consisting of that week and the immediately preceding 12 weeks, either subdivision (c)*(i)* or (c)*(ii)* was not satisfied. Notwithstanding any other provision of this act, if this state is in a period in which temporary extended unemployment compensation is payable in this state under title II of the job creation and worker assistance act of 2002, Public Law 107-147, or another similar

federal law, and if the governor has the authority under that federal act or another similar federal law, then the governor may elect to trigger "off" the Michigan indicator for extended benefits under this act only for a period in which temporary extended unemployment compensation is payable in this state, if the election by the governor would not result in a decrease in the number of weeks of unemployment benefits payable to an individual under this act or under federal law.

(e) For purposes of subdivisions (c) and (d), the rate of insured unemployment for any 13-week period shall be determined by reference to the average monthly covered employment under this act for the first 4 of the most recent 6 calendar quarters ending before the close of that period.

(f) As used in this subsection, "rate of insured unemployment" means the percentage determined by dividing:

(i) The average weekly number of individuals filing claims for regular benefits for weeks of unemployment with respect to the specified period as determined on the basis of the reports made by all state agencies or, in the case of subdivisions (c) and (d), by the unemployment agency, to the federal government; by

(ii) In the case of subdivisions (c) and (d), the average monthly covered employment under this act for the specified period.

(g) Calculations under subdivisions (c) and (d) shall be made by the unemployment agency and shall conform to regulations, if any, prescribed by the United States secretary of labor under section 3304 nt of the internal revenue code of 1986, 26 USC 3304 nt.

(6) As used in this section:

(a) "Regular benefits" means benefits payable to an individual under this act and, unless otherwise expressly provided, under any other state unemployment compensation law, including unemployment benefits payable pursuant to 5 USC 8501 to 8525, other than extended benefits, and other than additional benefits which includes training benefits under section 27(g).

(b) "Extended benefits" means benefits, including additional benefits and unemployment benefits payable pursuant to 5 USC 8501 to 8525, payable for weeks of unemployment beginning in an extended benefit period to an individual as provided under this section.

(c) "Additional benefits" means benefits totally financed by a state and payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law as well as training benefits paid under section 27(g) with respect to an extended benefit period.

(d) "Weekly extended benefit rate" means an amount equal to the amount of regular benefits payable under this act to an individual within the individual's benefit year for a week of total unemployment, unless the individual had more than 1 weekly extended benefit rate within that benefit year, in which case the individual's weekly extended benefit rate shall be computed by dividing the maximum amount of regular benefits payable under this act within that benefit year by the number of weeks for which benefits were payable, adjusted to the next lower multiple of $1.00.

(e) "Benefits payable" includes all benefits computed in accordance with section 27(d), irrespective of whether the individual was otherwise eligible for the benefits within his or her current benefit year and irrespective of any benefit reduction by reason of a disqualification that required a reduction.

(7) (a) Notwithstanding the provisions of subsection (1)(b), an individual is ineligible for payment of extended benefits for any week of unemployment if the unemployment agency finds that during that period either of the following occurred:

(i) The individual failed to accept any offer of suitable work or failed to apply for any suitable work to which the individual was referred by the unemployment agency.

(ii) The individual failed to actively engage in seeking work as described in subdivision (f).

(b) Any individual who has been found ineligible for extended benefits under subdivision (a) shall also be denied benefits beginning with the first day of the week following the week in which the failure occurred and until the individual has been employed in each of 4 subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than 4 times the extended weekly benefit amount, as determined under subsection (2).

(c) As used in this subsection, "suitable work" means, with respect to any individual, any work that is within that individual's capabilities, if both of the following apply:

(i) The gross weekly remuneration payable for the work exceeds the sum of the following:

(A) The individual's extended weekly benefit amount as determined under subsection (2).

(B) The amount, if any, of supplemental unemployment compensation benefits, as defined in section 501(c)(17)(D) of the internal revenue code of 1986, 26 USC 501(c)(17)(D), payable to the individual for that week.

(ii) The employer pays wages not less than the higher of the minimum wage provided by section 6(a)(1) of the fair labor standards act of 1938, 29 USC 206(a)(1), without regard to any exemption, or the applicable state or local minimum wage.

(d) An individual shall not be denied extended benefits for failure to accept an offer of, or apply for, any job that meets the definition of suitable work in subdivision (c) if 1 or more of the following are true:

(i) The position was not offered to the individual in writing and was not listed with the state employment service.

(ii) The failure could not result in a denial of benefits under the definition of suitable work in section 29(6) to the extent that the criteria of suitability in that section are not inconsistent with the provisions of subdivision (c).

(iii) The individual furnishes satisfactory evidence to the unemployment agency that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If that evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to that individual shall be made in accordance with the definition of suitable work in section 29(6) without regard to the definition in subdivision (c).

(e) Notwithstanding subsection (1)(b), work is not suitable work for an individual if the work does not meet the labor standard provisions required by section 3304(a)(5) of the internal revenue code of 1986, 26 USC 3304(a)(5), and section 29(7).

(f) For the purposes of subdivision (a)*(ii),* an individual is actively engaged in seeking work during any week if both of the following are true:

(i) The individual has engaged in a systematic and sustained effort to obtain work during that week.

(ii) The individual furnishes tangible evidence to the unemployment agency that he or she has engaged in a systematic and sustained effort during that week.

(g) The unemployment agency shall refer any applicant for extended benefits to any suitable work that meets the criteria prescribed in subdivisions (c) and (d).

(h) An individual is not eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period if that individual has been disqualified for benefits under this act because he or she voluntarily left work, was discharged for misconduct, or failed to accept an offer of or apply for suitable work unless the individual requalified in accordance with a specific provision of this act requiring that the individual be employed subsequent to the week in which the act or discharge occurred that caused the disqualification.

(8) (a) Except as provided in subdivision (b), payment of extended benefits shall not be made to any individual for any week of unemployment that otherwise would have been payable pursuant to an interstate claim filed in any state under the interstate benefit payment plan, if an extended benefit period is not in effect for the week in the state in which the interstate claim is filed.

(b) Subdivision (a) does not apply with respect to the first 2 weeks for which extended benefits are payable, pursuant to an interstate claim, to the individual from the extended benefit account established for the individual.

(9) Notwithstanding the provisions of subsection (1)(b), an individual who established a benefit year under section 46 on or after January 2, 1983, shall be eligible to receive extended benefits only if the individual earned wages in an amount exceeding 40 times the individual's most recent weekly benefit rate during the base period of the benefit year that is used to establish the individual's extended benefit account under subsection (2).

(10) This subsection is effective for weeks of unemployment beginning after October 30, 1982. Notwithstanding any other provision of this section, an individual's extended benefit entitlement, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts of trade readjustment allowances, paid under the trade act of 1974, Public Law 93-618, within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

History: Add. 1970, Act 128, Imd. Eff. July 27, 1970-Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972-Am. 1974, Act 104, Eff. June 9, 1974-Am. 1977, Act 277, Eff. Jan. 1, 1978-Am. 1981, Act 107, Imd. Eff. July 17, 1981-Am. 1982, Act 247, Imd. Eff. Sept. 23, 1982-Am. 1983, Act 164, Imd. Eff. July 24, 1983-Am. 1984, Act 172, Imd. Eff. June 29, 1984-Am. 1993, Act 275, Imd. Eff. Dec. 28, 1993-Am. 2003, Act 174, Imd. Eff. Aug. 14, 2003-Am. 2009, Act 19, Imd. Eff. Apr. 13, 2009; -Am. 2011, Act 14, Imd. Eff. Mar. 29, 2011-Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011.

421.65 Effective dates of Act 231 of 1971; recomputation of benefits.

Sec. 65. (1) If this 1971 amendatory act is given immediate effect, the effective date of paragraph (1a) of subsection (b) of section 27 and paragraph (4) of subsection (g) of section 27 shall be the first day of the calendar week containing the thirtieth day after it is approved by the governor or becomes law without his approval.

(2) An individual who has a current and unexhausted benefit year on the effective date as provided in subsection (1) shall have his weekly benefit rate and the maximum amount of benefits recomputed in accordance with this amendatory act with respect to any week of unemployment beginning on or after that date on that portion of his benefit rights not exhausted prior to that date but his weekly benefit rate and maximum amount of benefits established and not exhausted prior to the aforementioned effective date shall not be subject to reduction or elimination by such recomputation.

(3) Except as provided in subsections (1) and (2), this 1971 amendatory act shall become effective January 1, 1972.

History: Add. 1971, Act 231, Imd. Eff. Jan. 3, 1972.

421.66 Effective dates of Act 104 of 1974; recomputation of benefits.

Sec. 66. (1) If this 1974 amendatory act is given immediate effect, the effective date of this amendatory act shall be the first day of the calendar week containing the thirtieth day after it is approved by the governor or becomes law without his approval.

(2) An individual who has a current and unexhausted benefit year on the effective date as provided in subsection (1) shall have his weekly benefit rate and the maximum amount of benefits recomputed in accordance with this amendatory act with respect to any week of unemployment beginning on or after that date on that portion of his benefit rights not exhausted prior to that date but his weekly benefit rate and maximum amount of benefits established and not exhausted prior to the aforementioned effective date shall not be subject to reduction or elimination by the recomputation. In the recalculation of weekly benefit rates and maximum amounts of benefits, an individual who had been in family class “B” or “C” prior to the effective date of this amendatory act and has 1 dependent shall be assigned to dependency class “1”, an individual who had been in family class “C” or “D” and has 2 dependents shall be assigned to dependency class “2”, an individual who had been in family class “D” or “E” and has 3 dependents shall be assigned to dependency class “3”, and an individual who had been in family class “E” or “F” and has 4 or more dependents shall be assigned to dependency class “4”.

(3) Notwithstanding subsection (1), the amended provisions of sections 11(g), 13g, 13i, 13j, 13k, 19(a) (1), 25, 27(i), 42(8), 43, 50, and 50a shall become effective January 1, 1975.

(4) Notwithstanding subsection (1), the provisions of sections 17(c) (iii) and 27(j), in effect prior to this amendatory act, shall apply until January 1, 1975.

History: Add. 1974, Act 104, Eff. June 9, 1974.

421.67 Effective dates of Act 110 of 1975; recomputation of weekly benefit rate and maximum amount of benefits; supplemental benefits.

Sec. 67. (1) If this 1975 amendatory act is given immediate effect, the effective date of this amendatory act shall be the first day of the calendar week containing the eighth day after it is approved by the governor or becomes law without his approval.

(2) An individual who has a current and unexhausted benefit year on the effective date as provided in subsection (1) shall have his weekly benefit rate and the maximum amount of benefits recomputed in accordance with this amendatory act with respect to any week of unemployment beginning on or after that date on that portion of his benefit rights not exhausted before that date but his weekly benefit rate and maximum amount of benefits established and not exhausted before the aforementioned effective date shall not be subject to reduction or elimination by the recomputation.

(3) Notwithstanding subsection (1), the changes provided in section 44(2) shall first apply to remuneration paid after December 31, 1975.

(4) An individual who becomes eligible for 1 or more weeks of extended benefits under section 64 on or after the effective date of this amendatory act shall receive the increase in benefits provided in section 27 (b)(1) and (2) with respect to each such week. Any increase in benefits over those provided in section 64 shall be deemed supplemental benefits and shall be payable at an individual’s weekly supplemental benefit rate. This rate shall be the

difference between a weekly extended benefit rate that could have been established if the increase in benefits provided in section 27(b) (1) and (2) and been in effect during the individual's entire benefit year and his weekly extended benefit rate established under section 64. However, an individual's weekly supplemental benefit rate shall not exceed $30.00 supplemental benefits paid under this subsection based on services performed for employers liable for contributions on a contributory basis shall be charged to the solvency account. Supplemental benefits paid under this subsection based on services performed for reimbursing employers shall be reimbursed to the commission by those reimbursing employers.

(5) Notwithstanding subsection (1), the amended provisions of section 29(3) and (4), with respect to requalification and reduction in benefit entitlement based on disqualifications imposed under section 29(1)(a) and (b), shall first apply to any disqualifying act or discharge occurring on or after November 30, 1975.

History: Add. 1975, Act 110, Eff. June 8, 1975.

Compiler's note: In the third sentence of subsection (4), the phrase "in section 27(b)(1) and (2) and..." evidently should read "in section 27(b)(1) and (2) had...".

The fourth sentence of subsection (4), evidently should read as the following two sentences: "However, an individual's weekly supplemental benefit rate shall not exceed $30.00. Supplemental benefits paid under this subsection based on services performed for employers liable for contributions on a contributory basis shall be charged to the solvency account."

421.67a Repealed. 1996, Act 535, Eff. Jan. 13, 1997.

Compiler's note: The repealed section pertained to reports to be filed with the governor and legislature.

421.67b Annual report to legislature; validating representations made by employer to legislature.

Sec. 67b. (1) The commission shall annually report to the legislature on the number of claimants who qualify for benefits under section 46a; the average weekly benefit amount drawn by such claimants; and the average duration of regular and extended benefits drawn by such claimants. The first report required by this subsection shall be transmitted not later than August 31, 1984.

(2) When an employer subject to this act makes representations to the legislature as to the amount of contributions paid by the employer either currently or under proposed changes in this act, the committee to whom the representations were made may request the commission to validate the representations made by the employer. The commission shall calculate the contributions made by the employer and the contributions which would be made by the employer under any proposed changes to the act and transmit the results to the committee making the request.

History: Add. 1982, Act 535, Eff. Jan. 2, 1983.

421.68, 421.69 Repealed. 1982, Act 535, Eff. Jan. 2, 1983.

Compiler's note: The repealed sections pertained to eligibility and disqualification for benefits.

421.70 Effective date of Act 358 of 1980; recomputation of weekly benefit rate and maximum amount of benefits; supplemental benefits.

Sec. 70. (1) Except as provided in section 35(4), the effective date of the 1980 amendatory act which added this section 70 shall be March 1, 1981.

(2) An individual who has a current and unexhausted benefit year on March 1, 1981, shall have his or her weekly benefit rate and the maximum amount of benefits recomputed in accordance with the 1980 amendatory act which added this section 70 with respect to any week of unemployment beginning March 1, 1981, on that portion of his or her benefit rights not exhausted before March 1, 1981, but his or her weekly benefit rate and maximum amount of benefits established and not exhausted before March 1, 1981, shall not be subject to reduction or elimination by the recomputation.

(3) An individual who is eligible for 1 or more weeks of extended benefits under section 64 on or after March 1, 1981, shall receive the increase in benefits provided in section 68 with respect to each such week. Any increase in benefits over those provided in section 64 shall be deemed supplemental benefits and shall be payable at an individual's weekly supplemental benefit rate. This rate shall be the difference between a weekly extended benefit rate that could have been established if the increase in benefits provided in section 68 had been in effect during the individual's entire benefit year and his or her weekly extended benefit rate established under section 64. Supplemental benefits paid under this subsection based on services performed for employers liable for contributions on a contributory basis shall be charged to the nonchargeable benefits account. Supplemental benefits paid under this subsection based on services performed for reimbursing employers shall be reimbursed to the commission by those reimbursing employers.

History: Add. 1980, Act 358, Eff. Mar. 1, 1981.

421.71 Effective dates of Act 535 of 1982.

Sec. 71. (1) Except as otherwise provided in this section, the 1982 amendatory act which added this section shall take effect January 2, 1983.

(2) The amendments to sections 5(3), 10, 17(c), 20, and 26 shall be effective January 2, 1983.

(3) The amendments to sections 19 and 44 and section 19a shall be effective for calendar years after 1982.

(4) The amendments to section 27(b) shall be effective for benefit years beginning on or after January 2, 1983. The repeal of section 68 shall be effective on January 2, 1983. Benefit rates established under section 68 shall not be recomputed or changed as a result of the amendment of section 27(b)(1).

(5) The amendment to section 28(1)(a)(2) shall be effective for weeks of unemployment beginning on or after January 2, 1983.

(6) The amendments to section 29(1)(a), (1)(b), (3), and (4) shall be effective for separations occurring on or after January 2, 1983. The amendment to section 29(9) shall be effective January 2, 1983. The repeal of section 69 shall be effective January 2, 1983.

(7) The amendments to sections 46 and 50 shall be effective for benefit years established on or after January 2, 1983. Section 46a shall be effective for benefit years established on or after January 2, 1983.

History: Add. 1982, Act 535, Eff. Jan. 2, 1983.

421.72 Effective date of Act 164 of 1983.

Sec. 72. (1) Except as otherwise provided in this section and the 1983 amendatory act which added this section, the 1983 amendatory act which added this section shall take effect upon its date of enactment.

(2) The amendments made to section 43(g) by the 1983 amendatory act which added this section shall take effect January 1, 1983.

(3) The amendments made to sections 14, 15, 18, 21, 22a, 24, 32a, 33, 34, and 49 by the 1983 amendatory act which added this section which amendments provide for the extension of certain appeal periods from 20 to 30 days shall take effect October 1, 1983.

History: Add. 1983, Act 164, Imd. Eff. July 24, 1983.

421.73 Rounding benefits to next lower full dollar.

Sec. 73. Notwithstanding any other provision of this act to the contrary, any amount of unemployment benefits payable to an individual for any week if not an even dollar amount shall be rounded to the next lower full dollar.

History: Add. 1984, Act 172, Imd. Eff. June 29, 1984.

421.75 Conversion date to wage record system; effective date; report.

Sec. 75. The conversion date to a wage record system prescribed by 1994 PA 162 is October 1, 2000. The unemployment agency shall provide the standing committees of the senate and the house of representatives that address labor issues a report on the wage record system conversion process once every 6 months after August 1, 1997 until the conversion is fully completed.

History: Add. 1994, Act 162, Imd. Eff. June 17, 1994-Am. 1995, Act 25, Eff. Mar. 28, 1996-Am. 1997, Act 90, Imd. Eff. Aug. 1, 1997; Am. 2000, Act 186, Imd. Eff. June 23, 2000.

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Effective Dates of Acts Amending Michigan Employment Security Act From 1936 Through August 2012

Act	Public Acts of	Effective Date
1	1936, Extra Session	Dec. 24,1936
347	1937	Aug. 5, 1937
324	1939	June 22, 1939
364	1941	July 1, 1941
18	1942, 2nd Extra Session	Feb. 27, 1942
246	1943	June 1, 1943
9	1944, 1st Extra Session	Feb. 19, 1944
307	1945	May 24, 1945
335	1945	May 29, 1945
26	1946, 1st Extra Session	Feb. 26, 1946
3	1946, 2nd Extra Session	July 15, 1946
360	1947	July 8, 1947
282	1949	July 11, 1949
251	1951	June 17, 1951
1	1951, Extra Session	Aug. 23, 1951
117	1953	Oct. 2, 1953
131	1954	Aug. 13, 1954
197	1954	May 7, 1954
1	1954, Extra Session	Aug. 20, 1954
281	1955	July 15, 1955
178	1955	Oct. 14, 1955
9	1956, Extra Session	Oct. 2, 1956
287	1957	June 13, 1957
311	1957	June 21, 1957
230	1958	June 13, 1958
131	1959	July 8, 1959
270	1959	Oct. 30, 1962
36	1962	Mar. 28, 1963
196	1962	Mar. 28, 1963
124	1963	Sept. 6, 1963
183	1963	Sept. 6, 1963
188	1963	Sept. 6, 1963
189	1963	Sept. 6, 1963
190	1963	Sept. 6, 1963
226	1963	Sept. 6, 1963
231	1964	Aug. 28, 1964
281	1965	Sept. 5, 1965
361	1965	July 23, 1965
398	1965	Oct. 26, 1965
226	1966	July 11, 1966
192	1967	June 30, 1967
254	1967	Aug. 27, 1967
215	1968	June 24, 1968
338	1968	July 19, 1968
211	1969	Mar. 20, 1970
14	1970	Apr. 14, 1970
128	1970	July 27, 1970
135	1970	July 29, 1970
173	1970	Aug. 3, 1970
231	1971	Jan. 3, 1972
11	1974	Feb. 15, 1974
104	1974	May 16, 1974
42	1975	May 12, 1975
83	1975	May 20, 1975
110	1975	June 6, 1975
113	1975	June 14, 1975
161	1975	July 14, 1975
272	1975	Nov. 14, 1975
303	1975	Dec. 20, 1975
77	1976	Apr. 11, 1976
226	1976	Aug. 4, 1976
52	1977	Jan. 1, 1978
95	1977	Aug. 4, 1977
133	1977	Oct. 28, 1977
155	1977	Nov. 8, 1977
202	1977	Nov. 17, 1977
277	1977	Jan. 1, 1978
76	1978	Mar. 22, 1978
355	1978	July 20, 1978
471	1978	Oct. 18, 1978
526	1979	Dec. 29, 1978
28	1980	July 20, 1980
231	1980	July 20, 1980
358	1980	Dec. 30, 1980
388	1980	Jan. 6, 1981
404	1980	Jan. 8, 1981
107	1981	July 17, 1981
247	1982	Sept. 23, 1982
248	1982	Sept. 23, 1982
535	1982	Dec. 31, 1982
71	1983	June 2, 1983
164	1983	July 24, 1983
219	1983	Nov. 16, 1983
247	1983	Dec. 5, 1983
172	1984	June 29, 1984
197	1985	Dec. 26, 1985
223	1985	Jan. 10, 1986
70	1986	Apr. 8, 1986
178	1989	Aug. 23, 1989
224	1989	Dec. 21, 1989
225	1989	Mar. 29, 1990
226	1989	Dec. 21, 1989
227	1989	Dec. 21, 1989
228	1989	Apr. 2, 1990
230	1989	Dec. 21, 1989
231	1989	Dec. 21, 1989
232	1989	Dec. 21, 1989
236	1989	Dec. 21, 1989
237	1989	Dec. 21, 1989
238	1989	Dec. 21, 1989
239	1989	Dec. 21, 1989
250	1989	Dec. 21, 1989
3	1991	Apr. 1, 1992
4	1991	Apr. 1, 1992
5	1991	Apr. 1, 1992
7	1991	Apr. 1, 1992
8	1991	Apr. 1, 1992
10	1991	Apr. 1, 1992
204	1992	Oct. 5, 1992
275	1993	Dec. 28, 1993
276	1993	Dec. 28, 1993
277	1993	Dec. 28, 1993
278	1993	Dec. 28, 1993
279	1993	Dec. 28, 1993
280	1993	Dec. 28, 1993
281	1993	Dec. 31, 1993
296	1993	Dec. 29, 1993
311	1993	Dec. 29, 1993
162	1994	June 17, 1994
422	1994	Jan. 6, 1995
25	1995	Mar. 28, 1996
125	1995	June 30, 1995
142	1995	Mar. 28, 1996
181	1995	Mar. 28, 1996
145	1996	Mar. 25, 1996
498	1996	Jan. 9, 1997
503	1996	Jan. 9, 1997
504	1996	Jan. 9, 1997
535	1996	Jan. 13, 1997
577	1996	Jan. 17, 1997
90	1997	Aug. 1, 1997
186	2000	June 23, 2000
490	2000	Jan. 11, 2001
192	2002	Apr. 26, 2002
174	2003	Aug. 14, 2003
243	2004	Jul. 23, 2004
16	2005	Jul. 1, 2005
17	2005	Jul. 1, 2005
18	2005	Jul. 1, 2005
19	2005	Jul. 1, 2005
182	2005	Oct. 25, 2005
188	2007	Dec. 21, 2007

Effective Dates of Acts Amending Michigan Employment Security Act From 1936 Through January 2013

Act	Public Acts of	Effective Date
479	2008	Jan. 12, 2009
480	2008	Jan. 12, 2009
1	2009	Mar. 11, 2009
18	2009	Apr. 13, 2009
19	2009	Apr. 13, 2009
20	2009	Apr. 13, 2009
479	2008	Jan. 12, 2009
322	2010	Dec. 21, 2010
383	2010	Jan. 1, 2011
14	2011	Mar. 29, 2009
216	2011	Nov. 10, 2011
268	2011	Dec. 19, 2011
269	2011	Dec. 19, 2011
281	2011	Dec. 20, 2011
216	2012	Jan. 1, 2013
218	2012	June 28, 2012
219	2012	June 28, 2012
422	2012	Dec. 21, 2012
493	2012	Dec. 28, 2012
496	2012	Dec. 28, 2012
579	2012	Jan. 2, 2013

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State of Michigan
Department of Licensing and Regulatory Affairs
Unemployment Insurance Agency
Administrative Rules Related to the Michigan Employment Security Act — Amended April 10, 2002

PART 1. ADMINISTRATION

R 421.1 Definitions.

Rule 1. As used in these rules:

(1) "Act" means the Michigan employment security act, Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being §§421.1 to 421.75 of the Michigan Compiled Laws.

(2) "Agency" means the state of Michigan, unemployment agency.

History: 1999 MR 12, Eff. Dec. 20, 1999.

R 421.10 Disclosure of information.

Rule 10. (1) All information, files, and records of the Michigan employment security commission reflecting information obtained from an employing unit or individual pursuant to administration of the act by the commission or its agents or representatives shall be held confidential and shall not be disclosed nor open to public or private inspection by anyone, except as hereinafter provided.

(2) Such information in possession of the commission as may affect a claim for benefits, affect a charge to an employer's account, or be necessary for proper presentation of a case in any hearing before the commission, a referee, or the board of review, upon request by an interested party, shall be made available to such interested party for examination at an office of the commission by him or his duly authorized representative who has supplied the commission with satisfactory proof of authorization and identity. Copies of such information shall be furnished to the interested party upon request, pursuant to Act No. 442 of the Public Acts of 1976, as amended, being §15.231 et seq. of the Michigan Compiled Laws, and known as the freedom of information act. A duly licensed attorney-at-law who states that he represents a unemployed worker or an employing unit that is an interested party is not required to furnish proof of authorization.

(3) No information shall be released to any of the agencies, Agencys, or departments specified in section 11(b) of the act, unless a written request has been first submitted to the commission stating the specific information desired, the specific purpose for which the information is to be used, and the name of any person authorized by the principal to receive the information from the commission.

(4) Information shall be released to a college, university, and public agency of this state only as specified in section 11(b) of the act for use in connection with research projects of a public service nature and only after a written request, signed by the administrative head, or his delegated representative, of the college, university, or public agency, as required by the commission, is submitted to the commission and the commission is assured the information shall not be made public in any way identifying any individual or employing unit from or concerning which the information was obtained by the commission. The request shall contain a complete statement as to the nature of the information requested, the public service objective for which the request has been made, the prospective use of the information, and the manner in which it will be made public.

(5) The individual signing the request for confidential information shall certify to all of the following:

(a) That the requested information is for and to be used by the college, university, or public agency pursuant to the relevant provisions in the act.

(b) That he is empowered by the college, university, or public agency he represents to commit his principal for expenses which may be incurred by the commission in fulfilling the request.

(c) If reports based on the information are to be published, the college, university, or public agency shall submit the reports to the commission for review so that the commission may ascertain and assure that the confidentiality provisions of the act or applicable federal statutes or standards are not violated.

(d) That he is aware of the penalties provided in the act for the unauthorized or improper use of the information.

(6) The commission shall decide the feasibility of supplying such information based on the staff time available and the current workload of the commission and shall require reimbursement on a cost basis for supplying or preparing the information.

(7) Nothing in this rule shall be construed to prohibit publication by the commission of statistical data or other information in the interest of the public, not disclosing the identity of any individual or employing unit, or under the same limitation, to prohibit the commission, pursuant to section 4 of the act, from making available to the public upon request, statements of any and all informal rules or criteria of decisions, administrative policies, or interpretations and the like which are or may be utilized by the commission, its agents, or employees in any manner in the performance of their administrative duties. With regard to the disclosure of aggregated information obtained from employing units,

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formation shall be deemed confidential if there are fewer than 3 establishments in the aggregation or if any 1 establishment represents 80% or more of the total employment in the aggregation.

History: 1944 ACS 12; 1954 AC; 1954 ACS 44, Eff. Nov. 14, 1965; 1954 ACS 53, Eff. Feb. 14, 1968; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980.

R 421.15 Determination of normal seasonal work period of seasonal employer.

Rule 15. (1) The normal seasonal work period of a seasonal employer shall be determined by the agency to be the period selected by the employer if the period is not more than 26 weeks and falls within the earliest beginning and latest ending dates of the employer's work seasons in the previous 5 years or in as many years as the employer has operated the business in Michigan if less than 5 years or is within the expected seasonal work period if the employer has not operated the business in Michigan.

(2) If the employer does not request designation of a period as the normal seasonal work period, then the agency shall determine the normal seasonal work period to be the entire period falling within the earliest beginning and latest ending dates of the employer's work seasons in the previous 5 years or in as many years as the employer has operated the business in Michigan if less than 5 years or to be the employer's expected seasonal work period if the employer has not operated the business in Michigan. If, however, the period is more than 26 weeks, then the normal seasonal work period shall be the most recent seasonal period of the employer that is not more than 26 weeks.

(3) The determination shall be based on all of the following information:

(a) A statement from the employer indicating the beginning and ending dates of the employer's seasonal work periods in Michigan for each of the previous 5 calendar years or for as many years as the employer has operated the business if less than 5 years. If an employer has not previously operated the business in Michigan, then the agency shall obtain, from the employer, a statement of the employer's expected seasonal work period.

(b) A statement from the employer indicating the period the employer requests to designate as the normal seasonal work period, if any.

(c) General employment information about the employer that is in the possession of the agency and, if necessary, further clarifying information requested from the employer.

(4) After a work period has been determined by the agency, the employer's normal seasonal work period will not be redetermined by the agency unless the agency discovers relevant new information, or unless not less than 20 days before the start of the previously determined normal seasonal work period at least 1 of the following provisions is satisfied:

(a) The agency receives a request from an employer for a change that gives reasons for making the request, and the request is granted by the agency. The agency shall grant the request if the employer's reason for making the request is that there has been a substantial change in the operation of the business that necessitates changing the normal seasonal work period.

(b) The employer provides the agency with information about the employer's most recent seasonal work period, when the prior determination or redetermination was based on a history of less than 5 years of operating the business in Michigan or was based on the employer's expected seasonal work period.

(5) If the normal seasonal work period is redetermined, then the new normal seasonal work period will be used to establish denial periods beginning after the end of the newly redetermined normal seasonal work period.

History: 1996 MR 7, Eff. July 16, 1996; 2002 MR 7, Eff. Apr. 10, 2002.

PART 2. EMPLOYERS

R 421.101 Report to determine liability.

Rule 101. Every individual or legal entity that becomes an "employing unit" as defined in section 40 of the act shall, on or before the last day of the month next following the month during which it became an employing unit, file with this commission a "Report to Determine Liability" and such additional reports as the commission may require for the purpose of determining whether it is an "employer" as defined in section 41 of the act.

Every "employing unit" that is determined to be an "employer" shall be notified of such determination.

History: 1944 AC; 1944 ACS 12; 1954 AC; 1954 ACS 13, Eff. Feb. 14, 1958; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980.

R 421.105 Posting of notice of coverage.

Rule 105. (1) Every "employing unit" determined to be an "employer" shall post and maintain notices furnished by the commission indicating that the employer is registered with the commission and that the employees are covered for unemployment compensation purposes.

(2) The notices shall be conspicuously posted in easily accessible places frequented by employees. However, posting is not required in a private residence in which the only service performed is domestic; instead, the employer shall inform the domestic employee of the fact that the employer is registered with the commission.

(3) An employing unit not determined liable under the act shall not display the notice.

History: 1979 ACS 2, Eff. Apr. 25, 1980.

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R 421.112 Determination of cash value of room and board.

Rule 112. (1) If board, rent, housing, lodging, meals, or similar advantage is extended in any medium other than cash as partial or entire remuneration for service constituting "employment" as defined in section 42 of 1936 PA 1, MCL 421.42, then the reasonable cash value of the board, rent, housing, lodging, meals, or similar advantage is wages unless the board, rent, housing, lodging, meals, or similar advantage is furnished solely for the convenience of the employer. However, for purposes of this rule, payments in any medium other than cash shall not apply to agricultural or domestic service, except for purposes of subrule (7) of this rule.

(2) If the cash value for the board, rent, housing, lodging, meals, or similar advantage is agreed upon in any contract of hire, then the amount agreed upon is the value of the board, rent, housing, lodging, meals, or similar advantage. Check stubs, pay envelopes, and other documents which are furnished to employees and which set forth cash value are acceptable as evidence as to the amount of the cash value agreed upon in any contract of hire, except as provided in subrules (4) and (6) of this rule.

(3) If the cash value for board, rent, housing, lodging, meals, or similar advantage is not agreed upon in a contract of hire, then the rate for board, rent, housing, lodging, meals, or similar advantage furnished in addition to money wages or wholly comprising the wages of an employed individual shall have the following cash value, except as provided in subrules (4) and (6) of this rule:

Full board and room, per week.....	$64.96
Meals without lodging, per week	44.66
Meals without lodging, per day.....	7.45
Meals without lodging, per meal.....	2.29
Lodging without meals, per week	20.87
Lodging without meals, per day.....	3.22

However, if lodging is furnished, for example, to superintendents of properties, caretakers, and janitors, then the value of the lodging shall be the amount that would be paid by an employee for similar or equivalent accommodations furnished by an individual other than his or her employer.

(4) At the request of any employer or employee or on its own motion, the agency or its authorized agent, may after the expiration of a 1-year period from the effective date of this rule and after affording reasonable opportunity at a hearing for the submission of relevant information in writing or in person, determine the reasonable cash value of board, rent, housing, lodging, meals, or similar advantage in a particular instance or in a group of instances if it is determined that the values fixed in, or arrived at, under subrule (3) of this rule or in the contract of hire do not properly reflect the reasonable cash value of the remuneration.

(5) The agency shall adjust the cash values in subrule (3) of this rule annually on March 1, based on a comparison of the United States department of labor, Agency of labor statistics, consumer price index for urban wage earners and clerical workers for Detroit-Ann Arbor, Michigan, for the preceding December with the corresponding United States department of labor, Agency of labor statistics, consumer price index for urban wage earners and clerical workers for Detroit-Ann Arbor, Michigan, for the December preceding that December.

(6) Except as provided in subrule (4) of this rule, if the agency determines that the reasonable cash value of board, rent, housing, lodging, meals, or similar advantage is other than as prescribed in a contract of hire or in subrule (3) of this rule, then the employer's payroll and contribution reports to the agency shall show the value of the remuneration as determined by the agency.

(7) For the purpose of determining whether an individual is "unemployed" as defined in section 48 1936 PA 1, MCL 421.48, the reasonable cash value of board, rent, housing, lodging, meals, or similar advantage as compensation for personal services shall also be established pursuant to this rule.

History: 1954 ACS 44, Eff. Nov. 14, 1965; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980; 1986 MR 6, Eff. July 11, 1986; 1998 MR 6, Eff. July 13, 1998; 2001 MR 2, Eff. Feb. 2, 2001.

R 421.113 Rescinded.

History: 1954 ACS 44, Eff. Nov. 14, 1965; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980; Rescinded 1998 MR 6, Eff. July 13, 1998.

R 421.115 Records required of employing unit.

Rule 115. (1) Each employing unit having employment performed for it shall establish, maintain, and preserve such records for a period of not less than 6 years after the calendar year in which the remuneration to which they relate was paid or, if not paid, was due. Such records shall show all of the following for each worker:

(a) Name.

(b) Social security account number.

(c) Beginning and ending dates of each pay period.

(d) With respect to pay periods in which he performs services:

(i) Hours spent performing covered services.

(ii) Hours spent performing excluded services.

(e) Total amount of remuneration for employment paid in any quarter.

(f) Total amount of wages, as defined in section 44(2) of the act, paid in any quarter.

(g) Dates on which he was hired, rehired, or returned to work after a temporary layoff, and dates separated from work and reason therefor.

(h) Remuneration paid for services and dates of payment, showing separately:

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(i) Cash remuneration, including special payments, such as bonuses and gifts.

(ii) Reasonable cash value of remuneration in any medium other than cash, determined pursuant to the applicable rules of the commission, including special payments, such as bonuses and gifts.

(i) Amounts paid him as allowances or reimbursement for traveling or other business expenses and dates of payment.

(j) The place of his employment. For the purpose of this record, the place of employment shall be recorded as the city or township and county in which he performs his work. The place of employment of a worker who does not perform the majority of his work in any 1 city or township shall be recorded as the city or township and county of Michigan in which he has his base of operations; or, if he has no base of operation in Michigan, as the city or township and county in Michigan from which his service is directed or controlled; or, if the place from which his service is directed or controlled is also outside Michigan, as the city or township and county within Michigan in which he has his residence.

(2) Records shall be maintained by employing units in such form as to make it possible to determine all of the following from an inspection thereof with respect to any worker:

(a) Earnings by calendar weeks.

(b) Weeks of less than full-time work.

(c) Time lost due to reasons other than lack of work.

(d) Calendar days worked.

(3) Multicounty employers and, as defined by the commission, multi-industry employers within a county shall, upon request from the commission, maintain wage and employment information for each location.

History: 1944 AC; 1944 ACS 12; 1954 AC; 1954 ACS 13, Eff. Feb. 14, 1958; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980.

R 421.121 Employer contribution reports and payments.

Rule 121. (1) Except as provided in subrule (4) of this rule, contributions shall become due and payable quarterly with respect to wages paid in each calendar quarter, except that the agency may require contributions to become due and payable on a monthly basis in any instance in which an employer has a history of delinquency or in any instance in which the agency has reason to believe that the collection of contributions may otherwise be jeopardized.

(2) Each employer shall submit a contribution report on forms provided by the agency, or on facsimiles of forms approved by the agency, or by an electronic method approved by the agency. Except as provided in subrule (4) of this rule, an employer shall submit a quarterly report and pay the contributions due on wages paid during the calendar quarter on or before the twenty-fifth day of the month next following the last day of the calendar quarter or, if required by the agency, shall submit a monthly report and pay the contributions due on wages paid during the calendar month on or before the twenty-fifth day of the month next following the last day of the month for which the report is submitted. If the contribution report is submitted by an electronic method approved by the agency, it must be received by the agency within the same time period that applies to a report submitted by any other method. Contributions paid after the due date specified in this subrule but before the first business day of the calendar month beginning after the due date specified in this subrule shall not accrue interest. Contributions paid after the last day of the calendar month containing the due date specified in this subrule shall accrue interest beginning the day after the due date specified in this subrule. Payment of contributions may be made by any means approved by the agency.

(3) An employer who is notified by the agency to report and pay contributions on a calendar month basis shall file the report and pay the contributions due with respect to wages paid in the month that the notice is mailed by the agency. Further, the employer shall, within 25 calendar days after mailing the notice, file separate monthly contribution reports and pay contributions due with respect to wages paid in each previously completed calendar month in the particular quarter in which the notice is mailed.

(4) Each school district and community college district that elects to be a contributing employer and that is liable for contributions for a calendar year shall pay the contributions within 30 calendar days after the start of its next fiscal year after the calendar year. Within the time period in subrule (2) of this rule, a school district or community college district that becomes a contributing employer shall submit a contribution report on forms provided by the agency or on facsimiles of forms approved by the agency. However, the district shall make payment under this subrule.

(5) Any remuneration payable to an individual that has not been actually paid to the individual within 21 calendar days after the end of the pay period in which the remuneration was earned is deemed to have been paid on the twenty-first day after the end of the pay period. Remuneration, the exact amount of which or the persons to whom payable, or both, have not been determinable during any pay period, is considered to have been earned in the pay period in which both the amount and the persons to whom payable are first determinable.

(6) The following person, as appropriate, shall sign the certification on each contribution report:

(a) The individual, if the employer is an individual.

(b) The president, vice president, or other officer, if the employer is a corporation.

(c) A responsible or duly authorized member having knowledge of its affairs, if the employer is a partnership or other unincorporated organization.

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(d) An individual who possesses the necessary authority, if the employer is a governmental entity.

(7) An employing unit that at any time becomes a contributing employer under the provisions of the act during the course of any calendar year shall, immediately after becoming a contributing employer, prepare and file a contribution report for each then completed calendar quarter or each then completed calendar month if required by the agency within the calendar year. After filing the initial contribution report, the contributing employer shall file the reports as required by this rule.

(8) An employing unit that elects, under the provisions of section 25 of the act, to become a contributing employer shall, upon written approval of the election by the agency, file the required reports, including a contribution report for all completed calendar quarters, or calendar months if required by the agency, beginning with the effective date of liability as approved by the agency.

(9) Upon the discontinuance, sale, assignment, or transfer, whether voluntary or by operation of law, of the trade, organization, or business in Michigan of a contributing employer, other than a school district or community college district, contributions shall become immediately due and payable as of the date of the discontinuance, sale, assignment, or transfer. Within 15 calendar days of the date of discontinuance, sale, assignment, or transfer, the employer shall file with the agency all reports required by this rule for the part of the calendar month or calendar quarter that has elapsed since the last day of the preceding required reporting period. In the case of a school district or a community college district, the reporting requirements specified in this subrule shall apply, but a district shall pay contributions due under subrule (4) of this rule.

(10) The last return of a contribution report for any employer shall be marked "Final Return" by the employer or other person filing the return. An employer shall plainly write the period covered by the return on the return, indicating the date of the final payment of wages subject to contributions. Except for a contributing employer who elects to become a reimbursing employer, in addition to the other requirements of this subrule, an employer shall execute and file a "discontinuance or disposition of business or assets."

(11) An employer shall execute and file each return, together with any supporting data, including wage and employment information, pursuant to instructions and the applicable rules. Further, upon notification from the agency, a multicounty employer and, as defined by the agency, a multi industry employer within a county shall report wage and employment information for each location. An employer shall apply to the agency for the forms needed in time to have the employer's returns prepared, certified, and filed with the agency on or before the due date. An employer shall carefully prepare the return so as to set forth fully and clearly the data called for in the return. The agency shall not accept, as meeting the requirements of the act, a return that does not set forth the data fully and clearly. Each employer is required to file his or her own report with respect to wages for employment performed for the employer. Employers shall not file consolidated reports of parent and subsidiary corporations, except as permitted by R 421.190 with regard to a common paymaster arrangement.

History: 1944 AC; 1944 ACS 12; 1954 AC; 1954 ACS 13, Eff. Feb. 14, 1958; 1954 ACS 44, Eff. Nov. 14, 1965; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980; 1999 MR 12, Eff. Dec. 20, 1999; 2002 MR 7, Eff. Apr. 10, 2002.

R 421.122 Reimbursing employer reports and payments.

Rule 122. (1) Each reimbursing employer shall submit a quarterly report of total wages and monthly employment on a form provided by the agency, or by an electronic method approved by the agency. The quarterly report shall be submitted on or before the twenty-fifth day of the month next following the last day of each calendar quarter.

(2) Upon notification from the agency, multicounty employers and, as defined by the agency, multi industry employers within a county shall be required to report wage and employment information for each location.

(3) Each nonprofit employer that elects to be a reimbursing employer and that is liable for quarterly reimbursement payments shall submit such payments within 30 days after the mailing date of the quarterly billing of benefit charges. Payment of reimbursements may be made by any means approved by the agency.

(4) Each reimbursing governmental entity that is liable for reimbursement payments for a calendar year shall submit such payment within 30 days after the start of its next fiscal year after such calendar year. Each employer shall receive a quarterly summary statement of daily charges and credits.

History: 1979 ACS 2, Eff. Apr. 25, 1980; 2002 MR 7, Eff. Apr. 10, 2002.

R 421.123 Good cause for untimely filing of employer's quarterly contribution report.

Rule 123. Good cause under section 18(d) of Act No. 1 of the Extra Session of 1936, as amended, being §421.18(d) of the Michigan Compiled Laws, for an employer's failure to file a quarterly contribution report within 30 days after the date that the contribution rate is mailed by the agency to the employer includes, but is not limited to:

(a) A deliberate and intentional failure by an employee or other agent of the employer to file the contribution report or reports.

(b) The death or incapacity of the employer, the employer's employee, or other agent of the employer that prevents the timely filing of the contribution report or reports.

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(c) An unavoidable absence from the workplace of the employer, the employee of the employer, or other agent of the employer that prevents the timely filing of the contribution report. Reasons for unavoidable absence include service on jury duty or service in the military of the United States or in the Michigan national guard.

(d) The unavailability, due to extraordinary reasons, of information needed to complete the contribution report. Extraordinary reasons for the unavailability include fire, flood, natural disaster, or an act of God.

(e) An employer's, employer's employee's, or employer's agent's inadvertent filing, in a timely manner, of the contribution report with a state or federal taxing authority other than the employment security agency.

(f) The failure of a business or governmental agency entrusted with the delivery of mail to deliver the determination of the contribution rate to the employer within a reasonable period or to deliver the employer's completed quarterly contribution report to the employment security agency within a reasonable period.

(g) The failure of a predecessor employer to file 1 or more quarterly contribution reports in a timely manner which results in a higher contribution rate or a penalty, or both, for the successor employer and, within 1 year from the date of mailing the determination of the contribution rate to the successor, either the successor employer files, with the employment security agency, a copy of the missing report or reports signed by the predecessor employer or the authorized agent of the predecessor employer or else an auditor of the employment security agency prepares and files the report or reports based on the records of the predecessor employer.

History: 1995 MR 9, Eff. Sept. 26, 1995.

R 421.162 Charges and credits to employer accounts.

Rule 162. (1) If benefits are chargeable to an employer, then the agency shall notify the employer with respect to the employer's account as follows:

(a) When a benefit check is issued to an individual, the agency shall mail, to the employer whose account is charged with such benefits, a listing or facsimile of weekly charges and credits to the employer's account resulting from the issuance of the check. The listing shall show all of the following information:

(i) The name and social security account number of the payee.

(ii) The amount paid.

(iii) The date of issuance.

(iv) The calendar week or period for which benefits have been paid.

(v) The designation of the employer.

(b) Each listing or facsimile of weekly charges and credits to an employer's account issued to an employer pursuant to the provisions of subdivision (a) of this subrule shall, in the absence of a pending protest by the employer affecting the validity of benefit payments included in the statement, constitute a determination of the charge to the employer's account. The determination is final unless further proceedings are taken pursuant to section 32a of the act.

(c) The agency shall mail a quarterly statement consisting of a summary listing of charges and credits to each reimbursing employer for billing and reconciliation purposes. The agency shall mail a quarterly statement consisting of a summary listing of charges and credits to each contributing employer for reconciliation purposes. Quarterly statements shall be subject to review and redetermination by the agency as to the accuracy of the statement only if the employer requests the review and redetermination within 30 days after the date of mailing of the quarterly statement.

(2) If benefits are simultaneously chargeable to more than 1 employer, then the agency shall charge each employer the pro rata share of benefits based on wages paid to the unemployed worker during the base period by that employer as compared to total base period wages paid to the unemployed worker by all base period employers.

Training benefits paid pursuant to a determination that benefits are chargeable to more than 1 reimbursing employer, or to 1 or more reimbursing employers and the nonchargeable benefits account, shall be allocated to each reimbursing employer involved and charged as of the quarter in which payments are made. Extended benefits paid, and not reimbursed by the federal government, pursuant to a determination that benefits are chargeable to more than 1 employer shall be allocated to each employer involved and charged as of the quarter in which payments are made. Training benefits shall be allocated to each reimbursing employer involved in the individual's base period of the claim to which benefits are related on the basis of the ratio that the total wages paid during the base period by a reimbursing employer bears to the total amount of wages paid during the base period by all employers.

Extended benefits, to the extent not reimbursed by the federal government, shall be allocated to each employer involved in the individual's base period of the claim to which benefits are related on the basis of the ratio that the wages paid during the base period by an employer bears to the total amount of wages paid during the base period by all employers.

Benefits paid under a combined wage plan, where a unemployed worker has earned wages in 2 or more states, shall be allocated and charged to each employer involved in the quarter in which the paying state requires reimbursement. Charges to each employer involved shall bear the same ratio for benefits paid to a unemployed worker as the amount of each employer's wages in the base period bears to the total amount of unemployed worker's base period wages.

Benefits paid under a federal-state combined wage plan, where a unemployed worker earns wages with the federal government and a Michigan employer, shall be allocated and

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charged to each employer involved and charged as of the quarter in which payments are made. Charges to each employer involved shall bear the same ratio for benefits paid to a unemployed worker as the amount of each employer's wages in the base period bears to the total amount of unemployed worker's base period wages.

(3) The deductions from charges as provided in sections 20(a) and 20a of the act shall be in the form of credits to the employer's account. The agency shall mail listings of weekly charges and credits to the employer's account to the employer.

(4) If the agency finds that benefits paid and charged to an employer's account were improperly paid or charged, then the agency shall credit an amount equal to the charge based on such benefits to the employer's account as of the current period, except that the agency may consider the employer's request that the credit be made as of the quarter in which the charges were originally made, if the request is filed within 30 days after the mailing of the credit or within 30 days after the mailing of the contribution rate for the first calendar year which can be affected by the requested retroactive credit. However, if the employer files a request within 30 days of the mailing of a credit which, in combination with 1 or more preceding similar credits, is sufficient to change a contribution rate if the credits are given retroactive effect, then the request is considered as filed in a timely manner with respect to all such credits. If the allowance of retroactive credit affects contributions previously paid within the meaning of the provisions of section 16 of the act, then the agency shall make application for the credits not later than 3 years after the date of payment of the affected contributions. In the absence of an intentional false statement, misrepresentation, or concealment of a material fact by a unemployed worker, the agency shall not issue credit to an employer where improper payment was made because of the employer's failure to furnish information in a timely manner in connection with a new or additional claim as provided in section 32(b) of the act.

(5) Charges and credits to the federal government as a reimbursing employer shall be issued pursuant to methods prescribed by the federal government.

History: 1944 AC; 1944 ACS 12; 1944 ACS 26; 1944 ACS 29; 1954 AC; 1954 ACS 13, Eff. Feb. 14, 1958; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980; 1986 MR 6, Eff. July 11, 1986; 2001 MR 2, Eff. Feb. 2, 2001.

R 421.165 Rescinded.

History: 1944 AC; 1944 ACS 12; 1944 ACS 26; 1954 AC; rescinded 1954 ACS 13, Eff. Feb. 14, 1958.

R 421.184 Employer elections to cover multistate workers.

Rule 184. (1) The following rules shall govern the Michigan employment security commission in its administrative cooperation with other states subscribing to the interstate reciprocal coverage arrangement, hereinafter referred to as "the arrangement."

(2) As used in this rule, unless the context clearly indicates otherwise:

(a) "Agency" means any officer, board, commission, or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

(b) "Interested jurisdiction" means any participating jurisdiction to which an election submitted under this rule is sent for its approval; and "interested agency" means the agency of such jurisdiction.

(c) "Jurisdiction" means any state of the United States or, with respect to the federal government, the coverage of any federal unemployment compensation law.

(d) "Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated.

(e) "Services customarily performed by an individual in more than 1 jurisdiction" means services performed in more than 1 jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than 1 jurisdiction, or if such services are required or expected to be performed in more than 1 jurisdiction under the election.

(3) The submission and approval of coverage elections under the interstate reciprocal coverage arrangement shall comply with all of the following:

(a) Any employing unit may file an election to cover, under the law of a single participating jurisdiction, all of the services performed for it by any individual who customarily works for it in more than 1 participating jurisdiction. Such an election may be filed, with respect to an individual, with any participating jurisdiction in which:

(i) Any part of the individual's services are performed.

(ii) The individual has his residence.

(iii) The employing unit maintains a place of business to which the individual's services bear a reasonable relation.

(b) The agency of the elected jurisdiction, thus selected and determined, shall initially approve or disapprove the election. If such agency approves the election, then it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election as promptly as practicable and shall notify the agency of the elected jurisdiction accordingly. If its law so requires, any such interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

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(c) If the agency of the elected jurisdiction or the agency of any interested jurisdiction disapproves the election, then the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons therefor.

(d) Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by 1 or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

(e) In case any such election is approved only in part or is disapproved by some of such agencies, the electing employing unit may withdraw its election within 10 days after being notified of such action.

(4) The effective period of elections is as follows:

(a) An election duly approved under this rule shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer has no liability to pay contributions for the earlier period in question.

(b) The application of an election to any individual under this rule shall terminate if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed so that they are no longer customarily performed in more than 1 participating jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such finding is mailed to all parties affected. Except as provided in this subdivision, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

Whenever an election under this rule ceases to apply to any individual under this subdivision, the electing unit shall notify the affected individual accordingly.

5) The electing unit shall file reports and notices as follows:

(a) The electing unit shall promptly notify each individual affected by its approved election on the form supplied by the elected jurisdiction and shall furnish the elected agency a copy of such notice.

(b) Whenever an individual covered by an election under this rule is separated from his employment, the electing unit shall again notify him forthwith as to the jurisdiction under whose unemployment compensation law his services have been covered. If at the time of the termination the individual is not located in the elected jurisdiction, then the electing unit shall notify him as to the procedure for filing interstate benefit claims.

(c) The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than 1 participating jurisdiction, or where a change in the work assigned to an individual requires him to perform services in a new participating jurisdiction.

(6) The Michigan employment security commission hereby delegates to its director authority to approve or disapprove reciprocal coverage elections pursuant to this rule.

History: 1944 ACS 12; 1954 AC; 1954 ACS 13, Eff. Feb. 14, 1958; 1954 ACS 44, Eff. Nov. 14, 1965; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980.

R 421.190 Common paymaster; employee leasing companies; payrolling; temporary help firms.

Rule 190. (1) As used in this rule:

(a) "Captive provider" means an employee leasing company which limits itself to providing services and employees to only 1 client entity and the entity's subsidiaries and affiliates and which does not hold itself out as available to provide leasing services to other client entities that do not share an ownership relationship with the employee leasing company.

(b) "Client entity," also known as a "work-site employer," means the business entity that contracts with an employee leasing company for the purpose of providing employees and related services to the client entity.

(c) "Common paymaster" is the arrangement by which different services performed by 1 individual are divided among 2 or more employers that are related through commonality of ownership, and the individual is compensated by 1 of those employers that acts as the common paymaster. Under such an arrangement, different employers benefit from the services of the same individual, but these services are reflected in the experience rating of, and the payment of unemployment taxes by, only 1 of the employers.

If 2 or more related corporations concurrently employ the same individual and compensate that individual through a common paymaster that is 1 of the corporations, the corporations may elect to report wages and pay unemployment taxes of all shared employees of the related corporations through a common paymaster and the related corporations will be considered to be a single employing unit. The common paymaster for purposes of reporting wages and paying Michigan unemployment taxes of all shared employees shall be the corporation that has the highest Michigan unemployment tax rate. Corporations are considered to be related if they satisfy any 1 of the following tests at any time during the calendar quarter:

(i) The corporations are members of a controlled group of corporations as defined in section 1563 of the internal revenue code, 26 U.S.C. §1563, or would be members if certain stock ownership percentage

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requirements between corporations were relaxed and certain exclusions made inapplicable.

(ii) In the case of a corporation that does not issue stock, either 50% or more of the members of 1 corporation's board of directors or other governing body are members of the other corporation's board of directors or other governing body, or the holders of 50% or more of the voting power to select such members are concurrently the holders of 50% or more of that power with respect to the other corporation.

(iii) Fifty percent or more of 1 corporation's officers are concurrently officers of the other corporation.

(iv) Thirty percent or more of 1 corporation's employees are concurrently employees of the other corporation.

Corporations are considered related for an entire calendar quarter if 1 of the requirements listed in paragraphs (i) to (iv) of this subdivision is satisfied. Concurrent employment means the contemporaneous existence of an employment relationship between an individual and 2 or more corporations.

(d) "Employee leasing company (ELC)," also known as a "professional employer organization," means an independently established business entity that does all of the following:

(i) Provides employees to a client entity.

(ii) Pays the wages of the employees.

(iii) Reports and withholds applicable taxes from the wages of the employees.

(iv) Administers the benefits for the employees.

(v) Provides other payroll, human resources, and other management assistance services that are agreed upon with its client entity.

The employees provided to the client entity may have previously been employed directly by the client entity. The relationship between the client entity and ELC is intended to be long-term or continuing, rather than temporary or intermittent, and the employees are, generally, not subject to reassignment. The majority of the workers at a client entity's worksite, or a majority of workers in a specialized group within that workforce, consists of employees assigned by the leasing company.

(e) "Payrolling" is the practice of establishing a related or associated company for the purposes of reassigning the employee payroll functions from 1 business entity to the related business entity, usually to take advantage of the lower unemployment tax rate of the related business entity. Direction and control of the involved employees are not transferred along with the payroll to the related business entity, and the related entity is not an employee leasing company. The related business entity to which the payroll is assigned is not the employer for unemployment insurance tax purposes. The entity for which services are performed and which exercises direction and control over the employee is the employer.

(f) "Temporary help firm" means an employer whose primary business is to provide a client entity with the temporary services of 1 or more individuals under contract with the employer. Employment with a temporary help firm is characterized by a series of limited-term assignments of an individual to a client entity based on a written or oral contract between the temporary help firm and the client entity. The assignment is usually for a specified period. A separate written or oral employment contract exists between the temporary help firm and each individual it hires as an employee. The employee of the temporary help firm is subject to reassignment by the temporary help firm. Completion of an assignment for the client entity by an employee employed by the temporary help firm does not, in itself, terminate the employment contract between the temporary help firm and the individual. A temporary help firm that meets the requirements of section 41 of the act is a liable employer and shall pay unemployment taxes on its employees.

(2) An ELC that meets the requirements of section 41 of the act is a liable employer and responsible to pay unemployment taxes on the employees leased to the client entity. For unemployment tax purposes in Michigan, the ELC, and not the client entity, is the employer of the leased employees if all of the following conditions are met:

(a) An employing entity representing itself to be an ELC shall comply with the requirements of this rule to be considered by the agency to be an ELC for purposes of the act and this rule. If the agency determines the entity is not an ELC within the meaning of this rule, then the payroll of workers at the client entity will be assigned or reassigned to the client entity and the client entity's prior experience rating will be reinstated.

(b) The ELC shall administer all payroll and all benefit services for the client entity, pay the wages of the workers, and have the right, both in contract and in fact, to hire, promote, reassign, discipline, and terminate the leased workers. The ELC cannot delegate the rights to the client entity. The client entity's officers may be considered employees of the leasing company when they are acting as operational managers, or performing services, for the client entity.

(c) The ELC retains the right to exercise direction and control over the daily activities of the workers or can delegate the right to the client entity.

(d) Neither the ELC nor any individual owner of the ELC, nor owners of the ELC in the aggregate, has an ownership interest of more than 20% in the client entity, including the client entity's subsidiaries and affiliates, and the client entity does not have more than 20% ownership interest in the ELC.

(e) Neither the ELC nor any individual owner or other employee of the ELC has direct or indirect control over the client entity.

(f) The ELC does not limit itself to providing services and employees to any 1 client entity, including that entity's subsidiaries and affiliates, but holds itself out to the public in general as available to provide leasing services. The ELC shall not be a captive provider of employee services.

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(3) To be considered the employer of the leased employees, the employee leasing company shall comply with all of the following operational requirements:

(a) The ELC shall maintain records pertaining to the employees of the ELC who perform services for the client entity. In addition, the ELC shall make the records available to the agency, on request.

(b) Upon request, the ELC shall promptly provide the agency with a copy of the employee lease agreement with any of its client entities and with a list of the ELC's client entities.

(c) The ELC shall comply with federal, state, and local employment and business registration laws, regulations, and ordinances. If the ELC does not so comply, then the agency may decline or cease to recognize an employing entity as an ELC.

History: 1999 MR 12, Eff. Dec. 21, 1999; 2002 MR 7, Eff. Apr. 10, 2002.

PART 3. CLAIMS

R 421.201 "Interested party" defined.

Rule 201. (1) The term "interested party," as used in the act or these rules, means anyone whose statutory rights or obligations might be affected by the outcome or disposition of the determination, redetermination, or decision. A unemployed worker for unemployment benefits is not an interested party to a redetermination of charges or to an appeal relating to a redetermination of charges. An interested party has all of the following rights:

(a) The right to receive a copy of the notice of determination or redetermination.

(b) The right to request a reconsideration of the determination or redetermination.

(c) The right to appeal to a referee or the board of review in the manner provided in the act.

(2) The agency is an interested party in any appeal before a referee, the board of review, or in any judicial action involving an order or decision of the board of review or a referee.

(3) An employer or employing entity in this or another state is an interested party in connection with a claim for benefits if the employer's or employing entity's account has been charged, the employer or employing entity is presently or potentially chargeable with some portion of benefits paid or payable on such claim, or the employer or employing entity is directly involved in a possible ineligibility or disqualification of a unemployed worker. A base period employer is not an interested party with respect to a nonmonetary adjudication or appeal relating to another base period employer or the last separating employer concerning either benefit payments or charges, unless the issue on appeal is whether the base period employer is chargeable for benefits on the claim under section 29(5) of the act.

History: 1944 AC; 1944 ACS 12; 1954 AC; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980; 1986 MR 6, Eff. July 11, 1986; 1999 MR 12, Eff. Dec. 20, 1999; 2002 MR 7, Eff. Apr. 10, 2002.

R 421.204 Unemployment compensation notice to employee.

Rule 204. (1) An employer, other than an employer filing claims on behalf of workers in accordance with Rule R 421.210, shall provide each worker at the time of the worker's separation from employment a copy of form UA 1711, unemployment compensation notice to employee. However, this requirement is satisfied if the employer previously delivered a copy of the form to the worker, or if the employer has by any other method provided the worker an equivalent written statement notifying the worker of both of the following:

(a) If the worker loses form UA 1711 or the equivalent written notice from the employer, the worker may obtain a duplicate from a designated office in the establishment.

(b) The worker should have form UA 1711 or the equivalent written notice from the employer available for reference when filing a claim.

(2) If the agency finds that an employer fails to deliver form UA 1711 or the equivalent written notice before separation or fails to post adequate notices concerning replacement of a lost form UA 1711 or an equivalent written notice, then the employer, at the direction of the agency, shall be required to deliver form UA 1711 or the equivalent written notice to a worker when the worker is separated from employment. Form UA 1711 or the equivalent written notice shall be considered a report within the meaning of section 54(c)(1) of the act, and the agency may impose the penalty of $10.00 against an employer that fails to provide the form or the equivalent written notice to the worker by the date of the worker's separation from employment and will only be imposed if an employer fails to comply with this requirement after being notified by the agency. Imposition of the penalty provided under this rule is an appealable issue under the act.

(3) The form or equivalent written notice shall contain all of the following information:

(a) The employer's name and number of the employer's account with the agency.

(b) The address of the employer to which any request for wage or separation information, or both, shall be directed.

(c) Such other information as is required by the agency.

History: 1944 AC; 1944 ACS 12; 1954 AC; 1954 ACS 44, Eff. Nov. 14, 1965; 1979 AC; 2002 MR 7, Eff. Apr. 10, 2002.

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R 421.205 Notification to employing unit of filing of claim; request for wage and separation information from employing unit; notification of commission of possible disqualification or ineligibility of unemployed worker; "respond" defined.

Rule 205. (1) If an individual files a new claim for benefits, then the agency shall notify all of the individual's base period employers and employing units, the separating employer, and the individual's employers and employing units during the calendar quarter containing the Sunday of the week in which the new claim is effective, of all of the following:

(a) The filing of the claim.

(b) The wages on record, as to the unemployed worker, in the agency's wage database, or the wages reported by the unemployed worker if there are no wages on record in the wage database.

(c) The reason for separation reported by the unemployed worker.

(d) The unemployed worker's weekly benefit amount.

(e) The maximum benefit amount that may be charged to each employer's account.

(2) Any response by the employer or employing unit to the information provided by the agency shall be received by the agency within 10 calendar days from the date of mailing or personal service of the information on the form approved by the agency. The response shall contain all of the following information:

(a) A summary statement of pertinent facts if the employer or employing unit questions whether the individual should receive benefits or whether the employer's account should be charged for benefits.

(b) New, additional, or corrected information concerning the individual's wages or the reason for the individual's separation from employment as may be pertinent to increase benefits or benefit charges, decrease benefits or benefit charges, or render the individual disqualified or ineligible to receive benefits.

(3) If an individual files an additional or reopened claim, then the agency shall notify the separating employer or employing unit and the base period employers unless the agency receives a written request from the separating employing unit or from a base period employer that the notice not be provided. If the employer or employing unit has new, additional, or corrected information to provide the agency, or seeks to challenge the individual's eligibility or qualification for benefits or charges to the employer's account, then the information shall be received by the agency in writing or by any other means approved by the agency within 10 calendar days from the date of mailing or personal service of the notice.

(4) An employer or employing unit shall notify the agency, in writing or by any other means approved by the agency, in the time period provided in subrules (2) or (3) of this rule, of the possible disqualification or ineligibility of a unemployed worker, or of possible improper charges to the employer's account. The notice shall contain all of the following information:

(a) The individual's full name and social security number.

(b) The employer's or employing unit's name, registration number, if one has been assigned by the agency, and the address to which any monetary determination or nonmonetary determination shall be directed.

(c) The last day worked by the individual.

(d) A statement of the circumstances on which the employer or employing unit relies in questioning whether the individual is entitled to benefits.

(5) If an employer or employing unit fails to comply with the requirements of subrule (2) or (3) of this rule within the 10-day period provided, then the agency shall pay benefits in accordance with the monetary determination.

(6) If an employer or employing unit provides new, additional, or corrected separation information beyond the time period specified in subrule (2) or (3) of this rule, then the response shall not form the basis of a determination or redetermination of disqualification or ineligibility for any claim period for which benefits have been paid before the receipt by the agency of the response, except in any of the following circumstances:

(a) A showing that the employing unit could not reasonably comply with the due dates of subrule (2) or (3) of this rule.

(b) A showing of a false statement, misrepresentation, or nondisclosure of a material fact on the part of the unemployed worker.

(c) A showing of an agency administrative clerical error.

Separation information received by the agency from the employer more than 1 year after the mail date of the monetary determination shall not be considered by the agency. If new, additional, or corrected wage information is received by the agency from the employer after the 10-day period specified in subrule (2) or (3) of this rule, then the information shall not result in a decrease in benefit amount or benefit charge for any claim period for which benefits have been paid before the receipt by the agency of the response. Information received after the 10-day period shall, however, be used to increase a benefit amount or benefit charge for any claim period for which benefits have been paid before the receipt by the agency of the response.

(7) If the individual disagrees with the wage information contained in the agency's wage database, then the individual's statement shall be taken on a form designed for a statement or in any other manner approved by the agency and shall be provided to the employer by means of the monetary determination.

(8) If a notice is submitted by an employing unit indicating the sole reason for ineligibility to be leave of absence or

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vacation with pay and with respect to which period of time no claim was filed, then the agency shall, upon receipt and recording of appropriate evidence of reemployment by the employing unit granting the leave or vacation with pay, disregard the form without notification to the interested parties and without the necessity of making a determination with respect to the period of time during which the unemployed worker was on a leave of absence.

(9) To provide new, additional, or corrected information to the agency within the time period specified, the employer may deliver the information to the agency at a location approved by the agency by computerized data exchange or other electronic or non-electronic means approved by the agency.

History: 1944 ACS 12; 1944 ACS 26; 1944 ACS 29; 1954 AC; 1954 ACS 13, Eff. Feb. 14, 1958; 1954 ACS 44, Eff. Nov. 14, 1965; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980; 1986 MR 6, Eff. July 11, 1986; 1999 MR 12, Eff. Dec. 20, 1999; 2001 MR 2, Eff. Feb. 2, 2001.

R 421.206 Rescinded.

History: 1944 ACS 12; 1954 AC; rescinded 1954 ACS 13, Eff. Feb. 14, 1958.

R 421.207 Rescinded.

History: 1944 ACS 26; 1944 ACS 29; 1954 AC; 1954 ACS 13, Eff. Feb. 14, 1958; 1954 ACS 44, Eff. Nov. 14, 1965; rescinded 1954 ACS 53, Eff. Feb. 14, 1968.

R 421.208 Registering for work.

Rule 208. (1) To comply with the registration requirements of section 28(1)(a) of 1936 PA 1, MCL 421.28(1)(a), an unemployed worker shall register for work as instructed by the agency and fully and accurately supply information as to the unemployed worker's past work experience and training and other personal data as may be necessary to assure that the unemployed worker is considered for referral to any available suitable work.

(2) If a unemployed worker indicates on the application for benefits that he or she expects to return to his or her separating or previous employer within 120 days, and if the agency finds the unemployed worker to be job-attached or finds that the unemployed worker is not an appropriate candidate for full employment services, then the unemployed worker's application for benefits shall be used as the unemployed worker's registration for work.

(3) If, in registering for work under subrule (1) of this rule, a unemployed worker indicates that he or she is unwilling to be referred to or notified of work that the unemployed worker is qualified to perform because of past experience or training and that is generally similar to work for which the unemployed worker has received wages, then the agency shall make a determination as to the unemployed worker's availability for suitable work.

(4) A laid off individual is not required to register for work if registering is waived by the agency upon receipt of written notification by the individual's employer that the layoff is temporary and that work is expected to be available within 45 calendar days following the last day the individual worked. A waiver is effective if the notification from the employer has been received by the agency before the individual has certified for his or her first compensable week following the layoff.

(5) An individual who is required to register for work to be eligible for unemployment benefits and who, with good cause, fails to do so, shall not be ineligible for benefits for the weeks for which the individual failed to register. "Good cause" for failure to register shall include, but not be limited to, either of the following:

(a) Misinformation provided by the agency or failure to provide access to the means of registration by the agency or designated entity.

(b) A reason described in rule R 421.210(2) of the Michigan Administrative Code.

History: 1944 ACS 12; 1944 ACS 26; 1954 AC; 1954 ACS 44, Eff. Nov. 14, 1965; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980; 1998 MR 6, Eff. July 13, 1998; 2001 MR 2, Eff. Feb. 2, 2001.

R 421.209 Effect of religious convictions on Sabbath day work.

Rule 209. An individual shall not be deemed unavailable for work solely because, due to the precepts of his or her religion, the individual limits himself or herself to jobs not requiring work on his or her Sabbath. An individual who refuses to work on the Sabbath designated by his or her religion, or who is discharged from work or voluntarily leaves work, solely because of conscientious observance of the Sabbath as a matter of religious conviction shall not, for that reason, be disqualified from receiving unemployment benefits.

History: 1954 ACS 44, Eff. Nov. 14, 1965; 1979 AC; 1986 MR 6, Eff. July 11, 1986.

R 421.210 Unemployment insurance benefit filing requirements; definitions.

Rule 210. (1) An individual shall receive benefits for any week of unemployment for which the individual filed a claim and reported in accordance with this rule and with the direction of the agency and for which the individual is otherwise eligible and qualified for benefits. In the case of an employer whose workers have filed either 1,000 or more new claims or additional claims, or both, in each of the previous 3 calendar years, the employer shall file claims on behalf of the workers, in a manner prescribed by the agency.

(2) As used in this rule:

(a) "Additional claim" means a claim filed by an individual to reestablish eligibility for benefits after an interruption in the claim series during an existing benefit year caused by a period of employment.

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(b) "Claim series" means an uninterrupted period of weeks for which an individual claims benefits.

(c) "Continued claim" means a report filed by an individual who has filed a new, additional, or reopened claim and who is certifying as to eligibility for benefits for 1 or more weeks of unemployment.

(d) "Day of work" means a calendar day or portion of a calendar day on which an individual performed services for an employing unit under a contract of hire, including a calendar day or portion of a calendar day for which an individual received, or is entitled to receive, call-in pay. If an individual reports for work on a day on which the individual has been scheduled to work, but does not work because work is not available, then that day is considered a "day of work".

(e) "Good cause for late filing of a new, additional, or reopened claim" and "good cause for late reporting to file a continued claim" means that there is a justifiable reason, determined in accordance with a standard of conduct expected of an individual acting as a reasonable person in the light of all the circumstances, that prevented a timely filing or reporting to file as required by this rule. Examples of justifiable reasons that the agency may consider as constituting good cause include any of the following:

(i) Acts of God.

(ii) Working or reliance on a promise of work that did not materialize.

(iii) Closing of agency offices, or the failure of the agency's telephonic or electronic equipment, during scheduled hours of operation.

(iv) Delay or interruption in the delivery of mail or the delay or interruption of information by telephonic or other means by a business or governmental agency entrusted with the delivery of mail or of messages by telephonic or other means.

(v) Personal physical incapacity or the physical incapacity or death of a relative or ward of either the individual or the individual's spouse or of any person living in the same household as the individual claiming benefits.

(vi) Attendance at a funeral.

(vii) Incarceration.

(viii) Jury duty.

(f) "New claim" means a claim filed by an individual to establish eligibility for a new benefit year.

(g) "Reopened claim" means a claim filed by an individual to reestablish eligibility for benefits after an interruption in the claim series during an existing benefit year for a reason other than employment that is caused by a period of nonreporting.

(h) "Week of unemployment" means a week during which an individual is unemployed within the meaning of section 48 of 1936 PA 1, MCL 421.48.

(3) An individual shall file a new, additional, or reopened claim or shall report to file a continued claim as directed by the agency.

(4) To be filed on time and effective as of the beginning of the individual's first week of unemployment, a new or additional claim shall be received by the agency, in a manner prescribed by the agency, not later than the Friday after the end of the week containing the individual's last day of work. A reopened claim is effective as of the beginning of the week in which it is received by the agency.

(5) To be filed on time and effective for each week for which the individual is reporting to file, a continued claim shall be received by the agency, in a manner prescribed by the agency, not later than the Friday after the end of the last week of the period for which the unemployed worker is instructed to report and has continued to report in a claim series. If an individual does not file a continued claim in a timely manner in accordance with this subrule, and if the filing is untimely without good cause, then the claim filed by the individual is a reopened claim.

(6) If an individual does not file a new, additional, or reopened claim as prescribed in subrules (4) and (5) of this rule, but files the new, additional, or reopened claim not later than the fourteenth calendar day after the time limits prescribed in subrules (4) and (5) of this rule, then the new, additional, or reopened claim is considered filed on time if the unemployed worker has good cause for the lateness of the filing. If the unemployed worker does not have good cause for the lateness of the filing, then the new, additional, or reopened claim is effective beginning with the week in which it is filed.

(7) If an individual does not report to file a continued claim within the time limits prescribed in subrules (4) and (5) of this rule, but reports to file the continued claim not later than the fourteenth calendar day after the time limits prescribed in subrules (4) and (5) of this rule, then the individual is considered to have reported on time to file the continued claim if the individual has good cause for the lateness of the reporting to file the continued claim. If the individual does not have good cause for the lateness of the reporting to file the continued claim, then the reporting to file the continued claim is a reopened claim.

(8) If an individual files a new, additional, or reopened claim or reports to file a continued claim by mail, then the claim or report is considered received by the agency as of the date the mail is received by the agency.

(9) If an individual files a new, additional, or reopened claim or reports to file a continued claim by deposit in a designated agency drop box, then it is presumed that the claim was received by the agency on the previous business day if gathered in the first retrieval of the day if this presumption is required for the new, additional, or reopened claim to be considered filed on time or the continued claim to be considered a timely report.

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(10) If the unemployed worker is unable to file a claim in a timely manner because the agency's services are unavailable, then the claim is considered filed on time if it is received by the agency on the next workday.

History: 1944 AC; 1944 ACS 12; 1944 ACS 26; 1944 ACS 31; 1954 AC; 1954 ACS 44, Eff. Nov. 14, 1965; 1954 ACS 68, Eff. Aug. 2, 1971; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980; 1996 MR 8, Eff. Sept. 5, 1996; 1999 MR 12, Eff. Dec. 21, 1999; 2001 MR 2, Eff. Feb. 2, 2001; 2002 MR 7, Eff. Apr. 10, 2002.

R 421.211 Benefit year beginning date.

Rule 211. (1) The benefit year for an individual who does not have a benefit year established and who meets the requirements of section 46 of the act shall begin with the beginning of the week containing the effective date of the new claim as determined pursuant to the provisions of R 421.210.

(2) An individual who has established a benefit year, but has not received a benefit check for a compensable period during such benefit year, may request a redetermination of benefit rights and cancellation of the established benefit year and may file a new claim to establish a new benefit year, the beginning date of which shall be determined pursuant to subrule (1) of this rule.

History: 1944 AC; 1944 ACS 26; 1954 AC; 1954 ACS 13, Eff. Feb. 14, 1958; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980.

R 421.212 Leaving an employer in response to a recall by a former employer or to accept full-time work with another employer.

Rule 212. (1) If an individual who is currently employed at the time of accepting a recall to work for a former employer or accepting permanent full-time work with another employer continues to work concurrently with both employers for a reasonable length of time, not to exceed 10 working days, then wages earned with the employer for whom the individual was working at the time of recall or acceptance of other work are subject to transfer to the recalling or new employer under section 29(5) of the act.

(2) Wages transferred to a recalling employer or an employer with whom an individual has accepted work and performed services under section 29(5) of the act are subject to reduction under section 29(4) of the act in the event of a subsequent disqualifying act with the recalling employer or employer with whom an individual has accepted work.

(3) Section 29(5) of the act shall be applicable in situations where it is necessary for an individual to leave his current work as a condition of referral through a union hiring hall, if the individual has received an assurance from an authorized official of the union hiring hall that there is permanent full-time work available for that individual with a specific employer and the individual performs services for the new employer within 5 calendar days of the day of separation from the former employer.

History: 1954 ACS 44, Eff. Nov. 14, 1965; 1954 ACS 53, Eff. Feb. 14, 1968; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980.

R 421.215 Rescinded.

History: 1944 AC; 1944 ACS 12; 1954 AC; 1954 ACS 13, Eff. Feb. 14, 1958; 1954 ACS 44, Eff. Nov. 14, 1965; 1954 ACS 53, Eff. Feb. 14, 1968; 1979 AC; rescinded 1979 ACS 2, Eff. Apr. 25, 1980.

R 421.216 Waiver of seeking work.

Rule 216. (1) A laid off individual need not seek work if, under section 28(1)(a) of the act, this requirement is waived by the agency upon written notification by the individual's employer that the layoff is temporary and that work is expected to be available within 45 calendar days following the last day the individual worked. A waiver is effective if the agency receives notification from the employer before the individual is certified for his or her first compensable week following the layoff.

(2) The agency is authorized, under section 28(1)(a) of the act, to waive the seeking work requirement where the agency finds that suitable work is not available. Unless the agency determines that suitable work is available for an individual, suitable work will be presumed unavailable if the total unemployment rate for the state equals or exceeds 8.5%. In instances where the seeking work requirement is waived under section 28(1)(a) of the act, the individual shall be registered for work and shall not be in a period of disqualification.

(3) The agency may, under section 28(1)(a) of the act, waive the seeking work requirement if an individual is on a short-term layoff, as used in this rule, with a definite return-to-work date which is not later than 15 consecutive calendar days beginning with the first day of scheduled unemployment resulting from the layoff, and if the seeking work requirement is not waived for the individual under section 28(1)(a) of the act. The waiver under this subrule shall be based on the presumption that suitable work is not available for that individual. The presumption is based on the recognition that an individual on such a short-term layoff, as that term is used in this rule, is job-attached and is not likely to be hired by another employer for a short period. The agency shall verify, by telephone or written communication with the employer, that the layoff meets the criteria of this rule. The agency shall record the verification to include the return to work date and the name and title of the employer's representative verifying the date submitted. If the agency is unable to obtain confirmation from the employer at the time the claim is filed, then the determination as to whether the seeking work requirement is subject to waiver under this subrule shall be based on the evidence presented by the unemployed worker. The application of a waiver in accordance with this subrule shall not extend beyond the above 15 consecutive calendar day period or the date the individual returns to work, whichever occurs first.

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(4) The agency's authorization of the waiver of seeking work under subrules (1), (2), and (3) of this rule shall not relieve the unemployed individual claiming benefits of continuing to file claims pursuant to R 421.210 and being able and available to perform suitable full-time work.

History: 1979 ACS 2, Eff. Apr. 25, 1980; 1986 MR 6, Eff. July 11, 1986; 2001 MR 2, Eff. Feb. 2, 2001; 2002 MR 7, Eff. Apr. 10, 2002.

R 421.228 Rescinded.

History: 1944 ACS 12; 1954 AC; rescinded 1954 ACS 13, Eff. Feb. 14, 1958.

R 421.243 Payment of benefits to interstate unemployed workers.

Rule 243. (1) This rule shall govern the Michigan employment security commission in its administrative cooperation with other states and the Dominion of Canada for the payment of benefits to interstate unemployed workers.

(2) As used in this rule, unless the context clearly requires otherwise:

(a) "Agent state" means any state in which an individual files a claim for benefits against another state or states.

(b) "Benefits" means the compensation payable to an individual with respect to his unemployment under the unemployment insurance law of any state.

(c) "Interstate benefit payment plan" means the plan under which benefits are payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

(d) "Interstate unemployed worker" means an individual who claims benefits under the unemployment insurance law of 1 or more liable states through the facilities of an agent state. The term "interstate unemployed worker" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state, unless the Michigan employment security commission finds that this exclusion would create undue hardship on such unemployed workers in specified areas.

(e) "Liable state" means any state or states against which an individual files a claim for benefits through another state.

(f) "State" includes any state as defined in the Michigan employment security act.

(g) "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

(3) With respect to the benefit rights of interstate unemployed workers, all of the following shall apply:

(a) If a unemployed worker files a claim against any state, and it is determined by such state that the unemployed worker has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the unemployed worker may file claims against any other state in which there are available benefit credits.

(b) For the purposes of this rule, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable or whenever benefits are affected by the application of a seasonal restriction.

(c) The benefit rights of interstate unemployed workers established by this rule shall apply only with respect to new claims (notices of unemployment) filed on or after the effective date of this rule.

(4) Michigan, as agent state, shall do all of the following:

(a) Shall not refuse to take an interstate claim.

(b) Shall take claims for interstate unemployed workers on uniform interstate forms and in accordance with uniform procedures developed pursuant to the interstate benefit payment plan.

(c) Shall take claims for interstate unemployed workers in conformity with the requirements of subrule (3) of this rule.

(d) Shall take claims for interstate unemployed workers pursuant to the reporting requirements and type of week in use in Michigan.

(e) Shall register for work an interstate unemployed worker pursuant to Michigan registration requirements and shall report such registration to the liable state.

(f) Shall, in connection with each claim filed by an interstate unemployed worker, ascertain and report to the liable state in question such facts related to the unemployed worker's availability for work and eligibility for benefits as are readily determinable in and by the state of Michigan.

(g) Shall limit its responsibility and authority in connection with the determination of interstate claims to investigation and reporting of relevant facts.

(h) Shall afford all reasonable cooperation in the filing of appeals, taking of evidence, and the holding of hearings in connection with appealed interstate claims.

(5) Michigan, as liable state, shall do all of the following:

(a) Shall accept interstate claims when filed on uniform interstate claim forms and in accordance with uniform procedures adopted pursuant to the interstate benefit payment plan.

(b) Shall accept interstate claims as meeting Michigan's reporting requirements when filed pursuant to the reporting requirements of an agent state.

(c) Shall accept interstate claims when filed in conformity with the requirements of subrule (3) of this rule.

(d) Shall deem the registration for work of any interstate unemployed worker as meeting Michigan registration requirements when such registration has been made through a public employment office in an agent state when and as required by the law, rules, and the procedures of the agent state.

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(e) Shall accept interstate claims filed in accordance with the type of week in use in the agent state and shall make required adjustments to fit such claims to the type of week used in Michigan on the basis of consecutive claims filed.

(f) Shall determine whether an interstate unemployed worker filing against Michigan is eligible and qualified under the provisions of the Michigan act.

(g) Shall accept an appeal of an interstate unemployed worker. However, with respect to the time limits imposed by the Michigan act upon the filing of an appeal in connection with a disputed claim, an appeal made by an interstate unemployed worker shall be deemed to have been made and communicated to Michigan on the date it is received by a qualified officer of an agent state. Further, when an appeal is filed by means of a written communication from a unemployed worker directly to Michigan, the date such communication is received at any office of the commission shall be deemed to be the filing date.

(6) All of the provisions of this rule shall apply to the taking of claims in and for Canada pursuant to the provisions of the agreement, as amended, between Canada and the United States of America respecting unemployment insurance.

History: 1944 AC; 1944 ACS 12; 1944 ACS 27; 1954 AC; 1954 ACS 13, Eff. Feb. 14, 1958; 1954 ACS 44, Eff. Nov. 14, 1965; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980.

R 421.251 Labor dispute.

Rule 251. (1) When an employer believes that the unemployment of any of its workers in Michigan is due to a labor dispute in any establishment operated by such employer within the United States, or is due to shutdown operations caused by such labor dispute, the employer shall file, within five business days from the time the unemployment begins, a written statement with the Michigan Employment Security Commission, 7310 Woodward Avenue, Detroit, Michigan 48202, or with any branch office of the commission, setting forth all of the following information:

(a) That there is unemployment in Michigan due to a labor dispute or to shutdown operations caused by such labor dispute.

(b) The location of the plant or plants and division or divisions operated by the employing unit within the United States in which the labor dispute or shutdown operations occurred which caused such unemployment.

(c) The location of any other plant or plants and division or divisions operated by the employing unit in the state of Michigan in which there is no labor dispute, but in which there is unemployment due to the labor dispute or to shutdown operations caused by such labor dispute.

(d) A statement of the principal issues involved.

If any of the information specified in subdivisions (a) to (d) of this subrule is not available for inclusion in the written statement required within five business days, a supplemental statement incorporating such information shall be filed as soon as the information is available.

(2) To disqualify an individual for benefits because of being directly interested and consequently being directly involved in a labor dispute, the commission must find that the resolution of such labor dispute may reasonably be expected to affect the individual's wages, hours, or other conditions of employment. In the absence of substantial and preponderating evidence to the contrary, a "reasonable expectation" of an effect shall be deemed to exist if any 1 of the following 3 circumstances is found to be applicable:

(a) If it is established that there is, in the particular establishment or employing unit, a practice or custom or contractual obligation to extend, within a reasonable period, to members of the individual's grade or class of workers, in the establishment in which the individual is or was last employed, changes in terms and conditions of employment which are substantially similar or related to some or all of the changes in terms and conditions of employment which are made for the workers among whom the labor dispute exists which has caused the individual's total or partial unemployment. For the purpose of determining the "practice or custom" of an establishment or employing unit, as this phrase is used in this subdivision, the collective bargaining history of the employing unit shall be examined for the period of existence of the employing unit, but for not more than 5 years preceding the inception of the current labor dispute. A "practice or custom" shall be deemed to exist if, and only if, the employing unit has always, during the period examined, extended changes in terms and conditions of employment to members of the individual's grade or class of workers which were substantially similar or related to some or all of the changes in terms and conditions of employment which were made for the workers among whom the current labor dispute exists or existed. The phrase "extend within a reasonable period," as used in this subdivision, means that the establishment or employing unit has, by past practice, custom, or contract, actually effectuated substantially similar or related changes for members of the individual's grade or class of workers within 90 days after changes were made for the workers among whom there exists or existed the labor dispute which caused the unemployment in question. The requirement in this subdivision that the changes in terms and conditions shall have been substantially similar or related does not mean that the changes extended each time, during the period examined, to members of the individual's grade or class of workers shall have been identical.

(b) If it is established that 1 of the issues in or purposes of such labor dispute is to obtain a change in the terms and conditions of employment for members of the individual's grade or class of workers in the establishment in which the individual is or was last employed.

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(c) If such labor dispute exists at a time when the collective bargaining agreement, which covers the individual's grade or class of workers in the establishment in which the individual is or was last employed and the workers in another establishment of the same employing unit who are actively participating in such labor dispute, has expired, has been opened by mutual consent, or may, by its terms, be modified, supplemented, or replaced.

Notwithstanding the applicability of subdivision (a), (b), or (c) of this subrule, an individual shall not be deemed to be directly interested in a labor dispute if there is substantial and preponderating evidence which indicates that there is no reasonable expectation that the individual's wages, hours, or other conditions of employment may be affected by the resolution of the current labor dispute.

(3) The term "establishment," as applied to an employing unit engaged in construction activities at different locations, shall be construed, for the purpose of adjudicating building trade labor disputes, as follows:

(a) Each separate project of such employing unit, whether a general contractor or subcontractor, shall be considered a separate "establishment," within the meaning of this term as used in section 29(8) of the act, if the project is a separate activity insofar as the employees are concerned for the purpose of employment. In determining which construction activities of an employing unit shall constitute a separate project and consequently a separate establishment, the following factors, among others, shall be considered:

(i) Whether the employees for each project were hired for that job and are to be terminated upon its completion.

(ii) Whether the employees of an employing unit operating different projects worked primarily on 1 project rather than interchangeably on other projects.

(iii) Whether separate building schedules were followed.

(iv) Whether construction accounting procedures were such that contracts were bid on for each project on the basis, for example, of separate cost accounting, separate tax computations, or separate payrolls.

(b) Each employing unit engaged on a project, such as general contractor or subcontractor, is considered to be a separate establishment.

(4) For the purpose of determining whether the payment of union dues shall be deemed financing under section 29(8)(a)(ii) of the act, all of the following provisions shall be applicable:

(a) The payment of regular union dues in amounts and for purposes established before any unemployment due to a labor dispute shall not be construed as financing, even if such dues are used for a strike fund or other financing of the labor dispute.

(b) The payment of regular union dues which are established or increased after there is unemployment due to such labor dispute and which are used for the purpose of financing the current labor dispute shall be construed as financing the labor dispute.

(c) The payment of a special assessment into a fund established at any time and used for the purpose of financing the current labor dispute shall be construed as financing a labor dispute.

(d) The term "special assessment," for the purpose of this rule, means a payment made by a union member to his or her union to establish a fund for a specific purpose other than the payment of the ordinary administrative expenses of the union.

(e) The term "regular union dues," for the purpose of this rule and section 29(8)(a)(ii) of the act, means any payment, other than a special assessment, made by a union member on a continuing basis to his or her union.

History: 1944 AC; 1944 ACS 12; 1954 AC; 1954 ACS 13, Eff. Feb. 14, 1958; 1954 ACS 44, Eff. Nov. 14, 1965; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980; 1986 MR 6, Eff. July 11, 1986.

R 421.254 Value of lost remuneration.

Rule 254. If the value of lost remuneration is unknown, it shall be computed in the following manner:

(a) The total earnings of the worker with the employer (or employing unit) during the calendar week covered by the claim, exclusive of earnings for overtime work, shall be divided by the total number of hours, exclusive of overtime hours, worked during the calendar week. The value of the lost remuneration shall be the result obtained by multiplying the hourly rate so arrived at by the number of hours lost during such calendar week for any reason other than the failure of the employer to furnish full-time employment.

(b) In the absence of any circumstances to the contrary, a work week of 40 hours shall be deemed to be a normal week for the purposes of this rule.

History: 1944 AC; 1944 ACS 12; 1954 AC; 1954 ACS 13, Eff. Feb. 14, 1958; 1979 AC.

R 421.262 Rescinded.

History: 1944 ACS 12; 1954 AC; rescinded 1954 ACS 13, Eff. Feb. 14, 1958.

R 421.265 Rescinded.

History: 1944 ACS 12; 1944 ACS 26; 1944 ACS 29; 1954 AC; rescinded 1954 ACS 13, Eff. Feb. 14, 1958.

R 421.269 Method of requesting reconsideration or redetermination.

Rule 269. A request for reconsideration or redetermination of a determination shall be either in writing or in another form approved by the agency. The request is considered filed upon receipt by the agency, using a delivery method approved by the agency and detailed in the document being protested or appealed.

History: 2001 MR 2, Eff. Feb. 2, 2001.

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R 421.270 Good cause for reconsideration and reopening.

Rule 270. (1) In determining if good cause exists under sections 32a, 33, and 34 of the act, after the 30-day protest or appeal period has expired, for reconsideration of any prior determination or redetermination or for reopening and review, good cause shall include, but not limited to, any of the following situations:

(a) If an interested party has newly discovered material facts which, through no fault of the party, were not available to the party at the time of the determination, redetermination, order, or decision. However, a request for reconsideration of a determination or redetermination or for reopening a decision or order made after the expiration of the statutory 30-day period solely for the purpose of evading or avoiding such statutory period is not for good cause.

(b) If the agency has additional or corrected information.

(c) If an administrative clerical error is discovered in connection with a determination, redetermination, order, or decision.

(d) If an interested party has a legitimate inability to act sooner.

(e) If an interested party fails to receive a reasonable and timely notice, order, or decision.

(f) If an interested party is prevented from acting sooner due to an untimely delivery of a protest, appeal, or agency document by a business or governmental agency entrusted with delivery of mail.

(g) If an interested party has been misled by incorrect information from the agency, the office of appeals, or the board of review.

(2) If, before the start of an initial hearing before the office of appeals, the agency receives new, additional, or corrected information or discovers an administrative clerical error in the claim, the matter may be returned to the agency for reconsideration and redetermination.

History: 1944 ACS 12; 1954 AC; 1954 ACS 13, Eff. Feb. 14, 1958; 1954 ACS 53, Eff. Feb. 14, 1968; 1979 AC; 1979 ACS 2, Eff. Apr. 25, 1980; 1986 MR 6, Eff. July 11, 1986; 2001 MR 2, Eff. Feb. 2, 2001.

R 421.301 Rescinded.

History: 1944 AC; 1944 ACS 12; 1954 AC; 1954 ACS 44, Eff. Nov. 14, 1965; 1979 AC; rescinded 1979 ACS 2, Eff. Apr. 25, 1980.

R 421.302 Vacation pay.

Rule 302. When an employer is entitled to designate, pursuant to section 48 of the Michigan employment security act, vacation pay to a period of layoff, forced vacation, or other separation, the employer shall either deliver to the affected employee and to the employee's bargaining representative, if any, on or before the employee's last day of work, written notice of such designation stating that such designation may render the employee ineligible for unemployment benefits during the designated period or shall post such notice conspicuously in easily accessible places frequented by employees and deliver a copy thereof to the employee's bargaining representative, if any. However, as to an individual laid off prior to the time of designation, posting of the notice shall not substitute for the requirement of delivery of the notice to such individual by mail.

History: 1979 ACS 2, Eff. Apr. 25, 1980.

R 421.601 Newly liable nonprofit employer electing reimbursement payments; security.

Rule 1. (1) A newly liable nonprofit employer that elects, on and after December 21, 1989, to make reimbursement payments pursuant to the provisions of section 13a of Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being §421.13a of the Michigan Compiled Laws, shall provide the required security for the first-year security that is required pursuant to the provisions of section 13a(4) of Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being §421.13a(4) of the Michigan Compiled Laws, and for the 2 consecutive succeeding calendar years. Thereafter, the security shall be renewed for 2-year periods for as long as the nonprofit organization retains reimbursement status. A nonprofit employer that seeks to renew a security and thereby retain reimbursement status shall do so by November 30 of the year before the year for which the security is required.

(2) The security shall be in the form of a surety bond, irrevocable letter of credit, or other banking device which is acceptable to the employment security commission and which provides for payment to the commission, on demand, of an amount equal to the security required to be posted. The required security may be posted by a third-party guarantor.

(3) This rule shall not apply to a newly liable nonprofit employer that is expected to pay less than $100,000.00 in total wages per calendar year. However, a nonprofit employer that elects reimbursement status on or after December 21, 1989, shall be required to provide security when payment of gross wages in a calendar year reaches $100,000.00. It is the employer's duty to notify the commission, within 60 days, that its payroll has reached $100,000.00 per year. The security shall be posted within 30 days of notice of such requirement by the commission.

(4) For newly liable employers, the amount of security that is required shall be 4.0% of the employer's estimated total annual wage payments, as determined by the commission. Employers that have a previous payroll history shall be required to file a security that is equal to 4.0% of the total annual wage payments for the 12-month period ended June 30 of the year before the year the security is required or 4.0% of the estimated total annual wage payments, whichever is greater.

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History: 1992 MR 4, Eff. May 15, 1992.

R 421.602 Nonprofit employer liable before December 21, 1989, electing reimbursement payments; security.

Rule 2. (1) A nonprofit employer that was liable before December 21, 1989, and that elects the reimbursement method of financing on or after December 21, 1989, shall be required to post a security for the year of election and the succeeding year. Thereafter, the security shall be renewed for 2-year periods. A nonprofit employer that seeks to renew a security and thereby retain reimbursement status by posting a security shall do so by November 30 of the year before the year for which the security is renewed.

(2) The security shall be in the form of a surety bond, irrevocable letter of credit, or other banking device which is acceptable to the commission and which provides for payment to the commission, on demand, of an amount equal to the security that is required to be posted. The required security may be posted by a third-party guarantor.

(3) This rule shall not apply to a nonprofit employer that is expected to have less than $100,000.00 per calendar year in total wage payments, as determined by the commission. However, a nonprofit employer that elects reimbursement status on or after December 21, 1989, shall be required to provide security when the payment of gross wages in a calendar year reaches $100,000.00. It is the employer's duty to notify the commission, within 60 days, that its payroll has reached $100,000.00 per year. The security shall be posted within 30 days of notice of such requirement by the commission.

(4) The amount of security that is required shall be 4.0% of the employer's estimated total annual wage payments, as determined by the commission. Employers that have a previous wage payment history shall be required to file a security that is equal to 4.0% of the gross wages paid for the 12-month period ended June 30 of the year before the year the security is required or 4.0% of the estimated total annual wages, whichever is greater.

History: 1992 MR 4, Eff. May 15, 1992.

R 421.603 Effect of delinquent payment of reimbursement charges.

Rule 3. (1) If a nonprofit employer, regardless of the size of payroll or the date of election to become reimbursing, that was exempted from a security requirement becomes delinquent in paying its reimbursement charges for any 2 consecutive calendar quarters, the commission shall, pursuant to the provisions of section 13d of Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being §421.13d of the Michigan Compiled Laws, require the employer to execute and file a surety bond, irrevocable letter of credit, or other banking device which is acceptable to the commission and which provides for payment to the commission, on demand, of an amount equal to the security that is required to be posted. This rule shall apply even if the reimbursement charges have been protested by the employer. The security requirement may be posted by a third-party guarantor.

(2) For the purpose of this rule, an employer shall be considered delinquent if a billed amount is not paid within 30 days of the due date of billing for benefit charges. If the billed amount due is for benefit charges that have been protested by an employer and are under appeal, the employer shall pay the benefit charges in a timely manner, under protest, to avoid the security requirement. If the employer has a delinquency that is more than the amount of the security required, the employer shall be required to pay the delinquency in full and post the security, even if the benefit charges have been protested and are under appeal, or the employer's status as a reimbursing employer shall be terminated for the next calendar year. The security shall be filed within 30 days of notice to the employer of the requirement to file a security and shall be posted for the remainder of any calendar year plus the 2 subsequent calendar years.

(3) The amount of security that is required shall be equal to 4.0% of the employer's total gross wage payments for the 12-month period ending on the most recent June 30 or 4.0% of the employer's anticipated gross wage payments for the current year, whichever is greater. If wage information is not available, the commission shall estimate the payroll based on the information available. The security, once filed, shall remain in effect for the remainder of the first year it is required plus the 2 consecutive succeeding calendar years, at which time it will be subject to renewal for additional 2-year periods at the commission's discretion. If the required renewal security is not provided by November 30 of the year before the year for which it is required, the employer's reimbursement status shall be terminated.

History: 1992 MR 4, Eff. May 15, 1992.

R 421.604 Effect of failure to comply with rules.

Rule 4. Failure to comply with the security requirements of R 421.601 to R 421.603 shall result in the denial of election of reimbursement status or shall result in termination, by the commission, of the employer's existing reimbursement status.

History: 1992 MR 4, Eff. May 15, 1992.

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R 421.605 Effect of reimbursement payment delinquency.

Rule 5. If a reimbursing employer complies with the security requirement of R 421.601 to R 421.603, but is delinquent in making reimbursement payments for 2 consecutive quarters after the imposition of the security requirement, or if the delinquency is at any time more than the amount of security required, the commission shall terminate the employer's reimbursement status as of the beginning of the next calendar year. For the purpose of termination of reimbursing status, an employer shall be considered delinquent if a billed amount is not paid within 30 days of the due date of a charge or billing. If the billed amount due is for benefit charges that have been protested by an employer and are under appeal, the employer shall pay the benefit charges, under protest, to avoid termination as a reimbursing employer.

History: 1992 MR 4, Eff. May 15, 1992.

R 421.606 Implementation of rules.

Rule 6. The director of the Agency of unemployment insurance of the employment security commission, or an individual designated by the director of the Agency of unemployment insurance, shall be responsible for implementing these rules.

History: 1992 MR 4, Eff. May 15, 1992.

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DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

DIRECTOR'S OFFICE

EMPLOYMENT SECURITY BOARD OF REVIEW

(By authority conferred on the director of the department of consumer and industry services by section 36(1) of 1936 PA 1, MCL 421.36, and Executive Reorganization Order No. 1996-2, MCL 445.2001)

PART 1. GENERAL PROVISIONS

R 421.1101 Definitions.

Rule 101. As used in these rules:

(a) "Act" means 1936 (Ex. Sess.) PA 1, MCL 421.1 et seq.

(b) "Agent office" means an unemployment insurance office outside the state of Michigan serving as agent of the agency.

(c) "Board of review" or "board" means the Michigan employment security board of review.

(d) "Agency" means a the unemployment insurance agency as created in Executive Reorganization Order No. 2003-1, MCL 445.2011.

(e) Unless the context otherwise requires, the word "party" means the agency, the employing unit, and the claimant, and includes an agent or attorney of the agency, the employing unit, or the claimant.

(f) "Referee"means a hearing officer or administrative law judge with the state office of administrative hearings and rules (SOAHR) as created in Executive Reorganization Order No. 2005-1, MCL 445.2021.

(g) "Rehearing" means a request for review of a decision of a referee or the board of review received within 30 days after the date of mailing of the decision.

(h) "Reopening" means a request for review of a decision of a referee or the board of review after the 30th day, but within one year, after the date of mailing of the decision.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 2002 MR 17, Eff. Sept. 20, 2002; Eff. 2002 AACS; 2007 AACS.

R 421.1102 Tense, gender, and number.

Rule 102. For the purposes of these rules, the present tense includes the past and future tenses, and the future, the present; each gender includes the other 2 genders; and the singular includes the plural and the plural, the singular.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC.

R 421.1103 Principal office of agency and board; location.

Rule 103.(1) The principal office of the unemployment insurance agency is Cadillac Place, 3024 W. Grand Blvd., Detroit, Michigan 48202.

(2)The principal office of the Michigan Employment Security Board of Review is Ottawa Bldg., Fourth Floor, 611 Ottawa St., Lansing, Michigan 48909-7975.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 2002 MR 17, Eff. Sept. 20, 2002; 2002 AACS; 2007 AACS.

R 421.1104 Service of decisions, notices, and orders; “principal office” defined.

Rule 104. (1) A decision, notice, or order shall be served on each party and on the agent or attorney of record for each party by any of the following methods:

(a) Personal service.

(b) Depositing copies, which are enclosed in an envelope that is properly sealed, addressed, and posted to such person at his or her address appearing on the record of the appeal proceedings, in a United States mail receptacle.

(c) Certified or registered mail. An affidavit or certification of the person making such service shall be prima facie proof of service which is rebuttable by a preponderance of the credible evidence.

(2) If a written request for a notice of a referee hearing or a specific referee decision is received by the agency before the date of mailing of such notice or decision from a claimant’s collective bargaining representative who is not the claimant’s agent of record or from a claimant’s employer who is not a party, each such notice of hearing or referee decision shall be served by any of the methods in subrule (1) of this rule on the principal office of the claimant’s collective bargaining representative, if any, or of the employer, where the claim involves any of the following:

(a) Whether a claimant is disqualified under section 29(1)(g), 29(8), or 29(9) of the act.

(b) Whether money paid a claimant is vacation or holiday pay within the meaning of a collective bargaining agreement under section 48 of the act.

(c) Whether a claimant is on a leave of absence within the meaning of a collective bargaining agreement under section 48 of the act.

(d) The impact of a collective bargaining agreement on the issue of suitable work under section 28 or 29 of the act, including, but not limited to, the claimant’s prior training, prior earnings, experience, and possible loss of recall or seniority rights.

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(e) A claim for federal unemployment benefits where the employer is not a party.

(3) For purposes of subrule (2) of this rule, "principal office" means a collective bargaining representative address filed with the agency by the representative or the claimant or an employer address filed with the agency by the employer.

(4) The provision, pursuant to subrule (2) of this rule, of either a notice of a referee hearing or a referee decision, or both, to a collective bargaining representative or to an employer who is not a party does not serve to make such collective bargaining representative or employer a party under these rules.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988; 1988 AACS; 2007 AACS.

R 421.1105 Computation of time periods.

Rule 105. (1) The calendar day on which any decision, notice, or order is mailed shall be excluded in the computation of time.

(2) The calendar day on which compliance is required shall be included in the computation of time.

(3) If the last day for compliance is a Saturday, Sunday or legal holiday, the time for compliance will extend to the end of the next day which is not a Saturday, Sunday, or legal holiday.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC.

R 421.1106 Withdrawal or discontinuance of appeal.

Rule 106. A party who has filed an appeal may withdraw or discontinue the appeal by filing a written request and obtaining approval of the referee or the board of review before whom the appeal is pending.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC.

R 421.1107 Adjournments; taking testimony of witness unable to appear and testify at scheduled hearing; deposition.

Rule 107. (1) Adjournments of hearings may be granted by the referee or the board of review before whom the appeal is pending. Adjourned hearings shall be rescheduled to a time and place that the referee or board of review deems most convenient for all interested parties.

(2) The referee or the board of review may schedule an adjourned hearing at a place convenient to the residence of a witness to take his testimony, if he is unable to appear and testify at a regularly scheduled hearing.

(3) The testimony may be taken by any referee of this state or of any agent state, or may be taken by deposition pursuant to the provisions of law applicable to depositions in civil actions pending in the circuit courts of this state.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC.

R 421.1108 Witness fee vouchers; processing.

Rule 108. At the conclusion of a testimonial hearing by the referee or the board of review, witness fee vouchers shall be processed by the agency for payment for those witnesses who satisfy all of the following conditions:

(a) Were duly subpoenaed.

(b) Appeared in person at the hearing.

(c) Verified their mileage and proper mailing addresses.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 2007 AACS.

R 421.1109 "Good cause" defined.

Rule 109. As used in these rules, "good cause" includes, but is not limited to, any of the following:

(a) Newly discovered material evidence.

(b) A legitimate inability to act sooner.

(c) A failure to receive a reasonable and timely notice, order, or decision.

(d) Untimely delivery of a protest, appeal, or an agency document by a business or governmental agency entrusted with delivery of mail.

(e) Having been misled by incorrect information from the agency, referee, or board of review.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988; 1988 AACS; 2007 AACS.

R 421.1110 Employer or claimant fraud; hearing procedure.

Rule 110. (1) A hearing of employer or claimant fraud under section 54, 54a, 54b, 54c, OR 62(b), (c), or (d) of the act shall be preceded by a written notice of the penalties and issues involved.

(2) Where one party, including the agency, has documentary evidence or witnesses concerning another party's alleged fraud; the party shall make a witness list and the documentary evidence available to the other party or parties not less than 10 days before a fraud hearing.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988; 2002 MR 17, Eff. Sept. 20, 2002; 2002 AACS; 2007 AACS.

R 421.1111 Decisions of board and courts; subject matter index; copies.

Rule 111. Copies of Michigan court decisions involving the act where the agency is a party shall be kept on file by the agency at Cadillac Place, 3024 W. Grand Blvd., Detroit, Michigan 48202. To the extent practicable, the board of review shall maintain a digest, indexed by subject, of selected board of review and related court decisions. The subject matter index and copies of the decisions shall be available to the public for reference purposes.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988;

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2002 MR 17, Eff. Sept. 20, 2002; 2002 AACS; 2007 AACS.

R 421.1112 Rescission.

Rule 112. R 421.501 to R 421.561 of the Michigan Administrative Code, appearing on pages 4356 to 4361 of the 1967 Annual Supplement to the Code, are rescinded.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC.

PART 2. APPEALS TO REFEREES

R 421.1201 Appeal; form.

Rule 201. (1) An appeal to a referee shall be in writing and shall be signed by the appealing party or his agent.

(2) Appeal forms for referee hearings and rehearings shall be available at all commission offices.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC.

R 421.1202 Appeal; deadline; statements on redetermination; procedure on appeal of denial of redetermination.

Rule 202. (1) An appeal to a referee shall be received by the principal office or any branch office of the commission, or by any agent office of the commission outside the state of Michigan, within 30 days after the date of mailing or personal service of the commission's redetermination.

(2) A party who receives a denial of redetermination because his or her request for review was not filed with the commission within 30 days after the date of mailing or personal service of the underlying determination or redetermination may appeal the denial of redetermination to a referee. The referee shall take evidence on whether there was good cause for issuing a redetermination. If the referee finds good cause, the referee shall inform the parties of that fact and shall then proceed to take testimony on, and decide, the underlying issue or issues, in accordance with R 421.1206.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988.

R 421.1203 Notice of hearing.

Rule 203. (1) Except as required by subrule (4) of this rule, notice of the time and place of any hearing before a referee, and a short and plain statement of the issues involved, shall be mailed to, or personally served upon, each party by mail or personal service not less than 10 days before the date of the hearing.

(2) The notice shall be deemed mailed on its date of mailing.

(3) When a referee adjourns a hearing for which notice has been given, notice to the parties of the new hearing date may be given orally if the new hearing date is within 10 days of the old hearing date. Otherwise, the new notice shall be mailed.

(4) When a hearing involves employer or claimant fraud under section 54, 54a, 54b, 54c, or 62(b), (c), or (d) of the act, the notice of hearing shall be mailed to, or personally served upon, each party by mail or personal service not less than 20 days before the date of the hearing.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 2002 MR 17, Eff. Sept. 20, 2002.

R 421.1204 Subpoenas.

Rule 204. (1) A party may request subpoenas to compel witnesses to testify at a referee hearing or to compel persons to produce books, records, and papers at a referee hearing.

(2) Requests for subpoenas shall be made to a branch office or the referee division of the commission.

(3) The subpoenas shall be issued promptly, unless the commission decides that the request is unreasonable.

(4) A party denied a subpoena may apply to the board of review for issuance of the subpoena, and the proceedings before the referee shall be stayed until the board decides whether the subpoena should be issued.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC.

R 421.1205 Consolidation of proceedings.

Rule 205. Any number of proceedings before 1 or more referees may be consolidated for hearing when the facts and circumstances are similar and no substantial right of any party will be prejudiced thereby. All cases shall be consolidated for hearing in which the alleged facts and the points of law are the same.

History: 1954 ACS 101, Off. Nov. 14, 1979; 1979 AC.

R 421.1206 Readiness of parties after notice of hearing; adjournment; Issues before referee.

Rule 206. (1) A party appearing at a hearing before a referee after notice shall have his or her evidence and witnesses present and be ready to proceed on the statement of the issues contained in the notice of hearing.

(2) If an issue or time period beyond that specified in the determination or redetermination is raised at the referee hearing without having been included in the notice of hearing, the hearing shall be adjourned for a reasonable time if requested by either party. Evidence shall not be taken on the issue or time period, and a decision shall not be issued thereon, unless a knowing and informed waiver of adjournment is obtained from the parties. The purpose of the adjournment is to give the parties the opportunity to prepare to meet the issue.

(3) To secure a knowing and informed waiver on the record, it is the obligation of the referee to do all of the following:

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(a) Advise the parties that an issue or issues or a period of time not specified in the hearing notice has been or is about to be raised.

(b) Advise the parties of the nature of such issue and the consequences of his or her ruling on such issue.

(c) Advise the parties of the right to request an adjournment.

(4) With regard to that part of a referee's decision which rules on an issue or a period of time not specified in the notice of hearing and where a waiver of adjournment has not been obtained, as required under subrules (2) and (3) of this rule, the board may remand, set aside, modify, reverse, or affirm on appeal.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988.

R 421.1207 Conduct of hearing.

Rule 207. (1) The referee shall conduct and control the hearing to develop the rights of the parties.

(2) At the beginning of the hearing, the referee shall identify all parties, representatives, and witnesses present and shall outline briefly the issues involved.

(3) Oral evidence at a hearing before a referee shall be taken only on oath or affirmation.

(4) Each party shall have all of the following rights:

(a) To call and examine witnesses.

(b) To introduce exhibits.

(c) To cross-examine opposing witnesses on any matter relevant to the issues, even though that matter was not covered in the direct examination.

(d) To impeach any witness, regardless of which party first called the witness to testify.

(e) To rebut the evidence against him or her.

(5) A party may be called and examined as if under cross-examination.

(6) Oral arguments may be presented at the conclusion of the hearing.

(7) The referee may allow a reasonable time after conclusion of the hearing for the filing of written argument.

(8) The referee shall secure such competent, relevant, and material evidence that he or she deems necessary to arrive at a fair decision. To that end, the referee may adjourn the hearing from time to time to direct the parties to present the required evidence. The referee may cause subpoenas to be issued for that purpose. The referee may examine any party or witness. However, if the claimant or the employer is represented by legal counsel or an authorized agent, the referee shall allow legal counsel or the authorized agent to first conduct the direct examination of his or her witnesses, if requested. Then the referee may further examine any party or witness.

(9) When an interested party is not represented by legal counsel or an authorized agent, the referee before whom the hearing is taking place shall advise the party of his or her rights, aid him or her in examining and cross-examining witnesses, and give every assistance to the party compatible with an impartial discharge of the referee's official duties.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988.

R 421.1208 Hearing location; telephone hearing.

Rule 208. (1) A referee, in his or her discretion, may order that the testimony of parties and witnesses be taken by conference telephone or at a place or places of hearing convenient to the parties and witnesses.

(2) If a divided hearing or telephone hearing procedure is used, a party to the hearing shall submit any documents he or she intends to introduce at the hearing to the other parties and to the referee in time to ensure the documents are received before the date of the scheduled hearing. All documents submitted to the referee shall be identified on the record.

(3) If a hearing is conducted by conference telephone, the referee shall, on the record, make inquiries that the referee deems appropriate to ascertain the identity of the individuals participating by telephone.

(4) The referee may, on the referee's motion or on the motion of a party, adjourn any divided hearing or telephone hearing in progress if, in the referee's opinion, conducting the hearing in that manner is unsatisfactory.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988; 2002 MR 17, Eff. Sept. 20, 2002.

R 421.1209 Further hearing prior to decision.

Rule 209. (1) At any time between the hearing before a referee and issuance of his decision, the referee on his own motion, or at the request of any party to the proceeding, may direct a further hearing.

(2) A further hearing is within the discretion of the referee.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC.

R 421.1210 Decision of referee.

Rule 210. (1) Within 60 days after concluding a final hearing, the referee shall issue a written decision which shall be signed by him and dated. The decision shall set forth the findings of fact upon which the decision is based, the reasons for the decision, and the decision. The findings of fact, the reasons, and the decision shall be separately stated; but a failure to so separately state shall not vitiate the decision.

(2) The decision shall contain a notice of rights of appeal, pursuant to R 421.1213 of this part.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC.

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R 421.1211 Rehearing of referee's decision.

Rule 211. (1) A request for a rehearing of a referee's previous decision shall be received by the referee or by an office or agent office of the commission within 30 days after the date of mailing of the decision.

(2) Reasons for requesting a rehearing include, but are not limited to, good and valid reasons for not appearing at a referee hearing which resulted in a dismissal for lack of prosecution or the discovery of material evidence after the date of the referee hearing.

(3) A rehearing may also be granted on the referee's own motion.

(4) Granting a rehearing is within the discretion of the referee. The referee shall state in the order or decision allowing rehearing the reasons for granting the rehearing.

(5) If a timely request for rehearing is denied, both the denial and the referee's previous decision may be appealed to the board of review.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988.

R 421.1212 Reopening and review of referee's decision.

Rule 212. (1) A request for reopening and review of a referee's previous decision shall be received by the referee or by an office or agent office of the commission within 1-year, but more than 30 days, after the date of mailing of the decision.

(2) There shall be a showing of good cause for reopening. If the referee grants a reopening, the order or decision allowing such reopening shall contain a statement of the basis for the good cause finding. If the referee denies a reopening, the order denying reopening shall contain a statement of the basis for the denial.

(3) A reopening and review may also be granted on the referee's own motion if the review is initiated by the referee, with notice to the interested parties, within 1-year after the date of mailing of the previous decision.

(4) Granting a reopening is within the discretion of the referee. If good cause is established, the referee shall issue an order allowing reopening. The referee shall thereafter decide the underlying issues of the case based on the evidence already submitted and any additional evidence the referee may enter into the record.

(5) If a request for reopening is denied, the board of review will not review the referee's previous decision unless it first decides there was good cause for a reopening.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988.

R 421.1213 Notice of rights of appeal.

Rule 213. Each referee decision or final order shall notify the parties of all of the following:

(a) A party has the right to have a decision or a denial of a motion for rehearing reviewed by the board of review by making a timely appeal.

(b) A party may make a timely request to the board of review for an oral argument or to present additional evidence in connection with his or her appeal.

(c) Absent a hearing before it, the board of review shall consider a party's written argument to the board of review only if all parties are represented or by agreement of the parties.

(d) A referee decision or final order may be appealed directly to a circuit court if the claimant and the employer or their respective authorized agents or attorneys sign a written stipulation and file it in a timely manner.

(e) A party may make a timely request to a referee to rehear a previous decision.

(f) A party may make a timely request to a referee, for good cause only, to reopen and review a previous decision.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988.CS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988.

R 421.1214 Stipulations.

Rule 214. (1) The claimant and the employer or their authorized agents or attorneys may sign a written agreement to appeal a referee decision or order directly to a circuit court rather than to the board of review.

(a) Where a party is unrepresented, the agreement shall recite that the parties are thereby waiving the right to have their case appealed to and reviewed by the board of review.

(b) The stipulation shall be received by the referee within 30 days after mailing or personal service of the referee's decision or order.

(c) Seeking, obtaining, or filing a stipulation does not extend any time period. However, when all parties have signed the stipulation, it shall be deemed an appeal to the board of review until such time as the appeal to the court is perfected.

(2) The parties to an appeal before a referee may stipulate the facts in issue.

(3) Stipulations shall not be in any sense in derogation of the act and shall not involve an interpretation of the act.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988.

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PART 3. APPEALS TO BOARD OF REVIEW

R 421.1301 Appeal; form.

Rule 301. (1) An appeal to the board of review shall be in writing and shall be signed by the party appealing or his agent.

(2) Forms for appeals to the board of review and for rehearing by the board of review shall be available at the office of the board of review and all agency offices that are open to the public.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 2007 AACS.

R 421.1302 Appeal; deadline; for late appeal.

Rule 302. (1) An appeal to the board of review may be received at the office of the board of review, the principal office or any office of the agency, or by any agent office of the agency outside the state of Michigan.

(2) To be received on time, an appeal to the board of review must be received within 30 days after the date of mailing of the referee's decision or the referee's order denying rehearing or the referee's order denying reopening.

(3) The board of review is without jurisdiction to consider the merits of any appeal received after the 30-day appeal period. A party whose appeal is received by the board of review after the 30-day appeal period may request a reopening by the referee pursuant to R 421.1212. If the referee grants reopening, he or she will issue a new decision and the new decision may then be appealed to the board of review pursuant to R 421.1302(1)-(2).

(4) An appeal or request for rehearing or reopening to the board of review may be made by personal service, postal delivery, facsimile transmission, or other electronic means as prescribed by the board of review. If an appeal or request is made by facisimile transmission, the following will be presumed:

(a) That the facsimile transmission was received on time if it was received by the board of review not later than the last minute of the day of the applicable deadline as provided in these rules under prevailing Michigan time.

(b) That the facsimile transmission was received on the date and at the time electronically entered or printed on the face of the document, subject to verification by the board of review at its discretion.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988; 1988 AACS; 2007 AACS.

R 421.1303 Board; decision based on record; notice.

Rule 303. (1) The board of review often decides cases on the record made by the referee, without (a) oral argument before it, (b) additional evidence, or (c) consideration of written argument, unless all parties are represented or agree to written argument.

(2) The record made by the referee is the transcript of the referee hearing, the exhibits marked and received at the referee hearing, and written argument submitted to the referee if the other parties present at the hearing have been served a copy of the argument and have been given an adequate opportunity to respond to it.

(3) Notice of the parties' rights to request oral argument, to submit additional evidence, and to file written argument shall accompany the mailing of the referee hearing transcript to each party.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC.

R 421.1304 Oral argument; application; reasons.

Rule 304. (1) Oral argument to the board of review shall be by permission only.

(2) If a party wishes to apply for permission to make an oral argument to the board of review, the party shall make a request, in writing, setting forth the reasons for requesting permission for oral argument.

(3) Reasons for requesting oral argument include, but are not limited to, any of the following:

(a) The appeal involves an issue on which the law is unsettled or unclear.

(b) The appeal involves an issue of major precedential value.

(c) The record made by the referee is so lengthy that oral argument will be of special assistance to the board in reviewing the record.

(d) Unusual complexities affecting the referee's decision were present at any stage of the proceedings.

(e) The referee's decision departed from established legal precedent.

(4) To be timely, the application shall be received by the board of review not later than 20 days after the date of mailing of the referee hearing transcript, unless a reason constituting good cause is given.

(5) On the motion of 2 members of the board of review panel assigned to review a pending appeal, the board of review may offer the parties the opportunity to submit an application for oral argument more than 20 days after the date of mailing of the referee hearing transcript.

(6) To be granted, the application shall be approved by 2 members of the board of review panel assigned to review the appeal.

(7) The board of review may consider oral argument presented by conference telephone.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988; 2002 MR 17, Eff. Sept. 20, 2002; 2002 AACS; 2007 AACS.

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R 421.1305 Presentation of additional evidence; application.

Rule 305. (1) Presentation of additional evidence to the board of review shall be by permission of the board of review only.

(2) If a party wishes to apply to the board of review for permission to present additional evidence, he or she shall make an application in writing setting forth his or her reasons for applying for permission.

(3) To be timely, the application shall be received by the board of review not later than 20 days after the date of mailing of the referee hearing transcript, unless a reason constituting good cause is given.

(4) To be granted, the application shall be approved by 2 members of the board of review panel assigned to review the appeal.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 2002 MR 17, Eff. Sept. 20, 2002; 2002 AACS; 2007 AACS.

R 421.1306 Additional evidence order.

Rule 306. (1) When the board of review orders additional evidence, it may:

(a) Conduct a hearing pursuant to the act for the purpose of taking and receiving such evidence as it deems necessary.

(b) Remand the matter to a referee for the purpose of taking and receiving such evidence and for the purpose of submitting the evidence so received to the board of review for decision.

(c) Set aside the referee's decision and remand the matter to the referee for the purpose of receiving such additional evidence and for the purpose of issuing a new decision based upon the entire record.

(2) Absent an evidentiary hearing, a copy of documentary evidence directed by the board of review to be introduced shall be mailed by the board to each party to the proceeding, and a reasonable opportunity shall be afforded on request of any party to refute such evidence.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC.

R 421.1307 Written argument; reply; deadlines; consideration; agreement; application for oral argument or additional evidence not deemed written argument; amicus briefs.

Rule 307. (1) A party's written argument, if any, together with a statement of service of a copy on each other party, shall be received by the board of review not later than 20 days after the date of mailing of the referee hearing transcript. However, if an oral hearing is granted, written argument may be presented at any time at or before the oral hearing.

(2) A reply, if any, to another party's timely written argument, together with a statement of service of a copy on each other party, shall be received by the board of review not later than 20 days after the date of mailing of the other party's written argument.

(3) An extension of time for the filing of written argument may be permitted by the board if warranted by the circumstances.

(4) The board of review may consider a party's written argument only if any of the following conditions exist:

(a) All parties are represented by an attorney or other agent of record.

(b) All parties agree that the board may consider written argument.

(c) The board orders oral argument before it.

(d) The board orders evidence produced before it.

(5) As to subrule (4)(b) of this rule, the agreement shall be signed by each party and received by the board of review not later than 20 days after the date of mailing of the referee hearing transcript.

(6) A party's application to the board of review for either oral argument or additional evidence shall not be deemed a written argument within the meaning of this rule.

(7) When the parties are permitted to submit written argument pursuant to this rule and section 34 of the act, the board of review may consider requests for permission to submit an amicus brief from persons or organizations that are not parties to the matter before the board. If the board, in its discretion, grants such a request, all parties shall be notified and the brief shall thereafter be submitted to the board, together with a statement of service of a copy on each of the parties.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988; 2002 MR 17, Eff. Sept. 20, 2002; 2002 AACS; 2007 AACS.

R 421.1308 Record of proceedings; transmittal to board following notification of appeal; copies of referee hearing transcripts.

Rule 308. The record of proceedings before a referee, including the referee hearing transcript together with supporting exhibits, shall be promptly transmitted to the board of review following notification of an appeal to the board. Copies of referee hearing transcripts shall be mailed to the parties or to their attorneys or agents of record without cost to them.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC.

R 421.1309 Transfer of proceeding pending before administrative law judge.

Rule 309. (1) A party to a proceeding pending before an administrative law judge may

file an application to the Michigan compensation appellate commission (mcac) for either of the following:

(a) Transfer of the proceeding to the mcac.

(b) Transfer of the proceeding to another administrative law judge.

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(2) A party may file 2 regular applications for transfer. The application shall be filed at least 3 business days before the next scheduled hearing. An application received after business hours shall be considered filed the next business day.

(3) A party may also file a delayed application for transfer. A delayed application may be filed less than 3 business days before the next scheduled hearing. A delayed application shall include a motion. The mcac may grant the motion for sufficient cause shown, that establishes both of the following:

(a) That circumstances leading to the delay were beyond the control of the applicant.

(b) That to hold the hearing would violate due process.

(4) A party may also file an extenuating circumstances application for transfer. An extenuating circumstances application may be filed after a party has filed 2 or more applications, in any combinations of subrule (2), (3), or (4) of this rule. An extenuating circumstances application shall include a motion. The mcac may grant the motion for sufficient cause shown that establishes both of the following:

(a) That suspending the proceedings will not create undue hardship for the opposing party.

(b) That holding the hearing would violate due process.

(5) As soon as practicable, the mcac shall notify the administrative law judge of 1 of the following:

(a) That a regular application for transfer is pending.

(b) That a motion for delayed application is granted.

(c) That a motion for extenuating circumstances application is granted.

(6) Upon notification under subrule (5) of this rule, the administrative law judge shall immediately issue an order suspending any further proceedings before him or her that involve the pending application.

(7) Upon its own motion, or in response to an application under subrule (2), (3), or (4), the mcac shall determine whether sufficient cause exists to transfer the proceeding.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 AACS, Eff. Sept. 2, 1988, 2013 MR 24, Eff. Dec. 21, 2012.

R 421.1310 Subpoenas.

Rule 310. If the board of review orders additional evidence to be taken before it, a party may ask the board for subpoenas to compel witnesses to testify before the board of review or to compel persons to produce books, records, and papers.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC.

R 421.1311 Proceedings before board panels.

Rule 311. (1) A matter to be heard by the board of review shall be assigned to a panel of the board for disposition.

(2) Two members on a panel constitute a quorum.

(3) A decision reached by 2 members of the panel shall be the final decision of the board of review, except where the entire board participates as provided in R 408.1312.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC.

R 421.1312 Board; composition; communications; full review.

Rule 312. (1) The board of review shall be composed of representatives from 3 different representational sectors. One member shall be a representative of the general public and shall serve as chairperson. The remaining membership of the board shall be equally divided between members who are representative of employee interests in the state and employer interests in the state.

(2) The members of the board may communicate with employers, employees, and their agents and with representatives of the public interest about issues of unemployment insurance and matters affecting the administration of the act. However, board of review members shall not discuss the merits of a case pending before them with a party to the case or the party's duly authorized attorney or agent.

(3) The entire board of review shall conduct a full review of any appeal not yet decided and mailed if full board review is requested by 2 board members from different representational sectors or of any panel decision if full board review is requested by 2 board members from different representational sectors within 5 working days after its mailing date, with notice to the parties.

(4) A person may request a board of review member to request a full review.

(5) A decision of the full board of review which is equally divided shall constitute an affirmance of the decision initially appealed to the board of review.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988.

R 421.1313 Board; decision or order; copies; notice of rights of appeal.

Rule 313. (1) The board of review shall issue written decisions or orders which are signed and dated. The board of review may omit the giving of reasons in cases where a referee's decision is affirmed without alteration or modification.

(2) Decisions of the board of review shall contain a notice of rights of appeal, pursuant to R 408.1316 of this part.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC.

R 421.1314 Rehearing of the board of review's decision.

Rule 314. (1) A request for a rehearing of a board of review decision shall be received by the board of review or by an agent office of the agency or an office of the agency within 30 days after the date of mailing of the decision.

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(2) A rehearing may also be granted on the board of review's own motion.

(3) Granting a rehearing is within the discretion of the board of review.

(4) If a request for rehearing is denied, both the denial and the board of review's decision may be appealed to the appropriate circuit court pursuant to section 38 of the act.

(5) A rehearing request received after the 30th day shall be treated as a request for reopening pursuant to R 421.1315.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988; 1988 AACS; 2007 AACS.

R 421.1315 Reopening and review of the board of review's decision.

Rule 315. (1) A request for a reopening and review of the board of review's decision shall be received by the board of review or by an agent office of the agency or an office of the agency within 1 year, but more than 30 days, after the date of mailing of the decision.

(2) Reopening will be granted only if good cause is established. If the board of review grants reopening, the order or decision allowing reopening shall contain a statement of the basis of the good cause finding. If the board of review denies reopening, the order denying reopening shall contain a statement of the basis for the denial.

(3) Reopening and review may also be granted on the board of review's own motion if the review is initiated by the board, with notice to the interested parties, within 1-year after the date of mailing of the decision.

(4) If good cause is established, the board of review shall issue an order allowing reopening. The board of review shall thereafter decide the underlying issues of the case based on the record already made and any additional evidence the board of review may enter into the record.

(5) If a request for reopening is denied, both the denial of reopening and the board of review's decision may be appealed to the appropriate circuit court pursuant to section 38 of the act.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 1988 MR 8, Eff. Sept. 2, 1988; 1988 AACS; 2007 AACS.

R 421.1316 Notice of rights of appeal.

Rule 316. (1) Each board of review decision or final order shall notify the parties of all of the following:

(a) A party has the right to make a timely appeal of a decision or final order of the board of review to a circuit court.

(b) A party may make a timely request to the board of review to rehear a decision.

(c) A party may make a timely request to the board of review, subject to a showing of good cause, to reopen and review a decision.

(2) Each board of review decision or final order shall state the deadline and places of receipt of the above alternatives. It shall also state in boldface type: "**TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME**."

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC; 2007 AACS.

R 421.1317 Stipulations.

Rule 317. (1) The parties to an appeal before the board of review may stipulate the facts in issue.

(2) Stipulations shall not be in any sense in derogation of the act and shall not involve an interpretation of the act.

History: 1954 ACS 101, Eff. Nov. 14, 1979; 1979 AC.

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FACT SHEET LIST

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36	3/2012	Claiming Unemployment Benefits in Michigan
76	7/2011	Work Registration Needed For Jobless Benefits
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124	5/2011	Effect of Acquiring a Bankrupt Business on an Employer's Unemployment Tax Rate
125	2/2012	How severance pay affects unemployment benefits
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128	5/2011	Waiver (Suspension) of Unemployment Insurance Eligibility Requirements for Those in Approved Vacational Training
129	5/2011	Unemployment Benefits When a Worker Accepts a Buyout
133	5/2011	Reminder: 2010 FUTA Tax Credit Reduction
136	5/2011	2011 FUTA Tax Reduction
138	5/2011	Successorship and the Importance of Receiving a Disclosure & Clearance of Account Prior to Acquiring an Existing Business
139	8/2011	Federal Unemployment Tax Act (FUTA) Updates

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Claiming Unemployment Benefits in Michigan

State of Michigan
Department of Licensing and Regulatory Affairs

UNEMPLOYMENT INSURANCE AGENCY

RICK SNYDER, Governor
State of Michigan

STEVEN H. HILFINGER, Director
Department of Licensing and Regulatory Affairs

STEVE ARWOOD, Director
Unemployment Insurance Agency

Fact Sheet

If you become unemployed, you may qualify for unemployment insurance benefits. These benefits are intended to provide temporary income as you seek new employment. The following is basic information about Michigan's unemployment insurance program, which is administered by the Unemployment Insurance Agency (UIA).

How to file a claim for unemployment benefits
A claim for unemployment benefits begins the week it is filed. Therefore, you should file your claim for benefits during your first week of unemployment. There are two ways in which to file a claim. You can file a new unemployment claim or reopen an existing claim by:

1. Internet -- visit UIA's website -- ***www.michigan.gov/uia***. The website is available from 7:00 a.m. Monday through 7:00 p.m. Saturday *(Eastern Time)*. If you need a computer with Internet access, visit your local public library as most have computers with Internet connections available for public use.
2. Telephone -- call UIA's telephone filed claims (TFC) number at **1-866-500-0017**.
When to call: Call the toll-free TFC number to file your unemployment claim according to the schedule shown to the right.

Schedule for filing by phone
Based on last 2 digits of Social Security number

	8:00 AM to 12:30 PM *(Agents available)*	**12:30 PM to 4:30 PM** *(Agents available)*	**4:30 PM to 8:00 AM** *(No agents available)*
Mon	00-15	16-33	Open call-in
Tues	34-48	49-66	Open call in
Wed	67-81	82-99	Open call in
Thur Fri	Open call in		Open call in

Eastern Time

Once you file your new claim, you will be mailed:

- A determination showing if you qualify based on the wages you have earned, the amount of weekly benefits and the number of weeks you **may receive**.
- If there is an eligibility issue with your claim, you will receive a separate notice.
- A booklet with detailed information about your rights and responsibilities for unemployment benefits, unless you have chosen to view the booklet online. ***Please read this material carefully***.

Qualifying requirements – The UIA will look at your **standard base period** to determine if your wages qualify you for unemployment benefits. The standard base period includes the first four of the last five completed calendar quarters prior to when you filed your claim. The four calendar quarters in a year are: January – March, April – June, July – September and October – December.

If you cannot qualify based on your standard base period, the UIA will consider your wages in the **"alternate" base period**, which is the four most recently completed calendar quarters.

There are two ways in which your wages may qualify you for unemployment benefits:

- **"Regular" qualifying method:** (**a**) For benefit years beginning January 4, 2009, and after, you must have wages in at least two quarters in your base period. In one quarter, your wages must be at least **$2,871;** and (**b**) total wages for all four quarters must equal at least one and a half times the highest amount of wages paid in any quarter of the base period. ($2,871 x 1.5 = $4,306.50)

OR

- **Alternate Earnings Qualifier (AEQ):** (**a**) You must have wages in at least two quarters; *and* (**b**) total wages for all four quarters must equal at least 20 times the state average weekly wage (SAWW). For 2012, the AEQ amount is **$17,206.80** [20 x $860.34 (SAWW) = $17,206.80].

Eligibility requirements – To be eligible for unemployment benefits, you must be unemployed and able to, available for, and actively seeking suitable full-time work. Unless instructed otherwise by UIA staff, you must also register for work two to three business days before your first call to MARVIN by filing your resume with the Michigan Talent Bank and by reporting to your local *Michigan Works!* Agency service center.

Fact Sheet #36
March 2012

CADILLAC PLACE ■ 3024 WEST GRAND BOULEVARD ■ DETROIT, MICHIGAN 48202
www.michigan.gov/uia ■ TTY: 1-866-366-0004

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Receiving your benefits – You report to the UIA by telephone or through the Internet to certify concerning your eligibility for benefits, using Michigan's Automated Response Voice Interactive Network (MARVIN). You must certify through MARVIN every other week in order to receive your unemployment benefits. Your MARVIN appointment time is based on your Social Security number. To call MARVIN, dial its toll-free telephone number **1-866-638-3993.** To use MARVIN online, visit UIA's website (www.michigan.gov/uia) and click on the "UIA Online Services for Unemployed Workers" link. You will need to create a free online web account with UIA.

When you apply for benefits, you can choose to receive your benefits through either a debit card or by direct deposit into your bank account.

Amount of unemployment benefits – UIA staff calculates how much you receive in unemployment benefits by multiplying the highest amount of wages paid to you in any base period quarter by 4.1%. The UIA adds $6 for each dependent you claim, up to five dependents. The weekly benefit amount is capped at $362.

To determine how many weeks of benefits you may receive, UIA multiplies your total base period wages by 43%, and then divides that answer by your weekly benefit amount. The claim, however, cannot be less than 14 weeks or more than 20.

Receiving unemployment benefits while working – In some cases, you can accept part-time work while receiving unemployment benefits. However, your work must be less than full-time, and your benefits will be reduced according to *how much you earn in the week for which you are claiming benefits.*

There are three basic principles that affect how much you can earn while receiving unemployment benefits: **(1)** if your wages are equal to or less than your weekly benefit amount, then your benefits are reduced by 40¢ for every dollar you earn; **(2)** if your wages exceed your weekly benefit amount but are less than 1.6 times your benefit amount, then your total wages are subtracted from 1.6 times your weekly benefit amount; and **(3)** the combination of your weekly benefits and wages cannot exceed 1.6 times your weekly benefit amount.

A point to remember: The number of benefit weeks remaining on your claim will be reduced by one full week for each week you receive *any* benefit payment.

For further information -- For general information about unemployment benefits, visit our website at *www.michigan.gov/uia*. If you have a question or problem with your telephone or Internet-filed claim, you can inquire about the claim by calling **1-866-500-0017** and selecting Option 3. If you have an online web account with the agency, you can email questions about your unemployment claim to UIA's Virtual Problem Resolution unit. This toll-free number is open weekdays from 8:00 a.m. to 4:30 p.m. We also have problem resolution offices (PRO) in Detroit, Gaylord, Grand Rapids, Lansing, Marquette and Saginaw for in-person assistance with any problem you may have with your claim. There are also temporary mini-PROs in two Dept. of Human Services offices – Mt. Clemens and Muskegon. (See UIA website for locations)

January

S	*M*	*T*	*W*	*T*	*F*	*S*
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	**24**	**25**	**26**	**27**	**28**	**29**
30	31					

February

		1	2	3	4	5
6	**7**	**8**	**9**	**10**	**11**	**12**
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28					

FILING EXAMPLE

If you're filing a ***new*** **claim or** ***reopening*** **an established claim:**

January 21 – last day of work
January 23-29 – week claim should be filed
February 6-12 – to certify for your first two weeks of unemployment (weeks ending 1/29 and 2/5), contact MARVIN either by telephone at 1-866-638-3993 **OR** by going online to UIA's website and choosing the link, "UIA Online Services for Unemployed Workers." Contact MARVIN by phone or online at your appointed day and time on Monday through Wednesday during this week. If you are unable to contact MARVIN at your scheduled time, you can try again any time on Thursday or Friday between 8:00 AM and 7:00 PM.

Generally, UIA will issue your benefits within a day or two of your certification. There could, however, be a delay, if you were separated from your job for any reason other than lack of work.

LARA is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

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Michigan Department of Licensing and Regulatory Affairs
Unemployment Insurance Agency
Authority: UIA Director; Quantity: 1,000
Cost: $14 (1.4¢/copy). Paid for with federal funds.

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State of Michigan
Department of Licensing and Regulatory Affairs

UNEMPLOYMENT INSURANCE AGENCY

RICK SNYDER, Governor
State of Michigan

STEVEN H. HILFINGER, Director
Department of Licensing and Regulatory Affairs

STEVE ARWOOD, Deputy Director
Department of Licensing and Regulatory Affairs

STEVE ARWOOD, Director
Unemployment Insurance Agency

Fact Sheet

Work registration needed for jobless benefits

If you file a claim for unemployment benefits, you are required, in most cases, to also register for work. If you fail to register for work, you may not be eligible to receive benefits. To meet the registration requirement, you must post your resume on Michigan's Talent Bank, an Internet website.

Unemployed workers should visit their local *Michigan Works!* service centers, where they can gain Internet access and upload their resumes into the Talent Bank. Employers can also use the Talent Bank in their hunt for workers. They will be able to select potential job candidates from among the Talent Bank's statewide pool of job seeker resumes.

How to register for work

When you file a new initial claim for jobless benefits, you will be instructed to file your resume with Michigan's Talent Bank, unless you have a definite return-to-work date within 120 days of your layoff. Your resume must be filed at least three days before your first call to the Unemployment Insurance Agency's (UIA) MARVIN system.

You can enter your resume at your nearest *Michigan Works!* service center or through the Internet at *www.michworks.org*. However, if you register online, you must still report in person to your *Michigan Works!* service center to verify your registration. Take the form, "Notice to Register for Work," which can be found in your green *Unemployment Benefits in Michigan* booklet. *Michigan Works!* staff will stamp the registration form as proof of your visit. You must then keep the form for one year.

Since the Talent Bank application requires information about your work history, educational background and employment objectives, please gather the information before visiting your *Michigan Works!* service center. You will use the information to enter your resume into the Talent Bank.

Registration authorizes benefit payments

Once your resume is in the Talent Bank, *Michigan Works!* staff will verify to the Unemployment Insurance Agency that you have registered for work. UIA will then authorize your jobless benefit payments, assuming you meet the other qualifying and eligibility requirements. *If you delay in submitting your resume to the Talent Bank, then you may not be compensated for the weeks prior to your work registration date.*

Questions?

If you have questions about the Talent Bank, you can call a special toll-free number for answers. The number is **1-88-TALENT-55** (1-888-253-6855). You can also visit the Talent Bank website (*www.michworks.org*).

If you have general questions about Michigan's unemployment compensation program, please visit UIA's website at www.michigan.gov/uia. If you have questions about your unemployment claim, call the agency's toll-free claims line at **1-866-500-0017**. It is open weekdays from 8:00 a.m. to 4:30 p.m.

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Michigan Department of Licensing and Regulatory Affairs
Unemployment Insurance Agency
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State of Michigan
Department of Licensing
and Regulatory Affairs

UNEMPLOYMENT INSURANCE AGENCY

Rick Snyder, Governor
State of Michigan

Steven H. Hilfinger, Director
Department of Licensing and Regulatory Affairs

Steve Arwood, Deputy Director
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Steve Arwood, Director
Unemployment Insurance Agency

Work Opportunity Tax Credit

The VOW to Hire Heroes Act of 2011 changed the Work Opportunity Tax Credit (WOTC) program by adding two new categories to the existing qualified veteran targeted group. In addition to the employers that can currently benefit from the WOTC, certain tax-exempt employers can also apply for the credit if they hire a qualified veteran. The Act allows employers to claim the WOTC for those certified as qualified veterans who begin work after November 21, 2011, and prior to January 1, 2013.

The Work Opportunity Tax Credit is a federal credit available to private-for-profit employers who hire from specific targeted groups of people that have in the past experienced difficulty in securing employment in the past. For the first year of employment, WOTC allows maximum credits of $4,800 to $9,600 for disabled veterans, $4,000 for long-term recipients of Temporary Assistance to Needy Families (TANF), and $2,400 for all other target groups. There is an additional $5,000 credit for long-term TANF recipients who are employed for a second year. The maximum credit amounts for tax-exempt organizations can vary from $1,560 to $6,240. The credit, or any unused portion of the credit, can be carried back one year or forward 20 years from the year in which the employer claims the credit.

Eligible new hires cannot have any prior work history with the employer, cannot be a relative of the employer and must be a U.S. citizen or permanent resident.

WORK OPPORTUNITY TARGET GROUPS

- Short-term family TANF recipients
- Long-term family TANF recipients
- Veterans receiving Food Assistance
- Disabled veterans where the disability is service connected**
- Unemployed veterans**
- Food Assistance recipients, ages 18 to 39
- Vocational rehabilitation work plan participants or ticket-to-work holders
- SSI recipients (Supplemental Security Income)
- Ex-felons convicted or released within one year of hire
- Designated Community* residents, ages 18 to 39, in RRC

**Michigan's "designated communities" include the Rural Renewal Counties (RRC) of Gogebic, Marquette and Ontonagon.*

***Requirements**The unemployed disabled veteran discharged from service within one year prior to hire date or the unemployed disabled veteran with aggregate periods of unemployment totaling six months or more in the 12 months prior to hire.*
***The unemployed veterans with aggregate periods of at least four weeks but less than six months of unemployment compensation in the 12 months prior to hire or the unemployed veteran with aggregate periods of unemployment compensation totaling six months or more in the 12 months prior to hire.*

Detailed target group information is available on www.michigan.gov/uia.

WORK OPPORTUNITY TAX CREDIT

Not only must the new hire be a member of a WOTC target group, but the employer must also employ the new hire at least 120 hours to qualify for a 25percent credit and at least 400 hours to qualify for a 40percent credit in the first year of employment.

For most target groups, the credit is for the first $6,000 in gross wages paid to the employee in the first year of employment. However, maximum gross wages paid in the first year of employment for the disabled veteran are $24,000 and $10,000 for the long-term TANF recipient.

In addition, for hiring a long-term TANF recipient and working that employee into a second year, the employer can take a 50percent credit on the first $10,000 in gross wages paid in the second year of employment. This is a potential $9,000 credit for hiring one long-term TANF recipient.

Fact Sheet #79
June 2012

CADILLAC PLACE 3024 WEST GRAND BOULEVARD DETROIT, MICHIGAN 48202
www.michigan.gov/uia TTY SERVICE: 1-866-366-0004

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APPLICATION PROCEDURE

When applying for the credit, the employer must submit to the UIA two forms for each newly hired employee who may qualify as a target group member. Forms are available on the UIA's website at www.michigan.gov/uia or by calling the agency's WOTC Unit toll free at **1-800-482-2959**.

1. **IRS Form 8850**, "Pre-Screening Notice and Certification Request for the Work Opportunity Credit." – Employers use this non-discriminatory form at the time of hire to "pre-screen" applicants for potential target group membership.

   The **signed original** 8850 must be postmarked by the U.S. Postal Service **no later than 28 days from the employee's start date.**

   If the 28th day falls on a Saturday, Sunday or federal holiday, UIA will accept the form on the next business day. Applications not fully completed and/or submitted late will be denied.

2. **ETA Form 9061**, "Individual Characteristics Form" – The employer completes this form after deciding to hire the job seeker. The form must be fully completed and signed by the person completing the form (see reverse side of form for who may sign).

   There is no time limit for submitting ETA Form 9061. Therefore, it may be mailed or faxed separately from IRS Form 8850. However, applications will be processed faster when both forms are mailed together.

3. **Obtaining documentation**. Employers may need to submit documentation to prove that the new hire is a target group member. Requirements for specific target group documentation may be obtained through the UIA website at www.michigan.gov/uia or by calling the WOTC Unit toll free at 1-800-482-2959.

SPECIAL NOTE: Application processing is faster when UIA receives a timely and correctly completed package that includes IRS Form 8850, ETA Form 9061, and documentation supporting the employee's target group membership.

OTHER MAJOR PROGRAM FACTS

- Always list the employer's name and address on any correspondence.
- Employers using employer representatives to process their tax requests, **may not** have their certifications mailed to the employer representative until either **a notarized original or notarized copy** of the Power-of-Attorney is on file with UIA's WOTC Unit.
- Upon receipt of the certification notice, the employer is responsible for employing the worker the required number of hours as specified for the target group listed on the notice. IRS Form 5884, Work Opportunity Credit, is filed with your federal tax returns. It is available through visiting the IRS website at www.irs.gov or by calling IRS toll-free at 1-800-829-1040.

NOTE: *Photocopies of forms are acceptable. However, all signatures must be original. Fax transmissions of IRS Form 8850 cannot be accepted, nor is Michigan able to receive applications electronically, at this time.*

Mail forms and documentation to:
Unemployment Insurance Agency
WOTC Unit
P.O. Box 8067
Royal Oak, MI 48068-8067

Questions?
Call the WOTC Unit toll free at
(800) 482-2959 or (313) 456-2105
or visit the UIA website
(www.michigan.gov/uia).

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Fact Sheet

CY 2008 Statistical Highlights for Michigan's Unemployment Tax Program

Michigan's unemployment insurance (UI) program collects state UI tax payments from Michigan employers. These payments are then deposited in the state's UI trust fund from which funds are taken to pay state unemployment benefits to eligible unemployed workers.

Employer contributions to state UI trust fund…….	$1,495,408,847
Active subject employers *(12/31/08)*…..…….....	213,493
Contributing employers ……...	208,956
Reimbursing employers ……...…...	4,537
Newly established employers …….	22,090

TAX RATE INFORMATION FOR 2008

Michigan UI tax rates.....……...	Minimum - 0.06%
	Maximum - 10.30%
Average tax rate.……..…….…….	4.9%
Taxable wage base.....…..……..…..…….	$ 9,000

Industry	Average Tax Rate*
Agriculture, Forestry & Fishing…….…….	5.9%
Mining…….……..…….…….	6.5%
Construction…….…….……..	8.8%
Manufacturing……..…….…..….	6.4%
Transportation, Communications & Utilities….…….	5.1%
Wholesale & Retail Trade…….……..	3.6%
Finance, Insurance & Real Estate….……..…..…	4.2%
Services….……..…….……...……..	4.9%
Government….…….…….……..	3.4%

TAX RATE DISTRIBUTION

Tax rate range**	Number of employers	Percentage of total***
0.06 – 0.09%……..…….	25,372	12.2%
0.1 – 1.0%……..…….	38,803	18.6%
1.1 – 2.0%…….…….…….	36,841	17.7%
2.1 – 3.0%…….…….…….	28,522	13.7%
3.1 – 4.0%…….…….…….	12,875	6.2%
4.1 – 5.0%……..…….	7,899	3.8%
5.1 – 6.0%…….…….…….	9,061	4.4%
6.1 – 7.0%…….…….…….	5,014	2.4%
7.1 – 8.0%…….…….…….	4,755	2.3%
8.1 – 9.0%…….…….…….	4,065	2.0%
9.1 – 10.0%…….…….……...	4,173	2.0%
10.1 – 10.3%……...	30,865	14.8%
Totals……..	**208,245**	**100%**

Estimates **Some employers pay a tax rate of 13.3%, a 10% tax rate plus 3.0% penalty for not filing their state unemployment tax returns. (Data as of 6/30/2008.) * Does not equal 100% due to rounding.*

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CY 2010 Statistical Highlights for Michigan's Unemployment Benefit Program

Michigan's unemployment insurance (UI) program issues jobless benefits to workers who become unemployed through no fault of their own. The benefits are intended to help these workers with a source of temporary income while they seek new employment or await recall to their jobs.

The Unemployment Insurance Agency (UIA) administers Michigan's UI program. UIA issues both state and federal jobless benefits and collects Michigan unemployment taxes from employers, which are used to fund unemployment benefit payments.

Statistics for Michigan's unemployment benefit program

Regular State Benefits	CY 2010	CY 2009
Total weeks claimed…….	**8,264,708**	13,557,952*
Total weeks compensated…….	**7,325,575**	12,664,076
New initial claims filed……...	**644,435**	885,179*
Total benefits paid……...	**$2,063,574,687**	$3,771,655,416
Total payments issued……..…….	**3,799,664**	6,549,274
Number of first payments…….……	**387,386**	652,819
Average full check amount……..…….....	**$296.62**	$308.68
Exhaustions……..……	**233,020**	363,741* Ave.
duration of unemployment claim……..…..	**19.0 Weeks**	19.4 weeks

* **Revised**

	CY 2010
Relationship between average weekly state benefit claims and total unemployment	
Claims for regular state jobless benefits *(monthly average)*..……..….	161,000
Total unemployment *(monthly average)*.....….....…….…	……..597,000
Percent of total unemployed claiming benefits.....…....…….	26.9%
Monetary determinations for state unemployment claims	
Number issued……..…….	692,518
Number allowed (66.8%)……..…….	462,364
Claimants eligible for both maximum benefits and duration…….…...	186,254
Claimants who qualified for maximum weekly benefit……	205,856
Claimants who actually received maximum number of weeks…….	330,972
Nonmonetary determinations for state unemployment claims	
Number issued……..……..…..	270,381
Number denied……..……	155,178
57.4% of nonmonetary determinations were denials.	
Major nonmonetary reasons for denying state unemployment claims	
Voluntarily leaving the job (11.7%)..……..……..	31,508
Failing to meet reporting requirements (20.7%)……..…….	55,905
Discharge for misconduct (9.3%)……..……..	25,186

Fact Sheet

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Demographic data for those claiming state unemployment benefits

(monthly averages based on a sampling of state benefit claims)

Sex:	Males: **60.8%**		Females: **39.2%**			
Ethnic:	Hispanic/Latino: **3.5%**		Not Hispanic/Latino: **78.0%**		INA*: **18.5%**	
Race:	White: **62.2%** American Indian/Alaskan Native: **1.2%**		African American: **12.2%** Native Hawaiian/Pacific Islander: **0.1%**		Asian: **0.9%** INA*: **23.4%**	
Age:	Under 22: 35-44: 60-64:	**3.1%** **24.2%** **5.4%**	22-24: 45-54: 65+:	**5.9% 25.7%** **2.7%**	25-34: 55-59:	**23.8% 9.2%**

Industries:

Agriculture/forestry/fishing: -- **0.5%;** Mining: --**0.4%;** Utilities: --**0.1%;** Construction: --**10.7%;** Manufacturing: --**29.5%;** Wholesale trade: --**4.4%;** Retail trade: --**6.2%;** Transportation/warehouse: --**3.2%;** Information: --**0.9%;** Finance & insurance: --**2.0%;** Real estate: --**1.2%;** Professional/scientific/ technical services: --**5.4%**; Management of company/enterprise: -- **1.1%;** Administration & support/waste mgmt/remediation svc: -- **10.5%;** Education svc: --**1.6%;** Health care & social assistance: -- **4.6%;** Arts, entertainment & recreation: -- **1.5%;** Accommodation & food svc: -- **3.6%;** Other svc: --**1.7%;** Public admin: -- **0.9%;** INA*: --**10.0%.**

Occupations:

Management: -- **5.1%;** Business & financial ops.: --**1.9%;** Computer & math: -- **1.3%;** Architecture & engineering: --**2.2%;** Life, physical & social sciences: -- **0.1%;** Community & social svc: -- **0.5%;** Legal: --**0.4%;** Education, training & library: -- **1.2%;** Art design, entertainment, sports & media: -- **0.6%;** Health care, practice & technical: --**0.8%;** Health care support: --**2.1%;** Protective svc: --**0.5%**; Food preparation & serving related: --**2.9%;** Building & grounds cleaning & maintenance:
INA – Information not available* -2.2%**; Personal care & svc: -- **0.8%;** Sales & related: --**6.5%;** Office & administrative support: -- **6.5%;** Farming, fishing & forestry: -- **0.5%;** Construction & extraction: --**5.0%;** Installation, maintenance & repair: -- **4.3%;** Production: --**23.3%;** Transportation & material moving: -- **4.6%;** Military specific -- **0.1%;** INA*: --**26.7%.**

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Fact Sheet

How Unemployment Benefits Are Charged To Employers

When a worker becomes separated from his or her job and files for unemployment benefits, the worker's past employer or employers will probably be charged for any benefits that may be paid. This fact sheet will explain some of the basic standards the Unemployment Insurance Agency (UIA) follows in charging unemployment benefits to employer tax accounts.

Some basic terms

Base Period: In most cases, the base period is the first four of the last five completed quarters prior to the unemployment claim's filing date. Unemployment Compensation uses the wages earned during the base period to decide if a worker will qualify monetarily for unemployment benefits. If the worker does qualify, the wages determine the weekly amount and duration of benefits.

Rework: A worker can requalify for benefits by going back to work and earning wages. A worker who quits a job without good cause attributable to the employer must earn 12 times his/her weekly benefit amount to requalify; a worker who is discharged for misconduct must earn 17 times his/her weekly benefit amount to requalify; a worker who is discharged for serious misconduct, such as assault and battery, theft, willful destruction of property, or drug offenses, must certify to 26 weeks of benefit entitlement, earn a certain weekly amount, or complete a combination of both certifying and earning the required weekly amount to requalify.

CHARGING PRINCIPLES

There are two basic principles about charging employers for unemployment benefit payments:

Employer charging principle #1

UIA charges the employer's account for benefits paid *unless* the employer shows that the worker was disqualified or would have been disqualified had a benefit decision been made.

Employer charging principle #2

If the separation from the most recent employer was disqualifying, then *no* employer is charged for benefits unless or until "rework" is satisfied. If the unemployed worker did **not** have a disqualifying job separation and had earnings from the separating employer of at least **(1)** 7 *times* his/her weekly benefit amount (WBA) ***or*** **(2)** 40 *times* the state minimum wage *times* 7 ($2,072) then 100% of the first two weeks of benefits are charged to that employer. The base period employers are charged proportionately for the remaining weeks.

Calculating an employer's proportionate share of the benefit charges begins by determining the wages each base period employer paid the worker. Then the wages paid by each employer are compared to the total wages paid by *all* employers during the base period and a percentage is calculated for each employer. The percentage is the employer's share of each week's benefit charge.

EXAMPLE:

In this example, assume the worker has a weekly benefit amount of **$118** and is entitled to **16 weeks** of benefits. The first two weeks are charged to the most recent employer (employer D), since the wages paid by that employer were greater than either criteria (7 x WBA ***or*** 7 x minimum wage x 40). The quarterly wages paid by each employer are shown:

Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 5	Qtr 6
A=$350 B=$150	A=$500 B=$900 C=$1,500	A=$250 B=$250	D=$500	*LAG QUARTER* D=$1,750	*FILING QUARTER* D=$2,100

|----------**BASE PERIOD** ----------|

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Each employer's proportionate share of the total base period wages:
Divide each employer's base period wage payments by the total base period wages of $4,440. This gives the percentage of base period wages each employer paid to the worker.

Employer A = $1,100 in wages paid ÷ $4,400 = .25 = **25%**
Employer B = $1,300 in wages paid ÷ $4,400 = .295454 = **29.55%**
Employer C = $1,500 in wages paid ÷ $4,400 = .340909 = **34.09%**
Employer D = $ 500 in wages paid ÷ $4,400 = .113636 = **11.36%**

Each employer's share of the weekly benefit charges:
The percentages are multiplied against the unemployed worker's weekly benefit amount to determine employer's share of the charge for the unemployed worker's weekly benefit payment. In this example the unemployed worker's **weekly benefit amount is $118**.

Employer A's benefit charge = 25% x $118 = **$29.50**
Employer B's benefit charge = 29.55% x $118 = **$34.87**
Employer C's benefit charge = 34.09% x $118 = **$40.23**
Employer D's benefit charge = 11.36% x $118 = **$13.40**

If after rounding the benefit charges do not total the unemployed worker's weekly benefit amount, the difference will be added to the charge of the employer with the largest charge.

Each employer's maximum possible charge
To determine the maximum possible benefit charging liability for each base period employer, simply multiply the weekly charge against the maximum entitlement less two weeks, because in most cases, the first two weeks of benefits are charged to the most recent employer. In this example, the **maximum entitlement is 18 weeks**, but the last employer (employer D) is charged 100% for the first two weeks of benefits. The base period employers are charged proportionately for the remaining **16 weeks**.

Employer A: $29.50 x 16 weeks = **$472.00**
Employer B: $34.87 x 16 weeks = **$557.92**
Employer C: $40.23 x 16 weeks = **$643.68**
Employer D: $13.40 x 16 weeks = **$214.40***

Total charges to the last employer's account:
Employer D was a base period employer and the most recent employer and paid the unemployed worker a sum greater than the rework amount. Consequently, employer D will be charged 100% of the first two weeks of benefits, in addition to his/her proportionate share of the total potential benefit liability.

*The **potential maximum charge** to employer D's account is **$450.40**. [**$214.40** (proportionate base period charge) + **$236.00** (*100% of first two weeks of benefits is $118/week x 2 weeks*) = **$450.40**.]

Important Point! As an employer, you are only charged for weeks of benefits jobless workers actually collect. In most cases, unemployed workers return to work before collecting the maximum number of weeks allowed on their claims.

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Fact Sheet

No Line When Filing Online

Michigan's Internet service for filing unemployment claims

Unemployed Michigan workers can file a new claim for unemployment benefits or reopen an established claim by visiting the Unemployment Insurance Agency's (UIA) Internet website.

How to file online.
To use UIA's Internet Filed Claims (IFC) process, unemployed workers must visit the agency's website at *www.michigan.gov/uia*.

The IFC service is open to take claims continuously from 7:00 a.m. Monday through 7:00 p.m. Saturday. It will take about 30 minutes to file a claim online, depending on the Internet connection speed.

Who can file online?
To apply for unemployment benefits online, jobless workers must meet all of the following requirements:

- They have been employed by, at least, one but no more than 19 Michigan employers during the last 18 months;
- They have worked under only one Social Security number during the past 18 months;
- They have not filed a claim for unemployment benefits against another state during the past 12 months; and
- They have worked for a liable employer within the past 18 months

Information needed to file online.
When preparing to file an unemployment claim online, applicants will need the following information about themselves when responding to questions asked by UIA's online filing process:

- Social Security number;
- MARVIN PIN (personal identification number), if one has been issued in the past;
- Driver's license number; or state identification number;
- Date of birth;
- Complete home address, including zip code, telephone number and county of residence;
- For each employer during the past 18 months
  - Employer's name and address
  - First and last day of work
  - Earnings during the last 18 months
- For those who are **not** U.S. citizens or nationals, an alien registration number and the expiration date for the work authorization are needed

Work registration required.
When applying for unemployment benefits, applicants must register for work by data-entering a resume onto the Michigan Talent Bank (MTB) at a *Michigan Works!* Agency (MWA) service center or online at www.michworks.org, unless UIA has waived this requirement. If you register online, you still must report in person to MWA to verify your registration is active in the system. Failure to register for work can result in a delay or loss of your benefits.

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Choice of Payment Methods
Those filing for unemployment benefits online will be asked to choose their preferred method to received their unemployment benefit payments: either direct deposit into your bank or credit union account or by debit card. Benefits will be transferred to your debit card or bank or credit union account within 2-3 business days after reporting using MARVIN either online or by telephone.

System requirements for filing through the Internet.
To file an unemployment claim online, jobless workers will need a computer with Internet access. In addition, they must have either Explorer 4.x or higher or other supported web browsers. They will also be asked to print various pages during the process, which requires the computer to be connected to a printer.

How the system works.
UIA's Internet claims taking process uses an interactive application. In other words, the system will prompt users to answer a series of questions about themselves and their recent employment and wage history.

The data that is entered on the Internet screens will be uploaded to UIA's database. For those filing new claims, the agency will mail them an information booklet (*Unemployment Benefits in Michigan*) or it may be reviewed online at www.michigan.gov/uia. After filing a new claim, a monetary determination will be mailed on the next business day. The determination tells workers if they are qualified for benefits based on their wages with employers. It also indicates their possible weekly benefit amount and the number of weeks they could be paid. Those reopening established claims will not receive another copy of the information booklet.

Once the claim is successfully entered online, a confirmation page will appear with a confirmation number. If any issues or problems should arise during the claim filing process, applicants will be advised to file their claims by telephone.

During the application process, an unemployed worker will also be advised about contacting the agency's MARVIN system and will be given an appointment date and time for contacting MARVIN Online or at the toll-free telephone number – **1-866-638-3993**. Workers must contact MARVIN every other week to certify that they meet the necessary eligibility requirements.

The site is secure.
The UIA has done everything it can do to make its claims taking site as secure as possible to ensure that all information it receives from those applying for unemployment benefits is kept confidential.

Questions?
Workers who file their claims by Internet or telephone and who have a problem or question about the claim can inquire by calling UIA's telephone-filed claims line at **1-866-500-0017**. The phone line is available to take inquiries on weekdays from 8:00 a.m. to 4:30 p.m, except State of Michigan holidays. Those with an online account can contact UIA's Virtual Problem Resolution unit (ViPR) with questions. Through ViPR claimants can email questions about or problems with their unemployment claim and receive an electronic response. To establish an account, go to www.michigan.gov/uia and click on "UIA Online Services for Unemployed Workers."

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Fact Sheet

FILING UNEMPLOYMENT CLAIMS BY TELPHONE

Telephone-Filed Claims

Unemployed workers in the state can file their new unemployment claims or reopen established claims by dialing a special toll-free telephone number:

1-866-500-0017

This special telephone number is available to those calling from any area code in Michigan as well as throughout the United States and Canada.

UIA has established a schedule for jobless workers to follow when filing their claims for unemployment benefits by telephone. The schedule is based on the last two-digits of their Social Security numbers. If callers miss their scheduled call-in times, they can call anytime between 8:00 a.m. and 4:30 p.m. on Thursday or Friday.

Time	Monday	Tuesday	Wednesday	Thursday / Friday
8:00 a.m. to 12:30 p.m.	00 – 15	34 – 48	67 – 81	Open call-in
12:30 p.m. to 4:30 p.m.	16 – 33	49 – 66	82 – 99	

For example, a jobless worker with a Social Security number ending in 55 would call-in the unemployment claim on Tuesday between 12:30 and 4:30 p.m.

Once a caller completes the process of applying by telephone, which takes about 30 minutes, the individual will hear a confirmation number, which means the information has been received, and the claim will be processed. Within 10 days, the caller should receive information by mail about the claim.

Information needed when filing an unemployment claim

When filing unemployment claims, callers will need the following information:

- Social Security number
- A PIN used to call MARVIN for an existing claim or previous claim, or a driver's license or state ID number (A PIN is desired but not required when filing by telephone).
- Complete mailing address with zip code
- A telephone number
- County of residence
- For non-U.S. citizens or nationals, an alien registration number and the expiration date for the work authorization, and
- For each employer they have had over the last 18 months:
  - Employer's name and address
  - Last day of work with each employer, and
  - Earnings for each calendar quarter during the last 18 months

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Certify through MARVIN

After the claim is filed, jobless workers must remember to certify as to their eligibility for benefits once every two weeks by calling the agency's MARVIN system on their appointed day and time. The toll-free telephone number to MARVIN is **1-866-638-3993**.

Questions?

If you have questions about or problems with your unemployment claim and have filed your claim either by telephone or Internet, you can inquire about your claim by calling our telephone-filed claims hotline at **1-866-500-0017** for assistance on weekdays from 8:00 a.m. to 4:30 p.m.

If you have general questions about unemployment insurance in Michigan, visit the Unemployment Insurance Agency's website at *www.michigan.gov/uia*.

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Fact Sheet

Unemployment Benefit Information

HOW TO FILE YOUR CLAIM:

By Internet: To file your new unemployment claim or to reopen an established claim through the Internet, visit our website www.michigan.gov/uia from 7:00 a.m. Monday through 7:00 p.m. Saturday.

By Phone: To file your new claim or to reopen a claim through our toll-free telephone number, call **1-866-500-0017** using a touch-tone telephone. Use the call-in schedule (*shown below*) when filing by telephone. The schedule is based on the last two digits of your Social Security number. For example, if your Social Security number ends in 50, you would phone in your application on Tuesday afternoon.

Information Needed to File a Claim: Your Social Security Number, your driver license number or state identification number or your MARVIN PIN (if you have one); the names and addresses of employers you have worked for in the past 18 months along with your quarterly gross earnings and the last date of employment with each employer. If you are not a U.S. citizen or national, you will need your Alien Registration Number and the expiration date of your work authorization.

Time	Monday	Tuesday	Wednesday	Thursday & Friday
8:00 a.m. to 12:30 p.m.	00-15	34-48	67-81	**Open Call In**
12:30 p.m. to 4:30 p.m.	16-33	49-66	82-99	

HOW TO INQUIRE ABOUT YOUR CLAIM:

If you have filed for unemployment benefits by **Internet** or **telephone** and have a question or problem with your claim, call our telephone filed claims number using a touch-tone telephone at **1-866-500-0017** and press **3** to inquire about your claim. The inquiry option is available weekdays between 8:00 a.m. and 4:30 p.m.

WHERE TO FIND ANSWERS TO GENERAL QUESTIONS:

If you have general questions about unemployment benefits, visit the Unemployment Insurance Agency's website at www.michigan.gov/uia.

HOW TO OBTAIN UNEMPLOYMENT BENEFIT FORMS:

Most unemployment benefit forms are in the "Forms" section on the Unemployment Insurance Agency's (UIA) website at www.michigan.gov/uia.

MAIL OR FAX ALL CORRESPONDENCE ABOUT YOUR UNEMPLOYMENT CLAIM TO THE FOLLOWING ADDRESS OR FAX NUMBER:

UIA
P.O. Box 169
Grand Rapids, MI 49501-0169
Fax: 517-636-0427

EMPLOYER HOTLINE ANSWERS QUESTIONS: UIA has established a telephone hotline for *only* employers to call if they have tax or benefit questions. Employers can call the toll-free number at **1-800-638-3994** weekdays from 8:00 a.m. to 5:00 p.m.

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Fact Sheet

SUTA Dumping

Manipulating unemployment tax rates to pay less in taxes

What is SUTA Dumping?
SUTA (state unemployment tax act) Dumping is a tax evasion practice involving the manipulation of an employer's unemployment insurance (UI) tax rate to achieve a lower rate, and thereby pay less UI taxes. Typically, SUTA Dumping occurs when a business transfers payroll out of an existing company or organization to a new or different organization solely or primarily to reduce UI taxes.

How can the UI tax rate be manipulated?
There are three common ways, along with many variations, that are most often used to manipulate the tax rate. They are:

- **Vertical method** – Create a "new" employer that is assigned a "new" employer tax rate of 2.7%, and then transfer payroll to the new employer.
- **Horizontal method** – Transfer payroll to a subsidiary with a lower UI tax rate.
- **Acquired rate method** – Find another employer with a low UI tax rate and arrange to transfer payroll to that employer.

What is the harm in SUTA Dumping?
There are several ways in which SUTA Dumping harms employers and the state's UI trust fund.

- SUTA Dumping goes against the fundamental tenet of an experience-rated tax system that is widely supported by the employer community. The UI tax rate is based on an employer's history of benefit charges. With SUTA Dumping, an employer with a high UI tax rate attempts to hide behind a different company with a lower tax rate and dump their UI costs on all other employers.
- SUTA Dumping creates a competitive cost advantage for employers practicing UI tax evasion.
- SUTA Dumping reduces money in Michigan's UI trust fund, causing an increase in unemployment tax rates for all employers. Losses to Michigan's trust fund, because of SUTA Dumping, range between $62 and $95 million this year.
- SUTA Dumping has already affected Michigan employers by reducing the tax dollars going into the UI trust fund. As a result, the state was unable to grant employers a 10% across-the-board cut in UI taxes because the trust fund failed to meet the required threshold level.
- SUTA Dumping reduces funds available to pay unemployment benefits to unemployed workers.
- SUTA Dumping puts those employers at a disadvantage who try to manage their work and maintain steady employment for their employees.
- SUTA Dumping rewards employers for dumping their UI responsibility for past benefit charges on the rest of employers.

Although only a small percentage of employers are involved in SUTA Dumping, all employers are impacted because the "escaped responsibility for benefits paid" ends up with the rest of Michigan's employers.

What is the penalty for engaging in SUTA Dumping?
If you participate in a SUTA Dumping practice and are discovered, you run the risk of paying a penalty that would amount to **four times any savings** you would have received by manipulating your tax rate. Your UI tax rate would also be increased to the maximum tax rate (but not less than a 2% increase), for the year in which we determined that you engaged in SUTA Dumping, and for the next three years. A new civil penalty of up to $5,000 will apply if the person who engaged in SUTA Dumping is not an employer.

What should you do if you believe you may be SUTA Dumping?
If you have or think you have been taken in by someone's tax advice, or if you would like the

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Unemployment Insurance Agency (UIA) to review your account, please call the agency's Employer

Customer Relations hotline at **1-800-638-3994**. If you *voluntarily* request an audit determination, any penalties you may be assessed for SUTA Dumping could be substantially reduced.

Many businesses become involved with SUTA Dumping because of a suggestion or recommendation from a consultant or accountant. Such illegal advice is usually disguised with terms like "tax management" or "tax avoidance."

What is Michigan doing to combat SUTA Dumping?

Legislation

- On May 4, 2005, Gov. Jennifer Granholm signed into law several changes to the *Michigan Employment Security Act* that make it more difficult for employers to engage in SUTA Dumping. These changes became effective July 1, 2005, and will, in combination with existing law provisions:
  - Prevent an employer from forming a new business and then transferring existing employees to that business and claiming the 2.7% "new employer" tax rate for the sole or primary purpose of reducing the employer's UI tax rate.
  - Require an employer's UI tax liability to follow employees when they are shifted to a different business owned or controlled by the same persons or interests that operated the first business for the sole or primary purpose of reducing the employer's UI tax rate.
  - Require a nonprofit, governmental unit, or an Indian tribe, that is a "contributing" employer and pays UI taxes quarterly, to pay its previous UI debt and its experience account balance before being allowed to convert to reimbursing status. Also, if an employer applies for conversion from reimbursing to contributing status, it must continue to pay its outstanding unemployment benefit payments that were charged to its reimbursing account. A reimbursing employer reimburses UIA dollar-for-dollar for unemployment benefits paid to its former employees.
  - Increase an employer's UI tax rate to the highest possible rate for the current and following three years, if the employer engages in SUTA Dumping. A new civil penalty of up to $5,000 will apply if the person who engaged in the SUTA Dumping is not an employer.
  - Impose on those, who advise their clients to SUTA dump, the current fraud penalty of four times the amount of avoided taxes. The four times penalty, within the *Act's* fraud provisions, continues to apply to employers who engage in SUTA Dumping.
  - The U.S. Department of Labor (USDOL) notified the UIA in October 2006 that the SUTA section of Michigan's MES Act is out of conformity with federal law and must be amended. The UIA is working on corrective legislation.

Detection

- Michigan implemented software developed by the USDOL to detect SUTA Dumping. UIA is also using other screening methods. A referral list of those possibly engaged in SUTA Dumping has been growing, and a UIA team is pursuing those engaged in the practice.

Education

- Michigan has implemented an information program to educate employers about the harm of SUTA Dumping, the law prohibiting it and the statutory penalties.

Enforcement

- UIA has assembled a team to investigate and aggressively enforce the anti-SUTA Dumping provisions of the MES Act.

SUTA Dumping is a national problem

Michigan is not alone in its efforts to combat SUTA Dumping. Other states are also involved in their own efforts to fight the problem, and Michigan is partnering with those states in our effort to detect SUTA Dumping. Michigan is one of seven states being studied by the USDOL on the effects of SUTA Dumping. This study should be completed and available July 2007.

For more information about SUTA Dumping

To learn more about SUTA Dumping, or if you suspect another employer is engaging in SUTA Dumping, visit UIA's website at *www.michigan.gov/uia*, or call our Employer Customer Relations Unit at 1-800-638-3994.

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Employee Misclassification:
A problem that hurts everyone

The misclassification of employees is a problem that impacts employers, workers, and government. When workers are misclassified they may not qualify for certain benefits, while governments lose important tax revenues. The only party to benefit through misclassification is the employer who achieves an unfair business advantage over the competition.

What is employee misclassification?
Misclassification most commonly occurs when an employer hires a worker and improperly classifies the person as an "independent contractor," rather than as an "employee."

The difference between an independent contractor and an employee is determined in part by the concept of "right to control." With an employee, the employer determines what needs to be done (results) and controls how it is to be done (means). The person is normally directed by the employer.

Independent contractors, on the other hand, are *not* employees but are in business for themselves. They are hired to accomplish a task or tasks as determined by the employer, but independent contractors retain the right to control how they will get the work done.

Generally, independent contractors perform a specialized service that is not central to the overall function of the business. They, usually, make themselves available to the employer community at large and do not limit themselves to performing services for a single company. Independent contractors usually supply their own tools.

The Michigan Court of Appeals decision in *McKissic v Bodine, 42 MichApp 203 (1972)* determined the Economic Reality Test for Determining Contractor *v* Employee Status rules are:

- What liability, if any, does the employer incur in the event of the termination of the relationship at will?
- Is the work being performed an integral part of the employer's business which contributes to the accomplishment of a common objective?
- Is the position or job of such a nature that the worker primarily depends upon the emolument for payment of his/her living expenses?
- Does the worker furnish his/her own equipment and materials?
- Does the individual seeking employment hold him or herself out to the public a one ready and able to perform tasks of a given nature?
- Is the work or the undertaking in question customarily performed by an individual as an independent contractor?
- Control, although abandoned as an exclusive criterion upon which the relationship can be determined, is a factor to be considered along with payment of wages, maintenance of discipline and the right to engage or discharge employees.
- Weight should be given to those factors that will most favorably effectuate the objectives of the statute.

"Keeping in mind the purposes of the statute, the foregoing rules should be applied as a whole on a basis of common sense. No one can be singled out as controlling. By way of illustration, an automobile mechanic usually furnishes his/her own tools, but if

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www.michigan.gov/lara ∗ UIA's Misclassification Unit by email at 1099Referral@michigan.gov

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hired to work in a public garage would undoubtedly be classified as an employee."

In addition, independent contractors should receive from employers IRS form 1099-MISC, which reports payment of "non-employee compensation," while employees receive a W-2.

Often, wages for part-time, temporary, probationary, substitute and casual labor workers are misclassified, as well. Although a worker's job may be less than permanent, full-time, the worker is still an employee. Misclassification also occurs when workers operate in the "underground economy" and are typically paid in cash. The wages these workers receive are not reported, and th workers do not receive a 1099 form or a W-2 from their employers.

What are the consequences?
There are potential consequences when a worker is misclassified. These consequences include:

- For misclassified **workers**, they may:
  - Be ineligible for such payments as unemployment insurance (UI) and workers' compensation
  - Lose other labor law protections such as minimum and prevailing wage, overtime, health and safety, and family and medical leave
  - Become liable for their full Social Security taxes and have to report their own income taxes. In other cases, if the employee is paid in cash, neither the employee nor the employer is paying FICA/Social Security taxes. Consequently, the employee may receive less in Social Security benefits at retirement as the unreported wages are not credited toward the employee's potential Social Security entitlement.
  - Lose access to employer-based benefits, such as health insurance

- For **employers** who misclassify their employees, they:
  - Avoid paying income taxes, FICA taxes, unemployment taxes and workers' compensation premiums on workers that they do not classify as employees
  - Create an unfair competitive advantage
  - Underbid employers who do not misclassify their employees

- For **government** and **taxpayers**, worker misclassification results in:
  - Underreporting of UI taxable wages, resulting in less UI taxes being collected to pay benefits
  - Less taxes going into the UI trust fund result in higher taxes for all other employers in th state to pay for benefits
  - Uncollected income taxes and FICA taxes as some workers who receive 1099-MISCs fail to report their earnings and pay the taxes owed, and the employers are not paying their share of FICA taxes on these workers.

The Government Accountability Office reports that the underpayment of Social Security taxes, unemployment insurance and income taxes in 2006 due to worker misclassification amounted to a estimated $2.72 billion, nationally.

UIA is taking action to correct the problem of employee misclassified in Michigan.
In April 2006, Michigan's Unemployment Insurance Agency (UIA) began receiving from the Internal Revenue Service (IRS) statewide listings of employers who are issuing 1099-MISC

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Other states have had success in using the 1099-MISC data from IRS. These states report:

- Finding six times as many misclassified employees
- Collecting four times as much money
- Continuing payments into their state UI trust funds in future years by employers once they have properly classified their workers.

UIA is working in close coordination with its sister state of Michigan agencies – Wage & Hour Division and Workers' Compensation Agency.

The agency has also partnered with the IRS in another project – Questionable Employment Tax Practices (QETP). This state and federal partnership has resulted in coordinated efforts in other ta areas to ensure that appropriate taxes are being fairly paid by all employers.

Penalties could result

When UIA finds an employer has been misclassifying its employees, the agency requires the liable employer to:

- Pay the required unemployment taxes
- Become the liable employer immediately, as required by the MES Act
- Be scheduled for future audits to ensure compliance

If the employee misclassification continues, it is then an intentional violation of state law, and the employer could be subjected to penalties that quadruple the amount of taxes owed on any misclassified wages.

Report possible employee misclassification

To report suspected cases of employee misclassification, a special toll-free number can be called at **1-800-822-1122**. Callers can call and leave their information for follow-up 24 hours a day, seven days a week.

Questions?

For more information about the employee misclassification, visit the website for the Michigan's Interagency Task Force on Employee Misclassification at www.michigan.gov/deleg or contact UIA's Misclassification Unit at (313) 456-3899 or by email at dooleymauraa@michigan.gov.

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Fact Sheet

UIA offers electronic options for receiving unemployment benefits

In June 2008, the Unemployment Insurance Agency (UIA) expanded its benefit payment options for those receiving or filing for unemployment benefits. Unemployed workers can now select how they want to receive their benefits through:

- Michigan UI Debit Card
- Direct Deposit into their savings or checking account

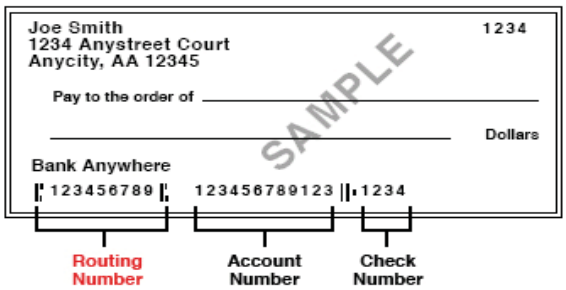
Advantages of direct deposit and debit card
These two benefit payment options are faster, more secure and a convenient alternative to paper checks. They also eliminate the worry about mail delays as the benefits are electronically deposited into the individual's bank account or added to their debit card within two or three days following their certification for benefits through the MARVIN system.

Individuals are not locked into one payment method for the duration of their claims. They can change their benefit payment method by calling UIA's toll-free claims line at **1-866-500-0017**, and selecting **Option #2**. Workers can also go online to the UIA website (www.michigan.gov/uia) and establish a web account, where they can choose or change their payment option, among other online services.

When they choose their option
When a worker applies for unemployment benefit, whether by telephone (1-866-500-0017) or through the Internet (www.michigan.gov/uia), they will be asked to select their benefit payment option.

The debit card will be issued or the direct deposit option will be established once UIA issues a monetary determination. Funds will be added to the worker's Michigan UI Debit Card or deposited into the individual's bank or credit union account within two or three days after they have made their biweekly eligibility certification through UIA's MARVIN system, if they have been determined to be eligible.

Direct Deposit
In order to use the direct deposit option, individuals must have an existing account with a U.S. financial institution. Through direct deposit, the individual can have his or her unemployment benefits deposited into either a checking or savings account.



When selecting direct deposit as their payment option, individuals will need their bank's or credit union's nine-digit routing number and their account number. The sample check points out where these numbers are located on a person's personal check.
Once the Direct Deposit option is set up, a worker's unemployment benefits will be

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electronically deposited into his/her checking or savings account.

Debit Card
UIA is partnering with JPMorgan Chase to provide debit card services. The debit card can be used to:

- Purchase goods and services using either a signature-based or personal identification number (PIN) based transaction with retailers that accept the Visa debit card.
- Withdraw funds through tellers at Visa participating banks and credit unions (called a "cash advance" transaction). The card may also be used to receive cash back from ATMs and at many point-of-sale transactions.
- Access their funds through some 13,100 Automatic Teller Machines (ATMs) in Michigan that bear the Chase, Plus, Allpoint, Interlink or Visa logos. To locate a Chase ATM, visit http://chase.com/atm; to find an AllPoint ATM visit http://www.allpointnetwork.com/.
- UIA Debit card withdrawals from ATMs are limited to $800 per day in an effort to protect cardholders against fraudulent transactions.

There may be fees and surcharges associated with the use of the debit card. Those selecting the cards will be advised of those charges when they receive their card.

Cardholders cannot make deposits or add funds to their Michigan UI Debit Card. In addition, no line of credit is attached to the UI debit card.

The Michigan UI Debit Card will be automatically issued to individuals who do not select a benefit payment option. The card does not expire for three years. Claimants should keep the card for use with possible future claims. When a card expires, Chase will send a new card, if necessary.

Customer support
Those who choose to use the Michigan UI Debit Card for their unemployment benefit payments should contact JPMorgan Chase with any questions or issues they may have with their card. Chase will provide customer support to individuals online (www.myaccount.chase.com) and through its toll-free phone system (**1-866-523-2122**) for such things as:

- Account balances
- Recent transactions
- Lost, stolen, or damaged cards
- PIN change

Those who decide to use **direct deposit** should contact their financial institution with their questions.

Unemployed workers with questions about their unemployment benefits can contact the Unemployment Insurance Agency by dialing its toll-free number **1-866-500-0017**.

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Fact Sheet

Emergency Unemployment Compensation (EUC) in Michigan

The EUC program provides up to 47 weeks of federally-funded extended unemployment benefits in all states, plus additional weeks of benefits in states with high unemployment rates. The United States Department of Labor continually monitors Michigan's unemployment rate to determine if additional adjustments should be made to the maximum number of benefit weeks available to claimants.

The EUC program is federally funded; therefore, employers will not be charged for benefits, and they will not receive a monetary determination.

EUC Eligibility Requirements
EUC payments can be obtained by individuals who are unemployed through no fault of their own and meet regular state unemployment eligibility requirements.

There are four tiers of federally-funded EUC benefits payable in Michigan:

- **Tier 1** - Provides up to 14 weeks of EUC benefits to those who exhaust their regular state unemployment benefits and file an EUC claim on or after Sept. 9, 2012. The amount equals 54% of a person's regular state unemployment benefits.
- **Tier 2** - Provides up to 14 weeks of EUC after a person exhausts EUC Tier I and equals 54% of a person's regular state unemployment benefits.
- **Tier 3** - Provides up to 9 weeks of EUC after a person exhausts EUC Tier II and equals 35% of a person's regular state unemployment benefits.
- **Tier 4** – Provides up to 10 weeks of EUC after a person exhausts EUC Tier III and equals 39% of a person's regular state unemployment benefits.
-

To be eligible for EUC, individuals must be unemployed or underemployed and be able, available, and actively seeking suitable full-time work. New entrants into EUC Tier 1 are required to participate in Reemployment and Eligibility Assessment (REA) activities administered at their local Michigan Works! Agency (MWA) office. EUC claimants are required to provide written documentation of their work search efforts on a biweekly basis to the UIA prior to certifying through MARVIN or MARVIN Online. You will be required by the UIA to report the details and results of your work search to the UIA using the Form UIA 1583EUC *Bi-Weekly Emergency Unemployment Compensation (EUC) Record of Work Search*.

Applying for EUC benefits
Unemployment benefits are typically issued for two-week periods after individuals certify through UIA's telephone or online MARVIN systems that they were unemployed and met eligibility requirements for the two weeks.

When the remaining balance on an individual's regular state unemployment claim is two weeks or less, the UIA will mail a letter to the individual explaining how to apply for the first EUC extension (Tier 1) by telephone or online. There is no application process for the EUC Tiers 2 through 4 as UIA automatically issues a determination to individuals as they exhaust their previous EUC Tier. Claimants should continue to certify by contacting MARVIN either by telephone or online.

The EUC program **expires week ending Dec. 29, 2012.** This means that EUC claims for Tier 1 cannot be established after Dec. 22, 2012, and claims for Tiers 2 through 4 cannot be established after week ending Dec. 29, 2012. **No EUC payments will be made for any week after Dec. 29, 2012.**

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Receiving your benefits

Individuals must report to UIA's telephone or online MARVIN system once every two weeks to claim their benefit payments, or they may continue to report by mail if instructed to do so by UIA. Telephone MARVIN appointment times are based on an individual's social security number, according to the chart below. Telephone MARVIN toll-free at **1-866-638-3993**. You can also reach MARVIN online at www.michigan.gov/uia and then click on the link, "UIA Online Services for Unemployed Workers." If you use MARVIN online, you may certify for benefits any day during your reporting week, Monday through Friday, from 8:00 a.m. to 7:00 p.m., ET, and on most Saturdays from 7:00 a.m. to 3:00 p.m., ET.

Telephone MARVIN Appointment Schedule

Time	Monday	Tuesday	Wednesday
8:00 – 9:00	00-01-02-03	34-35-36	67-68-69
9:00 – 10:00	04-05-06	37-38-39	70-71-72
10:00 – 11:00	07-08-09	40-41-42	73-74-75
11:00 – 12:00	10-11-12	43-44-45	76-77-78
12:00 – 1:00	13-14-15	46-47-48	79-80-81
1:00 – 2:00	16-17-18	49-50-51	82-83-84
2:00 – 3:00	19-20-21	52-53-54	85-86-87
3:00 – 4:00	22-23-24	55-56-57	88-89-90
4:00 – 5:00	25-26-27	58-59-60	91-92-93
5:00 – 6:00	28-29-30	61-62-63	94-95-96
6:00 – 7:00	31-32-33	64-65-66	97-98-99

When calling MARVIN by telephone, your appointment day and time is found by using the last two digits of your Social Security number. For example, if your social security number is: 555-55-5511, the last two digits are 11.

- ☐ Look at the schedule above and locate the number 11. Number 11 falls on Monday between the numbers 10 and 12.
- ☐ Under the column labeled "TIME," the appointment hour for number "11" is between 11:00 a.m. – noon. This is the appointment hour in which you must contact MARVIN to claim your benefit payment.
- ☐ If you miss your appointment time and day, you can contact MARVIN on Thursday and Friday between 8:00 a.m. and 7:00 p.m., ET, and on most Saturdays between 7:00 a.m. and 3:00 p.m. ET.

For further information

For general information about the EUC program, please visit our website (www.michigan.gov/uia). For questions or problems with your EUC claim, please call **1-866-500-0017** and select Option 3. This toll-free number is available weekdays from 8:00 a.m. to 4:30 p.m., ET. If you have an online web account with the Agency, you can submit an inquiry about your unemployment claim to UIA's Virtual Problem Resolution Center. The UIA also has Problem Resolution Offices (PRO) for in-person assistance. Below is a list of PRO locations.

Alpena 315 W. Chisholm St.
Detroit 3024 W. Grand Blvd.
Grand Rapids 3301 –A Plainfield NE.
Kalamazoo 1601 S. Burdick St.
Marquette 2833 U.S. 41 West
Muskegon 2700 Baker St.
Sault Ste. Marie 1118 E. Easterday Ave.
Benton Harbor 401 8th St.
Gaylord 400 W. Main St., Suite 7
Houghton 902 Razorback Dr.
Lansing 5015 S. Cedar St.
Mt. Clemens 21885 Dunham Rd., Suite 7
Saginaw 614 Johnson St.
Traverse City 1209 S. Garfield Ave., Suite C

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Solvency Tax

What is the Unemployment Insurance Solvency Tax?

If the Unemployment Insurance Agency (UIA) has to borrow money from the federal government to pay unemployment benefits, a solvency tax is triggered by a provision of the Michigan Employment Security (MES) Act to pay the interest on the federal loans.

Why is there a Solvency Tax at this time?

The law requires the UIA to impose the solvency tax if the following condition applies:

- The MES Act requires a solvency tax to be imposed if, on the preceding June 30, the balance in the Trust Fund is less than the total amount of unpaid federal loans. On June 30, 2010, the Trust Fund had nearly $3.9 billion in unpaid federal loans.

Who pays the Solvency Tax?

- Only a contributing employer, that had a negative balance in their experience account as of June 30th of the preceding calendar year. A "Negative Balance Employer" is one that paid less in state unemployment taxes than their former employees received in unemployment benefits.
- The negative balance employer must also have had to pay unemployment taxes for five consecutive years
- The **solvency tax will only apply to** those Michigan contributing employers with negative balances (about 15% of contributing employers).

When will the Solvency Tax become effective?

- The solvency tax will become effective January 1, 2011, absent federal action.

How is the Solvency Tax calculated?

- The solvency tax is 1/4 of the account building component (ABC) of the employer's contribution rate as determined under Section 19(a)(4) of MES Act.
- The maximum solvency tax rate is .75% (.0075)**,** based on a 3% maximum ABC**.**
- The maximum tax increase per year would be $67.50 per employee, based on the annual taxable wage base per employee of $9,000.
- The solvency tax is in addition to an employer's calculated tax rate and will be displayed as a separate line item on Form UIA 1771, **Tax Rate Determination For Calendar Year 2011** (if applicable).

How can an employer avoid the Solvency Tax?

- By making a voluntary UI tax payment, until November 30, 2010, employers can potentially avoid paying the solvency tax. If the payment equals the employer's negative reserve balance, as of June 30th of the preceding calendar year, the employer would no longer have a negative reserve balance and be subject to the Solvency Tax. If an employer cannot make a voluntary payment by November 30, 2010, they can still make a voluntary payment within 30 days from the date of mailing of Form UIA 1771, **Tax Rate Determination For Calendar Year 2011**

Questions about the solvency tax? Please call the Employer Customer Relations Hotline @ 1-800-638-3994 or email TaxSupport@michigan.gov.

Fact Sheet

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Fact Sheet

Extended Benefits in Michigan

During periods of high unemployment in a state, Extended Benefits (EB) may become available to workers who have exhausted their regular state unemployment insurance (UI) benefits as well as all other state and federal UI benefits.

Benefits payable through EB

The basic EB program provides UI benefits for half the number of weeks that a person received in regular UI benefits to a maximum of 13 weeks of EB. However, on April 12, 2009, legislation increased the maximum entitlement to **20 weeks** (80% of what the individual received in state benefits). The program's weekly benefit amount is the same as the individual received for regular state unemployment insurance.

What triggers EB?

Whether EB can be paid is determined by a calculation called the **insured unemployment rate** (IUR). The IUR is *not* the same as the **total unemployment rate** (TUR), which reports the total number of unemployed workers in the state's work force. The IUR is a 13-week moving average of UI weeks of benefits claimed divided by the number of people covered for UI. In order for EB to begin to be paid in a state, the state's IUR must be at least 5.0%, and the current IUR must be 20% higher than the average rate for the same period in both of the last two years.

Once the state begins paying EB, the program remains in effect for at least 13 weeks and potentially eligible unemployed workers are notified that they may be entitled to EB.

Michigan met the EB trigger level January 10, 2009

During the week of January 10, 2009, Michigan's IUR surpassed 5.0% and was 42% higher than same period for the prior two years. The week ending January 31, 2009, was the first week for which EB was payable.

State law amended April 13, 2009

The American Recovery and Reinvestment Act of 2009 (ARRA) provides for 100% federal funding of most EB claims. The state's UI law was amended on April 13, 2009, to include the total unemployment rate (TUR) triggering factor. If the state TUR is at least 6.5% and is 10% higher than the average TUR for the same period in either of the last two years, claimants are entitled to up to 13 week of EB. However, if the state TUR exceeds 8.0% and is 10% higher than the average rate for the same period in either of the last two years, claimants are entitled to receive 80% of their regular state UI benefits. State UI law was amended again on March 29, 2011, to consider three years in determining whether the state meets the TUR trigger.

To be eligible for EB, workers must be unemployed or underemployed and must have exhausted their federal Emergency Unemployment Compensation (EUC).

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Normally, EB costs are shared 50/50 between the federal government and the state. The state's share comes from its UI trust fund and is then charged on a prorated basis back to the employer(s). However, the 2009 American Recovery and Reinvestment Act calls for 100% of EB to be federally funded. Government employers and Indian Tribes and Tribal units, however, will still be charged 100 percent for EB.

Current eligibility period

The current EB period began January 25, 2009 and will continue as long as the state meets one of the EB trigger criteria methods.

Work Search is required

Individuals receiving EB must fulfill a stringent work search requirement in order to receive benefits and must list the employers contacted each week. As evidence of their work search, workers must supply the names of employers they have contacted over the prior two weeks, the name of the individual they contacted at each business, their method of contact, type of work they sought, and the results of their contact.

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Fact Sheet 123
May 2011

SOLVENCY TAX IS TEMPORARILY SUSPENDED

American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009 (also known as the federal economic recovery package) were signed into law by President Obama on February 17, 2009. Among its provisions, it provided temporary assistance for states whose unemployment insurance (UI) trust funds had been forced to seek interest-bearing loans from the federal government. The new law provides a temporary waiver of interest payments and the accrual of interest on loans for the period February 17, 2009, through December 31, 2010.

Michigan legislature passes House Bill 4239

On March 11, 2009, Governor Granholm signed Act No.1 of the Public Acts of 2009 into law. This law will give Michigan businesses a $43 million break on taxes by suspending the "solvency tax" that was required under state law in order for the state to pay the interest on the federal UI loans. As a result of the amendment to Michigan law, approximately 34,000 businesses that have negative balances in their unemployment experience accounts will now not be assessed the solvency tax in 2009 and 2010.

How will the solvency tax waiver affect employers that were assessed the Solvency Tax on their 2009 tax rate determinations?

Employers that were assessed the solvency tax on their 2009 tax rate determinations will be issued tax rate redeterminations on March 20, 2009, removing the solvency tax. Included with the tax rate redeterminations will be a letter from UIA Director Stephen M. Geskey, explaining why employers are receiving the redeterminations.

What effect does this waiver have on employers who made a voluntary payment?

- Negative-balance employers were given the opportunity to make voluntary payments to bring their experience account balances up to zero or greater and avoid being assessed the solvency tax.
  Under Michigan's UI law, a voluntary payment is not refundable. Voluntary payments are credited directly into the employer's experience account.
  By making the voluntary payment, though, an employer not only became positive, but reduced one of the components of their state unemployment tax rate (the Account Building Component) and this reduced their calculated state unemployment tax rate for 2009.
- In addition, these employers have become eligible for a Michigan FUTA tax credit rebate of up to 50% of the extra federal unemployment tax (FUTA) paid on their federal IRS Form 940.
- The first Michigan FUTA tax credit rebate will be issued in 2011.

Questions?

For more information about the Solvency Tax waiver, employers may call UIA's Employer Customer Relations hotline at 1-800-638-3994 or email TaxSupport@michigan.gov.

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Fact Sheet

Effect of Acquiring a Bankrupt Business on an Employer's Unemployment Tax Rate

Administrative actions can continue during bankruptcy

Although a bankruptcy filing prevents creditors from taking any collection action against the bankrupt employer, government entities, including the Unemployment Insurance Agency (UIA), may continue to audit, issue notices of tax delinquencies, require the filing of tax returns, and issue assessments against the employer while it is in bankruptcy.

Acquisition of assets through bankruptcy can still result in successorship

Assets may be sold out of bankruptcy "free and clear" of liens and other encumbrances, when assets are acquired by a purchaser during bankruptcy proceedings. However, the UIA can still determine that the acquiring employer is the "successor" to the bankrupt employer if the other tests for "successorship" are met. In addition, the bankrupt employer's unemployment tax delinquency accrued before the bankruptcy does not transfer through bankruptcy to the purchaser.

Conditions that can result in successorship from a predecessor employer

If there is substantially common ownership, management, or control between the predecessor employer and the successor employer (or between different divisions of the same employer) at the time of the transfer, there is a **mandatory** successorship.

There is also a **mandatory** successorship between the two employers (or between different divisions of the same employer) if there is an "acquisition," in whole or in part, of the organization (payroll/employees), trade (customers/accounts), or business (products/services), or 75% or more of the assets from the predecessor employer (or division) by the successor employer. "Acquisition" can occur by sale, lease, rental, merger, inheritance, foreclosure, gift, **bankruptcy**, or any other means of transfer.

"Transfer of Business" results in transfer, in whole or part, of unemployment insurance experience and tax rates

When there is a successorship (or even when there is a transfer of employees between employers without any successorship), the UIA must transfer a portion of the unemployment "experience" from one employer to the other when the employers are in the same kind of business and when the successor continues the business or resumes the prior business within one year. This is called a "**transfer of business**."

There is a mandatory "**transfer of business**" when the two businesses share substantially common ownership, management, or control and there has been a transfer of any kind of asset, tangible or intangible. There is also a mandatory "transfer of business" when employees transfer from one employer to the other and continue doing the same work they did before the transfer.

Therefore, when conditions of "**successorship**" are met, including the acquisition of assets through bankruptcy, the successor employer can acquire all or part of the bankrupt employer's unemployment tax experience (which can be a favorable

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history and a low unemployment tax rate, or an unfavorable history and a high unemployment tax rate). Unemployment tax rates range from 0.06% to 10.3%, applied to the first $9,000 of each covered worker's annual wages.

A **seller of a business** is required to provide the purchaser, not less than two calendar days before the acceptance of an offer, a statement of the seller's outstanding unemployment tax liability, unreported unemployment tax liability, and tax payments. The statement must also include unemployment tax rates and benefit charges for the previous five years, as well as a list of current employees and a list of employees separated within the previous 12 months.

For further information

For general information about successorship and about how unemployment taxes are calculated, call UIA **Tax Status** at 1-313-456-2080 or email EmployerLiability@michigan.gov.

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Fact Sheet

How Severance Pay Affects Unemployment Benefits

Defining Severance Pay

Severance pay is a payment made by the employer when the employee is separated from the job. Previously severance pay was not used to determine a worker's eligibility for unemployment benefits. With the passing of new legislation, severance pay will now be considered as income when calculating a worker's eligibility for benefits.

How Severance Pay Can Affect a Worker's Unemployment Benefit

The severance payment, like any other kind of "remuneration," will reduce unemployment benefits otherwise payable in the weeks to which the severance payment is allocated or distributed. If the payment is not allocated to a specific week or weeks by contract or by the employer, then the reduction in unemployment benefits will occur only in the week in which the severance payment is actually made.

Depending on the amount of severance pay, a worker's unemployment benefits can be affected in the following ways:

- If the severance payment attributed to a week equals or exceeds 1.6 times the worker's weekly benefit amount, then the unemployed worker is **not** entitled to any unemployment benefits for the week.
- If the worker's severance payment is greater than his/her weekly benefit amount but less than 1.6 times the weekly benefit amount, then the full amount of the severance payment is subtracted from 1.6 times the worker's weekly benefit amount. (The balance of weeks remaining on the unemployed worker's claim will be reduced by one week, if the worker claims benefits for that week.)
- If the severance payment is equal to, or less than, the worker's weekly benefit amount, then the claimant's weekly benefit amount will be reduced by 40 cents for each dollar of the total severance payment amount. (The balance of weeks remaining on the unemployed worker's claim will be reduced by one week if the unemployed worker claims that week.)

How Lump Sum and Salary Continuation Payments Affect Unemployment Benefits

In some cases, the employer may make a lump sum severance payment when the worker is separated from a job. If the employer allocates the severance payment to a week or weeks other than the week in which the payment is made, then the worker's weekly unemployment benefits will be reduced in each claimed week to which the severance payment is allocated.

If the employer makes a lump sum severance payment but does not allocate that severance payment to a week or weeks, then the severance payment will reduce the unemployment benefits only in the week in which the lump sum severance payment is made.

If the employer makes weekly or monthly severance payments (sometimes referred to as salary- or wage-continuation payments), then the severance payment will be used to reduce unemployment benefits in the week in which the severance is paid, unless the employer allocates the severance payments to other weeks.

Examples

#1 – The unemployed worker becomes unemployed after working full-time during week ending September 7. The employer pays the unemployed worker a $5,000 severance payment in that week and does not allocate the severance payment to any period. The unemployed worker files a new claim the following week. The worker's benefits are not reduced, as the severance payment was paid prior to the start of the claim and was not allocated to any period for which the unemployed worker was claiming benefits.

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#2 – Same facts as in Example 1, except the employer allocate the lump sum severance payment to the six weeks following the job separation. Unless the employer specifies how much will be allocated per week, UIA will equally allocate the payment over the six weeks, reducing the unemployment benefit for each of those six weeks. Based on new legislation, the severance payment may be considered wages to qualify for a later claim.

#3 – If the employer makes wage continuation payments weekly for the one-year period following the job separation, benefits would be reduced accordingly in each week. Based on new legislation the severance payment may be considered wages to qualify for a later claim.

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Fact Sheet

Changes to Federal Unemployment Taxes

Employers pay two unemployment taxes

State unemployment taxes are paid by employers to the Unemployment Insurance Agency (UIA) on a quarterly basis. These payments are used only to pay the cost of unemployment benefits to laid-off workers in Michigan.

Employers also pay a federal unemployment tax to the Internal Revenue Service, authorized under the Federal Unemployment Tax Act. The tax is paid annually on IRS Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*. The revenue from this tax is used to: (1) pay administrative costs of federal and state workforce agencies, (2) pay the federal share of Extended Benefits (under the Federal-State Extended Unemployment Compensation Act of 1970) during periods of high unemployment, and (3) provide loans to states with insolvent unemployment Trust Funds.

Normal FUTA Tax

Employers pay FUTA on the first $7,000 of each employee's annual wages. The FUTA tax is a flat rate of 6.2%, but employers who pay their state unemployment tax timely and in full receive a 5.4% credit. Therefore, the net FUTA rate is normally 0.8%.

Why is the FUTA Tax Credit Reduced?

Employers are required to pay both the FUTA tax and the state unemployment tax. They may obtain a credit on their Federal 940 FUTA form for taxes paid to the state. However, federal law provides for a reduction in the FUTA tax credit when a state has outstanding federal loans for two years. The reduction in the FUTA tax credit is 0.3% for the first year, and an additional 0.3% for each succeeding year until the loan is repaid. The FUTA credit reduction results in a net increase in FUTA taxes and applies to all Michigan contributing employers (except to Indian Tribes, nonprofit organizations, and governmental entities).

FUTA tax rate…….....	**6.2%**	
Credit allowed……	**5.4%**	*(if state unemployment tax paid timely)*
Net FUTA tax……	**0.8%**	
FUTA Credit Reduction in first year..	**0.3%**	
Total FUTA tax……..	**1.1%**	

This FUTA credit reduction results in an additional $21 per employee ($7,000 X 0.3% = $21) in the first year that loans are un-repaid, and an additional $21 in each succeeding year that loans are un-repaid.

When will the FUTA Credit Reduction take effect?

The FUTA credit reduction became effective January 01, 2009 and is due on federal IRS Form 940 by January 31, 2010.

**An additional 0.3% for each succeeding year that outstanding federal loans remain un-repaid.*

For more information about the FUTA credit reduction, employers may call the UIA Employer Customer Relations hotline at 1-800-638-3994 or email TaxSupport@michigan.gov.

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Fact Sheet

Filing for and Receiving Unemployment Insurance Benefits

The Unemployment Insurance Agency (UIA) has made the unemployment benefit process easier and faster. Now, you can file a new or reopened claim, complete reporting requirements and even change benefit payment options, all **online**.

Filing for and Receiving Benefits: Michigan's 3-Step Process

STEP 1: Filing a Claim

You can file a new claim for unemployment benefits (or reopen an established claim) by visiting the UIA's website at www.michigan.gov/uia, and click on the "File Unemployment Claims Online" link. This service is available anytime from 7:00 a.m. Monday through 7:00 p.m. Saturday. It may take about 30-45 minutes to file a claim online, depending on the Internet connection speed and your preparation. By reviewing the Internet Filed Claims tutorial on our website (on the homepage, click "Agency Webcasts" under "What's New" or http://www.michigan.gov/uia/0,1607,7-118-53900-219607--,00.html) and by having the information immediately available, you will save even more time by filing online.

Information Needed to File A Claim:

1. Your social security number,
2. Your state issued driver's license or ID card number or your MARVIN PIN (if you have one),
3. The names and addresses of employers you worked for during the past 18 months along with your quarterly gross earnings, and
4. The last date of employment with each employer.
5. UIA recommends you have your most recent employer's UIA account number or Federal ID number handy (especially if you have **not** filed a claim within the last three years or have been employed for less than six months). Depending on your situation, knowing the account number may speed up the processing of your claim (*UIA Administrative Rule 421.204(3)(a) requires the employer's UIA account number be given to employees and the employer's Federal ID number appears on your annual W-2 form*).
6. If you are **not** a U.S. citizen or national, you will need your Alien Registration number and the expiration date of your work authorization.

For a detailed worksheet of what you need to file a claim, visit UIA's website, click on the "FORMS" option from the upper left menu, and select *Form 1538: What You Need To File An Unemployment Claim*.

Once the claim is successfully entered online, a confirmation page will appear with a confirmation number. You will also be advised of your appointment date for MARVIN (Step 3).

STEP 2: Register for Work

After the claim is filed, applicants must register for work by filing a résumé and completing an application at the *Michigan Works!* Agency service center, unless UIA has waived this requirement. To locate the nearest *Michigan Works!* Agency office, please visit to www.michiganworks.org.

STEP 3: Report to MARVIN or MARVIN Online to Receive Benefits

In order to receive your benefits, you must report biweekly using MARVIN or MARVIN Online on your appointment date given to you when you filed your claim. MARVIN is the Agency's automated benefit payment system. You will use MARVIN to certify that you are eligible for payment by answering eligibility questions, such as if you are able, available, and looking for work and whether or not you have earnings during the two-week period for which you are reporting. To use MARVIN Online, go to www.michigan.gov/uia, and click on "Certify with MARVIN." If you miss your appointment day, you can also certify with MARVIN Thursday through Saturday. MARVIN is available from 7:00 a.m. – 7:00 p.m., Monday – Friday, and from 7:00 a.m. – 3:00 p.m. on Saturday (except the Saturday after the first Friday of each month). You will need to establish an account through the claim portal before you certify for the first time.

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The Claim Portal

Another UIA online service, the claim portal, allows unemployed workers to:

- Email questions or issues with your unemployment claim to the Virtual Problem Resolution Team and receive a response within 24 to 48 hours;
- View your benefit payment history;
- Certify with MARVIN Online;
- Choose or change benefit payment options online;
- Select or modify income tax withholdings;
- Reset your MARVIN PIN;
- Respond to UIA questions regarding your separation or eligibility for benefits;
- View your 1099 statement(s) for the last two calendar years;
- Check your claim balance; and
- Change your name/address.

To establish an account, go to www.michigan.gov/uia and click on "UIA Online Services for Unemployed Workers."

Benefit Duration

State unemployment benefits are usually limited to a maximum of up to 20 weeks. In 2012, there is currently one active federal unemployment extension program in Michigan: Emergency Unemployment Compensation (EUC). The EUC program provides federally-funded extended unemployment benefits in all states and is based on the state's unemployment rate. The EUC program will expire with the week ending December 29, 2012.

Benefit Amount

Your quarterly wages largely determines the amount of your unemployment benefits. State law provides that a worker can receive no more than $362 per week.

Severance Pay: How it Affects Unemployment Benefits

As a result of recent legislation, severance is considered as income when calculating a worker's eligibility for unemployment benefits.

Any reduction in unemployment benefits generally depends on the severance pay amount and the manner in which it was paid. If your employer makes a lump sum severance payment and allocates the payment(s) to specific week(s), then your weekly unemployment benefits will be reduced in each week for which the severance payment is allocated. If, however, your employer makes a lump sum severance payment but does not allocate the severance payment to a specific week or weeks, then the severance payment will reduce your unemployment benefits only in the week in which the lump sum severance payment is made.

The site is secure

The UIA has taken appropriate measures and precautions to ensure that its data servers are secured and that information submitted from those applying for unemployment benefits remains confidential.

Questions about the Three-Step Process?

If you have a problem or question about your new or reopened claim or your benefit payment, call the UIA at **1-866-500-0017** (TTY customers use 1-866-366-0004). This toll-free line is available weekdays from 8 a.m. to 4:30 p.m. except during State of Michigan holidays.

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fact sheet

Waiver (Suspension) of Unemployment Insurance Eligibility Requirements for Those in Approved Vocational Training

Usual eligibility requirements for unemployment benefits

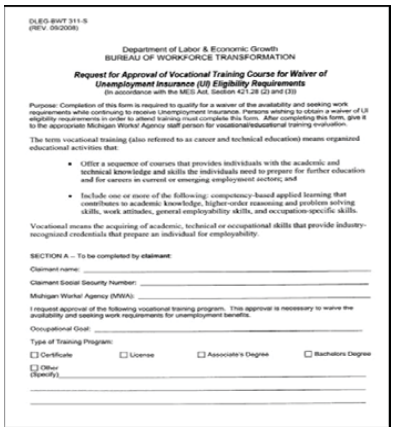
An unemployed worker collecting unemployment insurance (UI) benefits normally required to be available for full-time, suitable work and seeking work every week the worker is claiming benefits, and the worker must not refuse an offer of suitable work. (A worker who is able to adjust school hour to seek and accept work, or who would drop out of school to accept work, is already meeting the State of eligibility requirements and would not need to receive a waiver of these requirements.)

Waiver (suspension) of eligibility requirements for training

Because it is important for many unemployed workers to be retrained, the law says that if a worker is making satisfactory progress in an approved vocational training program, the worker can continue to receive unemployment benefits (up to the maximum number of benefit weeks on the claim) even though the worker is not available

Requesting a waiver of UI eligibility requirements for those in training

A worker who is in a training or educational program approved by the *Michigan Works!* Agency (MWA) can request the MWA process a waiver to the Unemployment Insurance Agency (UIA) so the UIA will continue to pay unemployment benefits while the worker is in training.



DLEG-BWT 311-S
(REV. 05/2008)

Department of Labor & Economic Growth
BUREAU OF WORKFORCE TRANSFORMATION

Request for Approval of Vocational Training Course for Waiver of Unemployment Insurance (UI) Eligibility Requirements
(In accordance with the MES Act, Section 421.28 (2) and (3))

Purpose: Completion of this form is required to qualify for a waiver of the availability and seeking work requirements while continuing to receive Unemployment Insurance. Persons wishing to obtain a waiver of UI eligibility requirements in order to attend training must complete this form. After completing this form, give it to the appropriate Michigan Works! Agency staff person for vocational/educational training evaluation.

The term vocational training (also referred to as career and technical education) means organized educational activities that:

- Offer a sequence of courses that provides individuals with the academic and technical knowledge and skills the individuals need to prepare for further education and for careers in current or emerging employment sectors; and
- Include one or more of the following: competency-based applied learning that contributes to academic knowledge, higher-order reasoning and problem solving skills, work attitudes, general employability skills, and occupation-specific skills.

Vocational means the acquiring of academic, technical or occupational skills that provide industry-recognized credentials that prepare an individual for employability.

SECTION A – To be completed by **claimant**:

Claimant name: _____

Claimant Social Security Number: _____

Michigan Works! Agency (MWA): _____

I request approval of the following vocational training program. This approval is necessary to waive the availability and seeking work requirements for unemployment benefits.

Occupational Goal: _____

Type of Training Program:

☐ Certificate ☐ License ☐ Associate's Degree ☐ Bachelors Degree

☐ Other (Specify) _____

MWA staff can provide the worker with a copy of the *Request for Approval of Vocational Training Course for Waiver of Unemployment Insurance (UI) Eligibility Requirements (Form DLEG-BWT 311-S)*

Unemployed workers must complete Section A of the two-page form; and MWA staff complete the rest of the form, and send it to the UIA.

UIA determines if UI eligibility requirements can be waived

Once the UIA receives the waiver request from the MWA, the agency evaluates it and either approves or denies the waiver request in a *Determination on Waiver of Eligibility Requirements (UIA form 1678 - see next page for form).*

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May 2011

CADILLAC PLACE * 3024 W. GRAND BOULEVARD * DETROIT, MICHIGAN 48202 www.michigan.gov/uia * TTY: 1-866-366-0004

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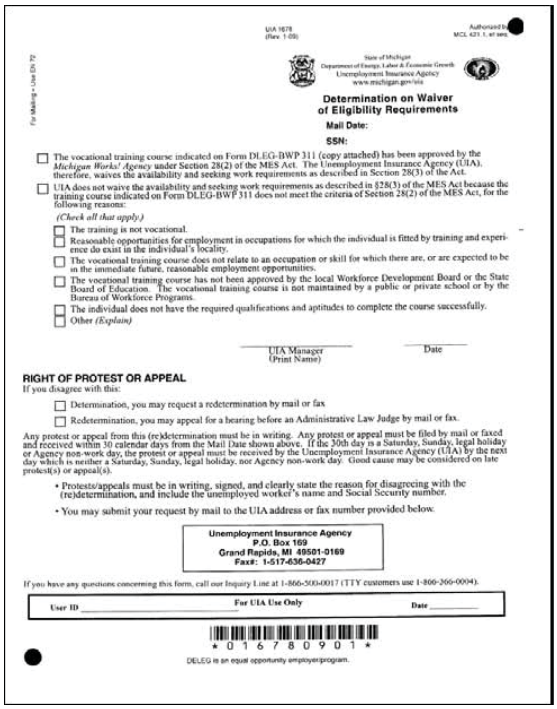
If UIA approves waiver

If the UIA approves the training eligibility waiver, then in addition to calling or going online to report to MARVIN every two weeks, the worker will file the *Certification of Participation in Approved Training (UIA form 1680)* by mail or fax, showing the chool's verification of the worker's participation.

For further information

For general information about how to apply for training and the eligibility waiver, call the nearest *Michigan Works!* Agency office. You can find them by calling *Michigan Works!* Toll-free at **1-800-285-9675**. To ask about claiming unemployment benefits while in training, call the Unemployment Insurance Agency at **1-866-500-0017**.

Determination on Waiver of Eligibility Requirements (UIA 1678)



UIA 1678 (Rev. 1-09)

Authorized by MCL 421.1, et seq.

State of Michigan
Department of Energy, Labor & Economic Growth
Unemployment Insurance Agency
www.michigan.gov/uia

Determination on Waiver of Eligibility Requirements

Mail Date:

SSN:

☐ The vocational training course indicated on Form DLEG-BWP 311 (copy attached) has been approved by the *Michigan Works! Agency* under Section 28(2) of the MES Act. The Unemployment Insurance Agency (UIA), therefore, waives the availability and seeking work requirements as described in Section 28(3) of the Act.

☐ UIA does not waive the availability and seeking work requirements as described in §28(3) of the MES Act because the training course indicated on Form DLEG-BWP 311 does not meet the criteria of Section 28(2) of the MES Act, for the following reasons:

(Check all that apply.)

- ☐ The training is not vocational.
- ☐ Reasonable opportunities for employment in occupations for which the individual is fitted by training and experience do exist in the individual's locality.
- ☐ The vocational training course does not relate to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities.
- ☐ The vocational training course has not been approved by the local Workforce Development Board or the State Board of Education. The vocational training course is not maintained by a public or private school or by the Bureau of Workforce Programs.
- ☐ The individual does not have the required qualifications and aptitudes to complete the course successfully.
- ☐ Other *(Explain)*

UIA Manager (Print Name) — Date

RIGHT OF PROTEST OR APPEAL

If you disagree with this:

- ☐ Determination, you may request a redetermination by mail or fax
- ☐ Redetermination, you may appeal for a hearing before an Administrative Law Judge by mail or fax.

Any protest or appeal from this (re)determination must be in writing. Any protest or appeal must be filed by mail or faxed and received within 30 calendar days from the Mail Date shown above. If the 30th day is a Saturday, Sunday, legal holiday or Agency non-work day, the protest or appeal must be received by the Unemployment Insurance Agency (UIA) by the next day which is neither a Saturday, Sunday, legal holiday, nor Agency non-work day. Good cause may be considered on late protest(s) or appeal(s).

- Protests/appeals must be in writing, signed, and clearly state the reason for disagreeing with the (re)determination, and include the unemployed worker's name and Social Security number.
- You may submit your request by mail to the UIA address or fax number provided below.

Unemployment Insurance Agency
P.O. Box 169
Grand Rapids, MI 49501-0169
Fax#: 1-517-636-0427

If you have any questions concerning this form, call our Inquiry Line at 1-866-500-0017 (TTY customers use 1-866-366-0004).

User ID _____ For UIA Use Only Date _____

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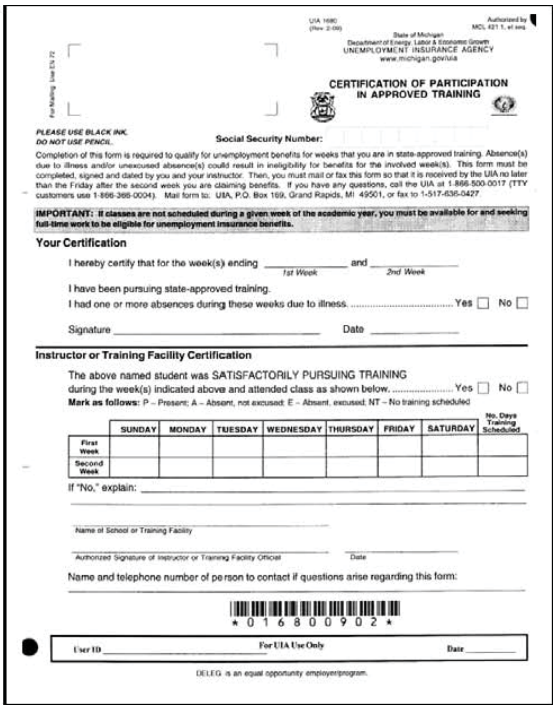
DELEG is an equal opportunity employer/program.

Certification of Participation in Approved Training (UIA 1680)



UIA 1680 (Rev. 2-09)

Authorized by MCL 421.1, et seq.

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Department of Energy, Labor & Economic Growth
UNEMPLOYMENT INSURANCE AGENCY
www.michigan.gov/uia

CERTIFICATION OF PARTICIPATION IN APPROVED TRAINING

PLEASE USE BLACK INK. DO NOT USE PENCIL.

Social Security Number:

Completion of this form is required to qualify for unemployment benefits for weeks that you are in state-approved training. Absence(s) due to illness and/or unexcused absence(s) could result in ineligibility for benefits for the involved week(s). This form must be completed, signed and dated by you and your instructor. Then, you must mail or fax this form so that it is received by the UIA no later than the Friday after the second week you are claiming benefits. If you have any questions, call the UIA at 1-866-500-0017 (TTY customers use 1-866-366-0004). Mail form to: UIA, P.O. Box 169, Grand Rapids, MI 49501, or fax to 1-517-636-0427.

IMPORTANT: If classes are not scheduled during a given week of the academic year, you must be available for and seeking full-time work to be eligible for unemployment insurance benefits.

Your Certification

I hereby certify that for the week(s) ending _____ (1st Week) and _____ (2nd Week)

I have been pursuing state-approved training.

I had one or more absences during these weeks due to illness. ..... Yes ☐ No ☐

Signature _____ Date _____

Instructor or Training Facility Certification

The above named student was SATISFACTORILY PURSUING TRAINING during the week(s) indicated above and attended class as shown below. ..... Yes ☐ No ☐

Mark as follows: P – Present; A – Absent, not excused; E – Absent, excused; NT – No training scheduled

	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	No. Days Training Scheduled
First Week								
Second Week								

If "No," explain: _____

Name of School or Training Facility

Authorized Signature of Instructor or Training Facility Official — Date

Name and telephone number of person to contact if questions arise regarding this form:

0168009 02

User ID _____ For UIA Use Only Date _____

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Department of Licensing and Regulatory Affairs

STEVE ARWOOD, Deputy Director
Department of Licensing and Regulatory Affairs

STEVE ARWOOD, Director
Unemployment Insurance Agency

Fact Sheet

Unemployment Benefits When a Worker Accepts a Buyout

What is a buyout?
In its simplest terms, a buy-out is an agreement between an employer and employee where the employer provides an employee an incentive (usually in the form of money) to permanently end the employer and employee relationship.

The incentive offered in the buyout may involve the payment of the worker's accrued sick pay, accrued vacation pay, and accrued company retirement benefits or the worker's company-sponsored 401(k) plan account. The buyout may also include the payment of several weeks or months of **severance pay** (see UIA Fact Sheet No. 125), based on a contract that provides for such a payment. In return for these payments, the worker agrees to give up any right they might otherwise have to re-employment with that employer, and to sever their employment relationship.

What are some reasons a worker might accept a buyout?
A worker who accepts a buyout might do so for several reasons. They might consider that the buyout provides them the opportunity to retire earlier than they anticipated and with a better retirement package than if they were to wait until their normal retirement age and years of service.

Still another reason a worker might accept a buyout is that they believed, or were actually told by the employer that, based on their seniority, it is unlikely that they would be able to continue working after the buyout period, or that it is certain they would not have the seniority to continue working, and would have none of the benefits the buyout would have provided them.

When can a worker who accepts a buyout potentially receive unemployment benefits?
Under Michigan law, a worker who leaves work voluntarily and without good cause attributable to the employer must be disqualified from receiving unemployment benefits.

If the worker could have continued to work for the employer at a suitable job, but instead chose to accept unemployment, then the worker would likely be disqualified from receiving unemployment benefits.

On the other hand, a worker who desired to continue working, but who chose to leave work based on information from the employer that there were no clear options for continued suitable employment, would likely not be disqualified from receiving unemployment benefits after accepting a buyout.

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Fact Sheet

Reminder: 2010 FUTA Tax Credit Reduction

Employers file Form IRS 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, on January 31st of each year. The revenue from these taxes is used, in part, to provide loans to states with insolvent unemployment trust funds. Michigan has been borrowing from the federal government to pay unemployment benefits for the past two years.

Federal law provides for a reduction in the FUTA tax credit when a state has outstanding federal loans for two years. The reduction in the FUTA tax credit was 0.3% for the first year (2009), and will be an additional 0.3% for each succeeding year until the loan is paid.

This FUTA credit reduction results in a net increase in FUTA taxes and applies to all Michigan contributing employers except for Indian Tribes, nonprofit organizations, and governmental entities.

The 2009 FUTA credit reduction was effective January 1, 2009, and was due on federal IRS Form 940 by January 31, 2010. For calendar year 2010, the FUTA credit reduction is 0.6% which will become due to the IRS by January 31, 2011

FUTA tax rate…….....	**6.2%**
Minus Credit allowed……..……	**- 5.4%***
Equals Net FUTA tax……..	**0.8%**
Add FUTA Credit Reduction in 2nd year…….….	**+0.6%**
Equals Total FUTA tax…….……..	**1.4%**

Employers pay FUTA to the IRS on the first $7,000 of each employee's annual wages ($7,000 X 0.8% = $56). The FUTA credit reduction results in an additional $21 per employee ($7,000 X 0.3% = $21) in the first year that loans are outstanding, and an additional $21 in each succeeding year that loans remain unpaid.

	Additional $21/employee	$77 ($56 + $21)	Effective FUTA rate: **1.1%**	**Due: 01/31/2010**
Year 2 (2010)	Additional $21/employee	$98 ($77 + $21)	Effective FUTA rate: **1.4%**	**Due: 01/31/2011**
Year 3 (2011)	Additional $21/employee	$119 ($98 + $21)	Effective FUTA rate: **1.7%**	**Due: 01/31/2012**

The FUTA credit reduction is used to pay the state's loan principal. The tax dollars collected by the federal government as a result of the 0.6% FUTA credit reduction are applied directly to Michigan's outstanding loan balance.

**If state unemployment tax is paid timely.*

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Unemployment Insurance Agency

Fact Sheet

2011 FUTA Credit Reduction

Employers pay two unemployment taxes

State unemployment taxes are paid by employers to the Unemployment Insurance Agency (UIA) on a quarterly basis. These payments are used only to pay the cost of unemployment benefits to laid-off workers in Michigan.

Employers also pay a federal unemployment tax to the Internal Revenue Service, authorized under the Federal Unemployment Tax Act. The tax is paid annually on IRS Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*. The revenue from this tax is used to: (1) pay administrative costs of federal and state workforce agencies, (2) pay the federal share of Extended Benefits (under the Federal-State Extended Unemployment Compensation Act of 1970) during periods of high unemployment, and (3) provide loans to states with insolvent unemployment Trust Funds.

Normal FUTA Tax

Employers pay FUTA on the first $7,000 of each employee's annual wages. The FUTA tax is a flat rate of 6.2%, but employers who pay their state unemployment tax timely and in full receive a 5.4% credit. Therefore, the net FUTA rate is normally 0.8%.

Why is the FUTA Tax Credit Reduced?

Federal law provides for a reduction in the FUTA tax credit when a state has outstanding federal loans for two years. The reduction in the FUTA tax credit is 0.3% for the first year, and an additional 0.3% for each succeeding year until the loan is repaid. The FUTA credit reduction results in a net increase in FUTA taxes and applies to all Michigan contributing employers (except to Indian Tribes, nonprofit organizations, and governmental entities).

FUTA tax rate……..... **6.2%**
Credit allowed…….. **5.4%** *(if state unemployment tax paid timely)*
Net FUTA tax…… **0.8%**
FUTA Credit Reduction in 2nd year… **0.6%**
Total FUTA tax……..**1.4%**

This FUTA credit reduction results in an additional $21 per employee ($7,000 X 0.3% = $21) in the first year that loans are un-repaid, an additional $42 per employee ($7,000 x 0.6% = $42) in the second year and an additional $21 in each succeeding year that loans are un-repaid.

When did the FUTA Credit Reduction take effect?

The FUTA credit reduction went into effect January 01, 2009. For 2009, the FUTA credit reduction was due on federal IRS Form 940 on January 31, 2010. For 2010, the credit reduction was due January 31, 2011.

For more information about the FUTA credit reduction, employers may call the UIA Employer Customer Relations hotline at 1-800-638-3994 or email TaxSupport@michigan.gov.

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Fact Sheet

SUCCESSORSHIP AND THE IMPORTANCE OF RECEIVING A DISCLOSURE & CLEARANCE OF ACCOUNT PRIOR TO ACQUIRING AN EXISTING BUSINESS

If you purchase or otherwise acquire an existing business that is liable for unemployment taxes, the purchaser (transferee) can be liable for tax debts incurred by the seller (transferor).

An employing unit that acquires the organization, trade, business, or 75% or more of the assets of an already existing business will be liable for unemployment taxes and interest due the Unemployment Insurance Agency (UIA) if the seller has an outstanding debt. Debt may also transfer if there is a transfer of business between two or more commonly owned, managed or controlled businesses. Prior to acquiring an existing business, Section 15(g) of the Michigan Employment Security (MES) Act requires certain clearances and/or disclosures be provided to the purchaser. If this is not done, the purchaser is unaware of any outstanding issues on the seller's unemployment account until they either have to pay their taxes using a high tax rate or are assessed, under Section 15(g) of the MES Act, for their predecessor's unpaid taxes and interest. Assumption of delinquent tax liability is additional to the potential transfer of experience account and tax rate (s).

What is the difference between a *Clearance of Account* and a *Business Transferor's Notice to Transferee of Unemployment Tax Liability and Rate*?

- Form UIA 1395, *Clearance of Account*, certifies the status of tax liability (taxes owing to UIA) of the seller. This is important information since the buyer may be responsible for paying any outstanding delinquency on the seller's account.
- Form UIA 1027, *Business Transferor's Notice to Transferee of Unemployment Tax Liability and Rate*, is used by the seller to disclose if there are any issues that could affect their current and future tax rates and must be disclosed for the most recent 5 years, such as cumulative benefit charges, missing tax reports, delinquent payments or a negative reserve balance. It is a misdemeanor not to disclose to the buyer.

Both are important documents and should be read carefully when acquiring or purchasing an existing business.

Successorship Involving Reimbursing Employers

Since there is no transfer of experience account from Contributing to Reimbursing employers or from Reimbursing to Contributing, a Form UIA 1027 *is not* required. However, if a predecessor involved in these types of successorships has an outstanding debt, Section 15(g) does apply. Therefore, a Form UIA 1395, *Clearance of Account*, should be requested.

Clearance of Account

The seller (transferor) or purchaser (transferee) should request the tax clearance prior to the sale, in writing and not less than 10 days before the transfer of business, as to any amounts owing to the Agency. When the UIA provides the clearance of account which certifies the tax liability as of the request date, the transferee will not be liable for any amount due from the transferor in excess of the amount certified by the Agency.

Disclosure of Unemployment Tax Liability

The statute requires the seller of a business, or the seller's real estate broker, attorney, or other agent, to deliver Form UIA 1027, *Business Transferor's Notice to Transferee of Unemployment Tax Liability and Rate*, to the buyer of the business prior to acquisition.

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This form is used by the seller to disclose if there is any outstanding unemployment tax liability, any unreported tax liability (missing tax reports), and the tax payments, tax rates and cumulative benefit charges for the most recent 5 years, and the actual reserve balance as of the prior June 30th. The actual reserve balance could be a negative or positive amount. A "Negative Balance" means that the employer paid less in state unemployment taxes than their former employees received in unemployment benefits.

Additional information provided - The seller must list the names, addresses and social security numbers of all their employees as of the date the form is signed; this informs the buyer of the potential number of claimants for future benefits. Also they must list the names, addresses, and social security numbers of their employees separated in the most recent 12 months prior to the date the Form is signed. This will give the buyer an idea of current and potential charges to their account.

The Seller can request the Form UIA 1027 from UIA's Tax Office, but should do so at least two weeks before the closing of the sale of the business to ensure adequate time for processing the request and mailing to the seller. The UIA is not responsible for providing this information to the buyer.

STATEMENT OF PENALTIES APPLICABLE FOR NON-COMPLIANCE WITH LAW. Failure of the business transferor or transferor's agent to timely provide correct information is a misdemeanor, punishable by up to 90 days imprisonment and/or fine of up to $2,500.00, or both. Civil liability for consecutive damages may also apply, as well as other remedies provided by law.

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***Steve Arwood**, Deputy Director*
Department of Licensing and Regulatory Affairs

Steve Arwood, Director
Unemployment Insurance Agency

Fact Sheet

Federal Unemployment Tax Act (FUTA) Updates

Federal Unemployment Tax Rate

The first update is that effective July 1, 2011, the 0.2% surcharge to the FUTA tax rate which has been in effect since the early 1980s has been removed. This reduces the maximum FUTA tax rate from 6.2% to 6.0%. This results in a $14 tax savings per employee.

Loss of FUTA Tax Credit Due to Loan Balances – Credit Reduction

The next update is about Michigan's status as a credit reduction state. What makes Michigan a credit reduction state? Michigan has met the criteria of having outstanding federal unemployment loans for two consecutive years since 2009.

The first year, 2009, the 90% credit on the 6.2% FUTA tax rate (5.4%) was reduced by 0.3%. This resulted in a net FUTA tax of 1.1%. This 0.3% credit reduction cost Michigan employers an additional $21 per employee on their federal unemployment taxes. In 2010, Michigan again met the two consecutive year criteria and since this was the 2nd time it happened, the 5.4% credit was reduced by 0.6%, making the credit 4.8%. This 2010 reduction cost Michigan employers $42 per employee.

Michigan still has had outstanding loans with the federal government in 2011 so we again meet the criteria for reducing the 5.4% FUTA credit. Since this is the 3rd year, the 2011 reduction is 0.9%, making the credit for Michigan employers 4.5%. This adds up to $63 per employee. With the lowered FUTA tax rate, the net cost to employers for 2011 is $49 per employee.

Michigan Unemployment Tax Credit

To offset this cost, Michigan offers a state unemployment tax credit to fully experienced employers (unemployment experience of 5 years or more) who have a positive reserve balance (check your annual tax rate determination, Form UIA 1771) of either 50% of the additional tax paid or the taxable wages for the year of the credit reduction multiplied by the employer's Non-chargeable Benefits Component (NBC) which ever results in the lower credit. This credit can be obtained by completing Form UIA 1110 located on the agency website, www.michigan.gov/uia.

For more information about the FUTA reduction, employers may call the UIA Employer Customer Relations hotline at 1-800-638-3994 or email EmployerLiaison@michigan.gov.

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Fact Sheet

Claiming Underemployment Benefits in Michigan

Underemployment is a situation in which a worker is employed, but his/her work hours and/or wages have been reduced or changed for reasons other than the worker's request. However, under certain circumstances unemployment benefits may be available.

"Earnings" can include the following: a payment of a wage; room, board or other living expenses; vacation or holiday pay; or a payment made by an employer to a separated worker in lieu of notice of a discharge or layoff.

If you are claiming benefits while underemployed you are required to:

- Report gross earnings per week (Sunday through Saturday) when certifying with MARVIN.
- Actively seek full-time work.

You are required by law to report your total gross earnings from all services performed.

How to report earnings for each week
You must report your total gross earnings, not just your take-home pay, for the week in which you actually performed the work, NOT the week in which you received the pay. Be sure to answer "yes" when MARVIN asks you if you worked during a specific week. Then report your total earnings (gross pay) before deductions.

How to calculate your earnings
Multiply your hourly rate of pay by the number of hours you worked during the week (Sunday through Saturday). Then add any other payments received during that week, such as cash payments, vacation pay, holiday pay, severance pay or other wage continuation pay.
Report the total earnings to MARVIN.

How earnings affect your weekly benefit amount (WBA) (through October 1, 2015)
UIA Form 1541, *Weekly Earnings Calculation Worksheet*, is available to unemployed workers through the UIA website at www.michigan.gov/uia .

Earnings equal or exceed 1.6 times your Weekly Benefit Amount (WBA)	A. WBA = $362.00 B. Total Earnings = $600.00 C. $362 x 1.6 = $579.20 D. If B is more than C, then you will not receive a benefit payment for this week.
Earnings are less than 1.6 times your WBA, but greater than your WBA, total earnings are subtracted from 1.6 times your WBA.	A. WBA = $362.00 B. Total Earnings of $420.00 C. $362 x 1.6 = $579.20 D. If B is more than A, then subtract earnings from C. $579.20 - $420= $159.00
Earnings are equal to or less than your WBA, 0.4 times your earnings are subtracted from your WBA.	A. WBA = $362.00 B. Total earnings of $101.00 C. If B is less than A, see the calculation below $101 x .4 = $40.40 WBA $362 – $40.40 = $321.60 you receive $321.00

Please refer to your Form UIA 1901 (Green Booklet), *Unemployment Benefits In Michigan*, for further information.

NOTE: Failure to properly report earnings may result in severe penalties if fraud is detected.

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Claiming Underemployment Benefits in Michigan
(*Underemployment and Excess Earnings*)

Underemployment is a situation in which a worker is employed, but his or her work hours and/or wages have been reduced other than at the worker's request. However, under certain circumstances unemployment benefits may be available.

"Earnings" can include the following: a payment of a wage; room, board or other living expenses; vacation or holiday pay the employer designates to a particular week; or a payment made by an employer to a separated worker in lieu of required advanced notice of a discharge or layoff.

How underemployment affects your account
If the unemployed worker earned wages with an employer within the past 18 months and work hours were reduced based on reasons other than the worker's request, the unemployed worker may be entitled to benefits. When the employer is paying more than the maximum charge per week the employer is entitled to an excess earnings credit.

The unemployed worker is required to report gross earnings (including lost earnings) each week (Sunday through Saturday) when certifying with MARVIN. Also, the worker must be able, available and seeking full-time work. Therefore, report any loss of earnings by a worker during any week resulting from any cause other than the failure of the employer to offer hours. This is considered lost earnings.

How excess earnings affect your account
A **contributing** employer may receive a credit for any week(s) the underemployed worker claimed benefits that were charged to that employer's account. To receive the credit, the earnings the employer paid an underemployed worker must equal or exceed the employer's weekly maximum potential benefit charge for that worker.

How to calculate your maximum potential charge <u>per week</u>

A. Locate your maximum charge located on the Form UIA 1575 *Monetary Determination*
B. Divide the maximum charge by the number of weeks to which the unemployed worker is entitled
C. The result of the calculation is the maximum potential charge the employer's account may be charged per week.

EXAMPLE: Maximum amount = $2,925.00 Maximum weeks = 20 $2,925/20 = maximum charge per week $146.25	If the claimant earns $146.25 or more from your place of business in any week that your business is charged you are entitled to a credit.

How to request an excess earnings credit

- Wait until you receive Form UIA 1136, *Statement of Unemployment Benefits Charged or Credited to Employer Account*
- Review reported earnings provided to UIA by the unemployed worker
- Follow the "How To Protest" on the reverse side of Form UIA 1136
- Return protest to UIA by mail, fax, or online as instructed.

If you require assistance in determining your weekly maximum potential charge, please contact the Office of Employer Ombudsman (OEO) unit at 1-855-4UIAOEO (1-855-484-2636) or (313) 456-2300.

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Fact Sheet

2012 FUTA Credit Reduction

Normal FUTA Tax

Employers pay FUTA on the first $7,000 of each employee's annual wages. The FUTA tax was a flat rate of 6.2% up to June 30, 2011. As of July 1, 2011, the FUTA tax rate is 6.0%, but employers who pay their state unemployment tax timely and in full will still receive a 5.4% credit if their state is not a credit reduction state. Therefore, the net FUTA tax rate is currently is 0.6%.

Michigan is a Credit Reduction State

Federal law provides for a reduction in the FUTA tax credit when a state has outstanding federal loans for two years. The reduction in the FUTA tax credit is 0.3% for the first year, and an additional 0.3% for each succeeding year until the loan is repaid. 2011 is the third year that Michigan has had an outstanding federal loan. The credit reduction for **2011**, which is **due January 31, 2012**, is **0.9%**. Therefore, the net FUTA tax is 1.7%, prior to July 1st, (a maximum of $119 per employee) and 1.5% on or after July 1st, (a maximum of $105 per employee). The FUTA credit reduction results in a net increase in FUTA taxes and applies to all Michigan contributing employers (except to Indian Tribes, nonprofit organizations, and governmental entities).

The FUTA credit reduction resulted in an additional $21 per employee ($7,000 X 0.3% = $21) in 2009 (first year loans were un-repaid), which reduced the FUTA credit to 5.1%. In 2010 (second year loans remained un-repaid), it cost Michigan employers an additional $42 per employee ($7,000 x 0.6% = $42), which reduced the FUTA credit to 4.8%. In 2012 (third year loans will remain un-repaid), it will cost Michigan employers an additional $63 per employee ($7000 x 0.9% = $63), which will reduce the FUTA credit to 4.5%.

From January 1, 2011 to June 30, 2011

FUTA tax rate…….....	**6.2%**	
Minus Credit allowed……..	**5.4%**	*(if state unemployment tax paid timely)*
Equals Net FUTA tax…….	**0.8%**	
FUTA Credit Reduction in 3rd year…	**0.9%**	
Total FUTA tax……..	**1.7%**	

From July1, 2011 to December 31, 2011

FUTA tax rate…….....	**6.0%**	
Minus Credit allowed……..	**5.4%**	*(if state unemployment tax paid timely)*
Equals Net FUTA tax…….	**0.6%**	
FUTA Credit Reduction in 3rd year…	**0.9%**	
Total FUTA tax……..	**1.5%**	

To offset this cost, Michigan offers a **Michigan Unemployment Tax Credit** to fully experienced employers (unemployment experience of 5 years or more), who have a positive reserve balance, a credit of either 50% of the additional FUTA taxes paid or the taxable wages for the year of the credit multiplied by the employer's Nonchargeable Benefits Component (NBC), which ever results in the lessor amount.

For more information about the FUTA credit reduction or the Michigan Unemployment Tax Credit, employers may call the UIA Office of Employer Ombudsman (OEO) at either 1-855-484-2636 (4-UIAOEO) or 1-313-456-2300, or email OEO@michigan.gov.

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Fact Sheet

Information for Employers Who Offer Work that a Claimant Refuses

When an Employer Offers "Suitable Work," the Claimant Can Lose Unemployment Benefits if He/She Refuses It.

What is "suitable work?"

Before the claimant has received 50% of his/her benefits on an unemployment claim, the claimant must accept a job that pays at least 70% of his or her gross wage before becoming unemployed. In addition to wages, other factors considered in determining suitability of a job are:

- Degree of risk to the claimant's health, safety, and morals
- Claimant's physical fitness for the job
- Claimant's prior training and work experience
- Length of the claimant's unemployment
- Claimant's prospects for securing work in his/her customary occupation
- Distance of work from the claimant's residence (taking into account the claimant's age and health, time of day of travel, travel time and traffic conditions, and availability of a means of transportation).

After the claimant has received 50% of his/her benefits on a claim, the claimant must accept a job even if it is outside of his or her past training and experience, if it pays at least the state minimum hourly wage of $7.40 an hour; if it pays at least the average wage in the locality for that kind of work; and if it pays at least 120% of the claimant's weekly unemployment benefit amount. The other factors in determining suitability, listed above, are also still taken into account.

What an Employer Should Do

The employer should communicate the offer of suitable work to a specific worker, with specific details about the job. Providing a "sign up" sheet for workers to use in responding to a generalized offer will not suffice.

If a worker refuses an offer of work, the employer should notify the UIA of the refusal (in writing to P.O. Box 169 Grand Rapids, MI 49501-0169 or Fax: 1-517-636-0427) and provide the following:

- A copy of the offer, including specifics on who offered it and how it was communicated to the claimant (e.g. verbal, written, posted, personally delivered).
- If applicable, how the work that was offered compares to work previously performed for the employer by the claimant
- Reason given by the claimant for refusing the work that was offered.

Sometimes a claimant will have "good cause" for refusing work and will not be "disqualified" for the refusal, but will be held "ineligible" indefinitely because the reason shows that the worker is unable to work or unavailable for work.

What Action will UIA take?

The UIA will use the employer's information to ask questions of the claimant about the offer, and about why he or she refused the work. If the claimant cannot show good cause for refusing an offer of suitable work, the UIA will suspend benefit payments for 13 weeks, and reduce the claimant's balance of weeks of benefits by 13 weeks (or the number of weeks remaining on the claim, if fewer than 13). Also, if the claimant explained to the employer or to the UIA that he/she turned down work because he/she did not wish to jeopardize or reduce his/her unemployment benefits, the UIA will adjudicate the issue of "lost earnings" and will consider earnings that were turned down as if they had actually been earned. The "lost earnings" will be used to reduce unemployment benefits for the week involved.

For further information about how employers can notify the UIA about a worker's refusal of an offer of suitable work, call UIA's **Office of Employer Ombudsman (OEO)**, 1-855-484-2636 (1-855-4-UIAOEO) or 313-456-2300, or email OEO@michigan.gov.

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Fact Sheet

What is Suitable Work?

Michigan's unemployment insurance law requires individuals collecting unemployment benefits to seek full-time suitable work and accept an offer of suitable work. In deciding whether full-time or part-time work is "suitable," the law considers the following criteria:

- Prior earnings
- Length of unemployment
- Prior training and work experience
- Distance of the offered work to the worker's place of residence
- The degree of risk involved to the worker's safety and health

During the first half of a worker's weeks of unemployment benefit payments, the worker is required to accept any suitable work offer if the pay is at least 70% of his or her last gross pay in addition to the above criteria.

After collecting half (50%) of the worker's entitled weeks, an unemployed worker must apply for, and accept work that is outside of his or her past training and experience if the pay is at least:

1. 120% of his or her weekly benefit amount (WBA);
2. the average wage for the particular work in the locality where the work is offered; and
3. the state minimum hourly wage (currently $7.40 an hour).

The law says that if a worker refuses an offer of suitable work, without good cause, the worker may be disqualified from receiving unemployment benefits.

A job is unsuitable if it is vacant due to a labor dispute, if it pays less than the usual wage for that job in the area, or if a worker would be required to join, resign from, or refrain from joining, a union.

How Does the UIA Determine Average Wage Information?

State law requires the UIA to use an online database published by the state. The UIA uses a database published by the Department of Technology, Management, and Budget (DTMB) to determine average hourly and average annual wage information for a specified occupation or job title within a geographic area. This searchable Internet database is available to the public at: http://milmi.org/cgi/dataanalysis/AreaSelection.asp?tableName=Oeswage

The following are some examples of refusal of suitable work situations.

Example 1: Suitable Work During the First Half of Benefits

An unemployed electrical engineer files for benefits after being laid off from a manufacturing company. She receives a determination entitling her to 20 weeks of benefits at a weekly benefit amount of $362. The unemployed worker has a degree in engineering and is diligently seeking suitable, full-time work while collecting benefits. After collecting 8 weeks of unemployment benefits, she is offered a full-time job as an engineer near her place of residence with a work commute of 10 miles. The pay offered is at a gross wage of $42,000 per year. Her gross wage at her last employer was $60,000 per year.

Is this Considered Suitable Work?

The work offer is consistent with her past training and work experience and is near her home. The pay offer is at least 70% of her last gross wage ($60,000 x .70 = $42,000). Unless one of the other criteria prevents this job from being suitable, such as a risk to her health or safety, the work offered is suitable.

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Example 2: Suitable Work After Collecting Half of Benefits

An unemployed medical assistant files for unemployment benefits in March of 2012 after being laid off from a local hospital. He receives a determination entitling him to 20 weeks of benefits at a weekly benefit amount of $324. He has previous training in the medical field and is certified as a medical assistant with prior work experience as a waiter. After collecting 14 weeks of unemployment benefits, he is offered a part-time job working 25 hours per week as a word processor at an insurance company near his home in Detroit. The offered wage is $16 per hour.

Is this Considered Suitable Work?

Since he collected half of his benefits, he must accept any work offer, regardless of his prior work experience and training as a medical assistant, if the work pays a gross amount of at least 120% of his weekly benefit amount, is the average wage in the locality of the type of work offered, **and** is at least the state minimum hourly wage (currently $7.40 an hour). In this example, the hourly pay offer exceeds the state minimum hourly wage and the gross pay is greater than 120% of his weekly benefit amount. See below for calculations.

- **Gross Wages Per Week Offered** = 25 hours of work x $16 per hour = $400 per week
- **Weekly Benefit Amount (WBA)** = $324
- **120% of WBA** = $324 x 1.20 = $380.80 rounded down to $380.
- $400 gross earnings offered per week is greater than $380, which is 120% of his WBA

However, to be suitable work, the pay offer must also be the average wage for the type of work in the location where the work is offered. In this example, the unemployed individual was offered work as a word processor in Detroit. Using the DTMB online database explained earlier, the most recent average hourly wage for a word processor in the Detroit Metropolitan Statistical Area is $17.60. Since the pay offer is less than the average hourly wage in the locality, the work offer would be unsuitable and he may continue to collect benefits if it is determined that he is not disqualified.

Protesting or Appealing a Disqualification Decision: If you have received a determination disqualifying you from benefits due to your refusal of suitable work, you may protest or appeal the (re)determination within 30 days of the mail date on the (re)determination. During an appeal hearing, the employer must prove that a specific offer of work was made to you and that it was suitable. On the other hand, you will have to prove that the offer was not received, or you may have to show why the work was unsuitable, or you may have to explain that you had good cause for refusing the work.

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Fact Sheet

Obligation Assessment

In 2011, the State of Michigan issued bonds to repay federal loans for unemployment benefits and restore solvency to the Unemployment Trust Fund**.** These bonds will be repaid by Obligation Assessments issued to employers.

Who has to pay the Bond Obligation Assessment (OA)?

The OA will be assessed on all contributing employers until the bonds are repaid.

How long will this be in effect?

The bonds are scheduled to take 10 years to repay. The OA rate will be determined yearly and included on the annual Tax Rate Determination.

How will the Obligation Assessment be billed?

It will not be billed; however, it will be included as a part of the annual tax rate determination.

Why was it included on the tax rate statement?

It was determined that it would be easier for employers if the OA was a percentage factor added to the annual tax rate. An employer will multiply their taxable wages, quarterly, by their total tax rate (which includes the Obligation Assessment). By doing it in this manner, it permits an employer to pay the assessment based on the allocation of the wages paid to his employees, instead of a lump sum payment.

Will the Obligation Assessment be the same for all employers or a percentage factor of an employer's experience?

One of the components of the OA is based on the employer's individual tax rate; therefore, the amount will vary.

Will it be credited to an employer's experience account?

No, similar to the solvency tax, interest and penalty charges, it is not credited to an employer's experience account.

How is it calculated?

The OA is structured to incorporate the employer's experience rate and a base assessment of $42 per employee for 2012, and is currently estimated at $63 for 2013 and beyond. The calculation of the OA takes into consideration the employer's current tax rate, the OA ratio, a base assessment, and the taxable wage base. The OA ratio for 2012 is 0.08, the base assessment is $42.00 and the taxable wage base is $9,500.00. The formula is:

(*2012 tax rate X OA ratio*) + (*base assessment ÷ taxable wage base*)

Note: The 2011 tax rates were used by the State Treasurer to set the Obligation Assessment rates for the year. When calculating your individual OA rate, you would use the tax rate that is shown on your 2012 tax rate determination form.

For Example:

2012 tax rate = 2.4% = 0.0240	**X OA = 0.08 = .001920**
$42.00 ÷ $9,500.00	**= .004421**
.001920 + .004421= .006341	**X 100 = .634 Rounded = .64**
2012 Obligation Assessment =	**0.64 added to calculated 2012 tax rate**

If you would like to verify the OA**,** click on:
http://www.michigan.gov/uia/0,4680,7-118-26898_27193_60127-270759--,00.html.
Enter the tax rate from the "**Your Computed Rate**" field located on your Form UIA 1771, Tax Rate Determination for Calendar Year 2012, and the calculator will display the correct Obligation Assessment amount.

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How is the Obligation Assessment Ratio (OAR) determined?

For the 2012 tax year, the State Treasurer, in consultation with the Director of LARA, has set the OAR. For 2013, and after, the OAR will be set by the State Treasurer & the Director of LARA on or before November 20th of each tax year.

Can you explain the formula used?

- **2012 tax rate –** The tax rate issued on the 2012 tax rate determination.
- **Obligation Assessment Ratio (OA Ratio) –** The OA Ratio is used to calculate the experience based cost of the Obligation Assessment Rate. The formula for the OA Ratio is as follows:

$$\frac{\text{Principal, interest, and administrative expenses due on 2012 bonds}}{\text{Anticipated regular UI revenue from contributing employers due in 2012}} = \textbf{OA Ratio}$$

- **Base Assessment –** The base assessment is a flat rate that is assessed to all covered employees.
- **Taxable Wage Base –** The taxable wage base is the maximum amount of wages paid to an employee by an employer that are subject to Unemployment Insurance taxes.

Is the Bond (OA) appealable?

No, this is not an **UI Tax** assessment determination; therefore, it cannot be protested or appealed. It is a statutory amendment to the Michigan Employment Security (MES) Act.

If I receive a redetermination, will the Obligation Assessment change?

Yes. Since the tax rate is a part of the formula to determine the obligation assessment, any circumstance that would cause the employer's 2012 tax rate to change will also change the OA rate for 2012.

EWAM and Tax Rates with the Obligation Assessment

If an employer checks their 2012 rate on EWAM, they will not be able to see the reason their tax rate has increased. In EWAM, the rate components and the obligation assessment are not defined. Only the total tax rate is displayed. Every employer was mailed their Tax Rate Determination, a letter informing employers about the Obligation Assessment (OA) and an Obligation Assessment Rate worksheet which explains how the OA was calculated. Please refer to the above-mentioned documents if further explanation is needed after checking EWAM.

Tax Rates:

Year	Rate
2012	00.51 %
2011	00.06 %
2010	00.06 %
2009	00.06 %
2008	00.06 %
2007	00.06 %
2006	00.06 %

For more information about the Obligation Assessment, employers may call the UIA Office of Employer Ombudsman (OEO) at either 1-855-484-2636 (4-UIAOEO) or 1-313-456-2300, or email OEO@michigan.gov.

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Fact Sheet

2011 CHANGES THAT AFFECT TAX RATES

Amendments to Tax Rate Tables

Public Act 269 of 2011 added 2 new tax rate tables to the Michigan Employment Security Act (Act) which will gradually, by 2013, modify the definition of a fully-experienced employer to one who has been liable for 3 years or more, instead of 5.

These tables are separated by employer type. Tables A, A-1, and A-2 are for non-construction employers and Tables B, B-1, and B-2 are for construction employers, as defined in Section 19(a)(1)(ii) of the Act.

For an employer that was a contributing employer ***before January 1, 2012*** and did not convert from a reimbursing to a contributing employer on or after January 1, 2012, the following tables apply:

Table A – Non-construction Employers	
Year of Contribution Liability	Contribution Rate
1	2.7%
2	2.7%
3	1/3 (Chargeable Benefits Component) + 1.8%
4	2/3 (Chargeable Benefits Component) + 1.0%
5 and over	Chargeable Benefits Component **(CBC)** + Accounts Building Component **(ABC)** + Nonchargeable Benefits Component **(NBC)**

Table B – Construction Employers	
Year of Contribution Liability	Contribution Rate
1	Average Construction Contractor Rate
2	Average Construction Contractor Rate
3	1/3 (CBC) + 2/3 Average Construction Contractor Rate
4	2/3 (CBC) + 1/3 Average Construction Contractor Rate
5 and over	CBC + ABC + NBC

For an employer that becomes a contributing employer ***on or after January 1, 2012 and before January 1, 2013***, the following tables apply:

Table A-1 – Non-construction Employers	
Year of Contribution Liability	Contribution Rate
1	2.7%
2	2.7% + 1/3 (Chargeable Benefits Component)
3	2.7% + 2/3 (Chargeable Benefits Component)
4 and over	CBC + ABC + NBC

Table B-1 – Construction Employers	
Year of Contribution Liability	Contribution Rate
1	Average Construction Contractor Rate
2	1/3(CBC) + Average Construction Contractor Rate
3	2/3(CBC) + Average Construction Contractor Rate
4 and over	CBC + ABC + NBC

For an employer that becomes a contributing employer **on or after January 1, 2013**, the following tables apply:

Table A-2 – Non-construction Employers	
Year of Contribution Liability	Contribution Rate
1	2.7% + 1/3 (Chargeable Benefits Component)
2	2.7% + 2/3 (Chargeable Benefits Component)
3 and over	CBC + ABC + NBC

Continued on Reverse

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Table B-2 – Construction Employers	
Year of Contribution Liability	Contribution Rate
1	1/3 (CBC) + Average Construction Contractor Rate
2	2/3 (CBC) + Average Construction Contractor Rate
3 and over	CBC + ABC + NBC

Changes to the Look Back Period to Determine the Chargeable Benefits Component (CBC) for all Contributing Employers

In 2012, the time period used to calculate the CBC was changed from 60-months (5 years) to 48-months (4 years). In 2013, and years to follow, the time period will be 36 months (3 years). In the future, the look back period, to determine the CBC, will remain at 3 years, as provided in Section 19(a)(3)(i) of the Act:

For calendar years beginning **before** January 1, 2012: $\frac{\text{60-months benefit charges}}{\text{60-months taxable wages}}$

For the calendar year **2012:** $\frac{\text{48-months benefit charges}}{\text{48-months taxable wages}}$

For each calendar year beginning **on or after** January 1, 2013: $\frac{\text{36-months benefit charges}}{\text{36-months taxable wages}}$

Note: Beginning in 2012, all tax rates include an Obligation Assessment. For more information on the Obligation Assessment and how it is calculated, please see Fact Sheet 146, Bonding Obligation Assessment on the UIA website at:

http://www.michigan.gov/uia/0,4680,7-118-26898_27193-268893--,00.html

For more information about the New Tax Rate Tables, employers may call the UIA Office of Employer Ombudsman (OEO) at either 1-855-484-2636 (4-UIAOEO) or 1-313-456-2300, or email OEO@michigan.gov.

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Fact Sheet

Employer Amnesty Program Misclassification of Wages

Employers Can Request UIA to Review Their Classification of Workers as "independent contractors"
The *Michigan Employment Security Act* was amended by Public Act 269 of 2011 adding a new Section 42a, which establishes an amnesty program for employers. The amnesty program offers an attractive way to resolve worker classification issues at a reduced cost and eliminates prospective tax uncertainty.

Effective immediately, and continuing through December 31, 2012, employers who have classified some or all of their workers as "independent contractors" can request the UIA to review that classification. The UIA will apply the "economic reality test" and will issue a Determination as to whether those workers are indeed "independent contractors" or instead must be classified as "employees."

Employers are not obligated to participate in the amnesty program. Employers are eligible to participate, even if they have been notified of the scheduling of an audit, claims investigation, or liability investigation. However, once the auditor or investigator has begun reviewing data for the audit or investigation, the employer is no longer eligible to take advantage of the amnesty program.

UIA Will Issue a Determination as to the Proper Classification of the Workers
Following its review, the UIA will issue a Determination as to whether the workers were properly classified as "independent contractors." If the UIA determines that the workers were incorrectly classified as "independent contractors," the UIA will not:

- Assess unemployment tax on those misclassified wages prior to the date of the determination
- Assess interest or penalties on the amounts determined to be wages paid to the workers previously considered "independent contractors" prior to the date of the determination

Misclassified Workers Can Be Paid Resulting Benefits, But Employers Will Not Be Charged
Any workers determined to have been improperly classified as "independent contractors" will be considered to have earned wages with the employer. If the worker becomes unemployed and files a claim for unemployment benefits, those wages can be used for the claim if they fall within the "base period" of the claim. However, the account of the employer participating in the amnesty program will not be charged for those benefits. The employer would only be charged for benefits based on wages paid after the date of the Determination issued under the amnesty program.

UIA Will Begin Applying 20-Factor IRS Test When Amnesty Program Ends
Once the amnesty program ends on December 31, 2012, the UIA will begin using the IRS "20-factor" test to determine a worker's "independent contractor" classification. Beginning January 1, 2013, interest and penalties will be assessed on unemployment taxes that were underpaid as the result of the misclassification of workers as "independent contractors."

For further information about how employers can apply for the UIA's amnesty program, contact the **Office of Employer Ombudsman (OEO)**, 1-855-484-2636 (4-UIAOEO) or 313-456-2300, or by email at OEO@michigan.gov.

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2011 Amendments to the Michigan Employment Security Act (Act) Tax - and Wage Record-Related Changes

State of Michigan
Department of Licensing and Regulatory Affairs

UNEMPLOYMENT INSURANCE AGENCY

RICK SNYDER, Governor
State of Michigan

Steven H. Hilfinger, Director
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Steve Arwood, *Deputy Director*
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Steve Arwood, Director
Unemployment Insurance Agency

Fact Sheet

Section 13(1)

- Contributions due and payable from an employer that is liable under this *Act* solely on the basis of the payment of wages for domestic services may be paid annually on the date specified by the UIA, while still reporting quarterly.
- A contribution payment amount that is not an even dollar amount shall be credited to the account of the employer in an amount equal to the next lower dollar amount if under 50 cents and in an amount equal to the next higher dollar amount if 50 cents or more.

Section 13(2)

- Requires an employer having more than 25 employees on January 1, 2013, to file quarterly reports by an electronic method approved by the UIA beginning with the report for the first quarter of 2013.
- An employer having more than five but fewer than 26 employees on January 1, 2013, is required to file quarterly reports by an electronic method approved by the UIA beginning with the report for the first quarter of 2014.
- An employer having five or fewer employees on January 1, 2013, is required to file quarterly reports by an electronic method approved by the UIA beginning with the report for the first quarter of 2015.

Section 13(3)

- Allows employers that have 25 or fewer employees and who incurred at least 50% of taxes due in the first quarter of the prior year, to equally distribute payment of the first quarter taxes over the 4 quarters in that year.
- No interest or penalties are applied if payment is made in accordance with Section 15a.

Section 13(m)(5)

- This section pertains to Professional Employer Organizations (PEO). Change the “8” quarter of no employees requirement to “12” is consistent with the change in Section 19(a)(1)(i).
- The change is for consistency with Section 3303(a)(1) of the Federal Unemployment Tax Act.
- If a client entity of a PEO leases some of its employees from the PEO but retains the remainder of its employees, the leased employees shall be reported by the PEO under the client entity’s unemployment insurance account number.
- The employees retained by the client entity will be reported by the client entity under an agency-assigned sub-account number of the client entity’s account number.

Section 15a(1)

- Allows an employer to pay 1st quarter tax liability in 4 equal payments. Interest will not be charged on outstanding taxes when the employer meets the requirements in 13(3).
- Agency may collect interest at the rate specified in Sect. 15 on the amount of the deferred tax that is otherwise due in that quarter and unpaid.

Section 19(a)(1)(i)

- If an employer’s coverage is terminated under section 24, or at the conclusion of 12 or more consecutive calendar quarters during which the employer had no workers in covered employment, and if the employer again becomes liable for taxes, the employer is considered as newly liable for taxes.

Fact Sheet #149
April 2012

See Reverse

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Section 19(a)(1)(i) Continued

- Employers will be assigned their most recent rate if they become liable again after a transfer of business.

Section 19(a)(1)(ii)

- Effective January 1, 2012, the most recent 48 consecutive months of benefit charges and taxable wages ending the previous June30th will be used to calculate the Chargeable Benefits Component (CBC).
- Effective January 1, 2013, the most recent 36 consecutive months of benefit charges and taxable wages ending the previous June 30th will be used to calculate the CBC.

Section 21(a)

- Allows a successor employer to receive notice that there are benefits being charged to their account from the predecessor thereby giving the successor employer an opportunity to act more quickly.
- An employer determined by the Agency to be a successor employer shall begin receiving the listings effective for weeks beginning after the mailing of the determination of successorship.

Section 27(o)(9)(c),(d)

- "Seasonal employment" means the employment of 1 or more individuals primarily hired to perform services during regularly recurring periods of 26 weeks or less in any 52-week period other than services in the construction industry.
- A seasonal employer designation under this act need not correspond to a category assigned under the North American Classification System - United States Office of Management and Budget.

Section 42a New

- Provides amnesty to employers who may have been treating their employees as independent contractors when in fact they should be employees.
- Employers have until January 1, 2013, to request the Agency to determine whether their employees fall under covered employment.
- If determined to be employees, a claim may be filed and wages in the first 4 or the last 5 calendar quarters may be used to establish claim.
- Penalty and interest shall only accrue on taxes or reimbursement assessed on wages paid on or after the date of the Determination.

Section 54(c)(2)

- Any employer or owner, director, officer, or agent of an employer or any other person failing to submit, when due, any quarterly wage detail report required by Section 13(2), or who submits an incomplete or erroneous report, is subject to an administrative fine of $50.00 for each untimely report, incomplete report, or erroneous report if the report is filed no later than 30 days after the date the report is due.
- The fee will be $250.00 if the report is filed more than 1 calendar quarter after the date the report is due; and an additional $250.00 for each additional calendar quarter that the report is late. However, no penalty shall apply if the employer files a corrected report within14 days after notification of an error by the Agency.

For more information about the amendments, employers may call the UIA Office of Employer Ombudsman (OEO) at either 1-855-484-2636 (4-UIAOEO) or 1-313-456-2300, or email OEO@michigan.gov.

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What is a Denial Period?

State of Michigan
Department of Licensing & Regulatory Affairs

UNEMPLOYMENT INSURANCE AGENCY

RICK SNYDER, Governor
State of Michigan

STEVEN H. HILFINGER, Director
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Fact Sheet

Denial Period Defined. A "Denial Period" prevents a worker from receiving unemployment benefits based on work with an employer who hired that worker to work during a regularly recurring seasonal period (or school year), if the employer has given the worker "reasonable assurance" of returning to the work at the start of the next season (or school year).

What Kinds of Workers Can be Subject to a Denial Period?

- **School Employees:** This includes instructors, researchers, and principal administrators, as well as all other school employees working for school districts, community college districts, educational service agencies (such as intermediate school districts), charter schools, public or non-profit colleges and universities, and other public or non-profit schools (but not employees of private schools). The Denial Period applies to these workers during the period between school terms, and to vacation periods within a school term. The Denial Period applies to unemployment benefits from all non-private schools the worker worked for, if the worker has "reasonable assurance" of work from any non-private school.
- **School Bus Drivers Working for Private Bus Companies:** The Denial Period applies if at least 75% of the worker's wages with the bus company were for driving a school bus. The Denial Period applies to workers in K-12 and higher education schools during the period between school terms.
- **School Workers Working for Contractors Providing School Services:** This includes services such as food service, security services, custodial services, or other services provided to a school by a contractor. The Denial Period applies to workers in K-12 and higher education schools only during the period between school terms.
- **School Crossing Guards:** The Denial Period applies during the period between school terms and to vacation periods within a school term.
- **Professional Athletes:** The Denial Period applies during the period between sport seasons to workers whose recent past wages were earned substantially from participating in sporting events, or from training or preparing to participate in sporting events.
- **Workers Hired by Governmental, Private, or Non-profit Employers as Seasonal Workers:** The Denial Period applies to workers hired primarily to work during regularly recurring periods of 26 weeks or less within any 52-week period by any employer (except a construction employer). It includes a governmental entity (such as a city, county, township, or village) that hires seasonal workers.

What is the Effect on a Worker's Entitlement to Unemployment Benefits?

A worker subject to a Denial Period cannot receive unemployment benefits during the Denial Period based on the kind of work described above, but could receive benefits during that period based on work other than the work described above. If a school worker (other than an instructor, researcher, or principal administrator); or a school bus driver working for a private contractor; or a school worker working for a contractor providing services to a school; who had been given reasonable assurance of returning to work was not rehired at the start of the new school year, the worker can claim retroactive unemployment benefits if the worker was regularly certifying for benefits (that is, reporting to "MARVIN") during the Denial Period. A Denial Period does not apply to a seasonal worker required to begin work before the start of the normal seasonal work period or required to continue working after the end of the normal seasonal work period. In the case of a school worker, if a labor dispute delays the start of the school year, the Denial Period ends at the originally-scheduled start of the school year.

Must Unemployment Taxes Be Paid on the Wages of These Workers?

Unemployment "contributions" must be paid by a "contributing employer" on the wages of workers potentially subject to a Denial Period, but the reduced benefit charges resulting from the denial of benefits to these worker will likely lower the employer's tax rate and overall tax payments.

For further information about Denial Periods, call UIA's **Office of Employer Ombudsman (OEO)**, 1-855-484-2636 (4-UIAOEO) or 313-456-2300, or email OEO@michigan.gov.

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Understanding Reasonable Assurance

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Department of Licensing & Regulatory Affairs

UNEMPLOYMENT INSURANCE AGENCY

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Unemployment Insurance Agency

Fact Sheet

Understanding Denial Periods

A "Denial Period" prevents a worker from receiving unemployment benefits based on work with an employer who hired that worker to work during a regularly recurring seasonal period (or school year), if the employer has given the worker "reasonable assurance" of returning to the work at the start of the next season (or school year). For more details, please review Fact Sheet UIA 150, which is located on the UIA website at www.michigan.gov/uia.

Defining Reasonable Assurance

Although "Reasonable Assurance" is not a guarantee of a job, it is an employer's "reasonable" assertion that a job will be available at the beginning of the next season, based upon the facts and circumstances known to the employer at the time the assurance is given.

Reasonable Assurance Given in Good Faith by the Employer

"Reasonable Assurance" must be given by the employer in "good faith" taking into account economic circumstances at the time the assurance was given, and economic circumstances that could reasonably, at the time the assurance was given, be foreseen to exist at the time for which the assurance was given (that is, what economic circumstances would likely exist at the beginning of the new season or school year). For example, in the case of a school district, if declining enrollment and state funding will likely mean that the 25 least senior employees in a job category will not be rehired, and the claimant involved is included in that group, then an assurance of re-employment given to that employee would not be in "good faith" and therefore would not be reasonable.

Comparing Wages and Fringe Benefits of Jobs

The economic terms and conditions of the employment in the successive seasonal period or academic year must be reasonably similar to those in the previous seasonal period or school year. An assurance of a job paying wages or providing fringe benefits of less than 80% of the worker's previous job would not be considered "reasonable assurance" for the purpose of applying the denial period.

For example, if a full-time, permanent "contract" teacher is given "reasonable assurance" of work for the following academic year as a regular emergency substitute (RES) teacher, the differences in pay and benefits must be considered to determine if the claimant had been given "reasonable assurance" when he/she was assured of the RES work. The RES work pays about 58% of the pay the claimants received as "contract" teachers, and did not offer sick leave, leaves of absence, or holiday pay. In addition, an RES is entitled to either dental or medical insurance coverage, but not both; whereas a contract teacher is entitled to both.

For further information about Denial Periods and Reasonable Assurance, call UIA's **Office of Employer Ombudsman (OEO)**, 1-855-484-2636 (4-UIAOEO) or 313-456-2300, or e-mail OEO@michigan.gov.

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Steve Arwood, Director
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Fact Sheet

Rounding Quarterly Contribution Payments to a Full Dollar Amount

Section 13(1) of the Michigan Employment Security Act provides, in pertinent part:

> A **contribution payment** amount that is not an even dollar amount shall be credited to the account of the employer in an amount equal to the next lower dollar amount if under 50 cents and in an amount equal to the next higher dollar amount if 50 cents or more.

When completing Form UIA 1028, *Employer's Quarterly Wage/Tax Report* for quarter ending 09/30/2012, and thereafter, report gross, excess, and taxable wages in the exact currency amount (dollar and cents). Also, when completing the *Wage Detail Report* portion of the 1028, the individual gross wages and the total gross wages should be reported in the exact currency amount (dollar and cents). Rounding should not be used when reporting wages.

To determine the amount due as payment, you must make two separate calculations and you must have your Form UIA 1771, *Tax Rate Determination for Calendar Year 2012* on hand. For the first calculation, the taxable wages are multiplied by the combined rate of the Account Building Component (ABC), Chargeable Benefits Component (CBC), and Nonchargeable Benefits Component (NBC). Please note that the result is then rounded to the whole dollar. For an employer, who is not fully experienced, their new employer rate (2.7% or the appropriate rate for their 1st year of liability) will be used in the 1st calculation. For the 2nd calculation, multiply the Obligation Assessment (OA) portion of the tax rate by the taxable wages. However, this result is not rounded to the whole dollar. Note that interest, penalty charges, as well as the non-reporting penalty, SUTA penalty or Solvency rates are not rounded.

For example, an employer has taxable wages of $52,423.78 and a total tax rate of 1.1%. The computed tax rate (ABC + CBC + NBC) is 0.60% and the OA is 0.50%.

- When the taxable wages are multiplied by 1.1%, the result is $576.66. The amount due should be rounded to $577.00 (50¢ or greater, round up). If the employer remits $576.66, the taxes due would be underpaid.
- If the taxable wages are multiplied by 0.60%, the result is $314.54, which would be rounded to $315.00 (50¢ or greater, rounded up).
- When the taxable wages are multiplied by the OA, the result would be $262.1189, which is rounded to the nearest cent (2 decimal places), but not to the whole dollar; the result is $262.12.
- To determine the total due, add $315.00 plus $262.12 = $577.12.
- However, if $576.66 ($52,423.78 times the total rate 1.1%) is remitted, there would be an underpayment because payments are allocated to the OA first, then the remaining amount is allocated to tax, which leaves, in this case, an underpayment of $0.46 ($577.12 minus $576.66 = $0.46).

The best method to use to avoid small underpayments or overpayments is to calculate them separately, then total the results to determine the amount to be remitted. It is recommended that you have your Form UIA 1771, *Tax Rate Determination for Calendar Year 2012* on hand. Your tax rate and Obligation Assessment rate are displayed separately on this form. Note: the 2013 and subsequent tax rate determinations will be available in MIWAM.

Beginning with quarter ending September 30, 2012, electronic filers (single filers) using MiWAM (Michigan Web Account Manager) will not be required to submit gross, excess and taxable wages. MiWAM will perform the calculations based on wage detail data, and calculate the tax amount due, which will be rounded (up or down, whichever is appropriate), and calculate the OA amount due. The results will be added together and displayed as the correct amount to be remitted. This change was effective with the quarter ending March 31, 2012, tax filings.

For more information, employers may call the UIA Office of Employer Ombudsman (OEO) at either 1-855-484-2636 (4-UIAOEO) or 1-313-456-2300, or email OEO@michigan.gov.

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Department of Licensing and Regulatory Affairs

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Unemployment Insurance Agency

Fact Sheet

New Wage Detail Penalty Amounts

Section 54(c)(2) of the Michigan Employment Security (MES) Act, provides for late penalties and non-filing penalties for the wage detail report information. Beginning with the quarter ending September 30, 2012, the wage detail report penalties will be charged as follows:

- A $50.00 penalty will be charged if Form UIA 1028, *Employer's Quarterly Wage/Tax Report* (combined tax and wage report), due for that quarter is untimely, incorrect, or erroneous, and if filed no later than 30 days after the date the report is due.
- If the untimely, incorrect or erroneous report is filed more than 1 calendar quarter after the date the report was due, a $250.00 penalty will be charged.
- An additional $250.00 will be charged for each calendar quarter that the report remains unfiled.
- No penalties will apply if the employer files a corrected report within 14 days after notification by the Agency of an error.
- These penalties will not be charged retroactively, which includes quarters ending 12/31/2011, 03/31/2012, or 06/30/2012.
- If a wage report for a prior quarter is received late, the penalty will still be $25.00.

Section 54(c)(3) of the MES Act allows cancellation of late or non-filing penalties for the wage report by providing the following:

> If a report is filed after the prescribed time and it is shown to the satisfaction of the Commission (now UIA) that the failure to submit the report was due to reasonable cause, a fine shall not be imposed. The assessment of a fine as provided in this subsection constitutes a final determination unless the employer files an application with the unemployment agency for a redetermination of the assessment in accordance with section 32a.

Application for Redetermination of Penalties

Under Section 54(c)(3) of the MES Act, if an employer shows the failure to file or late filing was due to a reasonable cause, the Agency shall not impose a fine.

The employer must apply for a redetermination within 30 days of receiving the penalty assessment. A written application for redetermination must be submitted to the Unemployment Insurance Agency, P O Box 8068, Royal Oak, MI 48068-8068. Also, the request for redetermination can be filed through MiWAM (Michigan Web Account Manager).

Regardless of an employer's ability to pay, it is highly recommended that employers file their combined wage/tax reports on time to avoid these penalties. If an employer is unable to pay their taxes in full when due, payment plans are available. Employers should contact TaxCollections@michigan.gov for details or to establish a payment plan.

For more information, employers may call the UIA Office of Employer Ombudsman (OEO) at either 1-855-484-2636 (4-UIAOEO) or 1-313-456-2300, or e-mail OEO@michigan.gov.

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Department of Licensing and Regulatory Affairs

STEVE ARWOOD, Director
Unemployment Insurance Agency

Fact Sheet

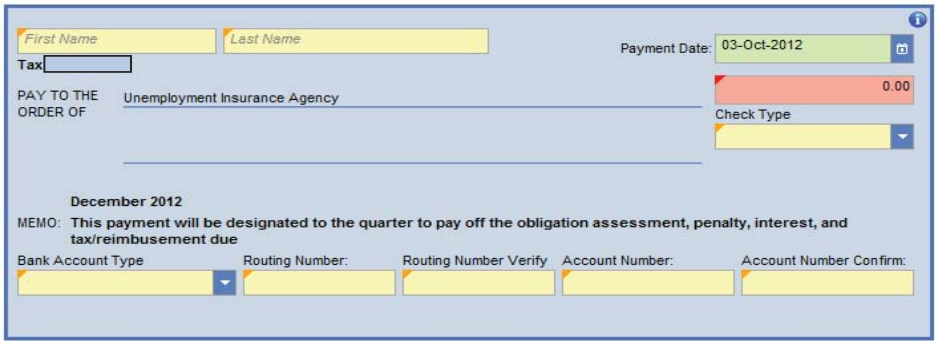
Employer Electronic Payment Options

The Unemployment Insurance Agency (UIA) has made available to employers the option to pay their quarterly unemployment tax liability by Automated Clearing House (ACH) Credit or ACH Debit and also includes Bulk Payment functionality for multiple employer payments. This will make paying taxes simpler and more convenient. Employers who wish to pay their unemployment quarterly taxes electronically can pay by ACH Debit through their Michigan Web Account Manager (MiWAM) or by ACH Credit through their financial institution.

ACH Debit Transmissions

Employers who wish to pay their unemployment taxes through their MiWAM Account must verify with their financial institution that they have the ability to authorize a debit from their bank account. Some financial institutions offer a service referred to as "Debit Blocking" to their customers to prevent unauthorized debits (withdrawals) from their accounts. If an employer has this service on their account, they must contact their financial institution and have ACH transactions identified with the company ID 9044021793, which authorizes UIA to debit the account. **Failure to do this prior to making a payment through MiWAM will result in UIA not being able to receive the electronic payment.**

To make a payment, an employer must first log in to their MiWAM account which can be accessed through the UIA website at www.michigan.gov/uia. Once logged in, click on the "Pay" button next to the quarter you wish to pay and complete the required fields. (For First and Last Name fields, if the account belongs to a business named ABC Corp., "ABC" would be typed in the First Name field and "Corp." would be typed in the Last Name field.) **Please note that the payment date selected will be considered the date "received" by the Agency.**



For technical questions on paying taxes through the ACD Debit option, please contact MiWAM Support at (313) 456-2188, 8 am to 5 pm, Monday through Friday or through email at MiWAMSupport@michigan.gov.

Bulk Payments

The Bulk Payment feature allows Michigan UIA tax payers to authorize a single payment and submit a file indicating how the payment should be allocated for multiple employers through their MiWAM account. Only web account users who are directly authorized to file and pay on behalf of the employer, or have a Power of Attorney on file with UIA for the employer, can use this function. This function can also be used for reimbursement payments.

The fixed-length file format shown below provides the information needed to allocate the authorized payment.

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BULK PAYMENT BATCH/FILE HEADER

Field Name	Data Type Size	Format	Description
Record Type	String	1 X(1)	Acceptable value is the letter H. Identifies the record as a header record
Number of Payments	Integer	7 9(7)	Recon Field – Should match the total number of payments in the batch. This numeric field should be left-filled with zeros if the number of payments is less than the maximum field length.
Total Payment Amount	Integer	13 9(11)V9	Recon Field – Should match the total number of all payments in the batch. This numeric field should be left-filled with zeros if the payment amount is less than the maximum field length.
		21	

BULK PAYMENT DETAIL RECORD

Field Name	Data Type Size	Format	Description
Record Type	String	1 X(1)	Acceptable value is the letter P. Identifies the record as a detail record
Employer Number	Integer	10 9(10)	Combines the employer number and multi-unit number
Quarter Ending	Integer	5 QCCYY	Q = 1, 2, 3 or 4 and the four-digit year
Payment Amount	Integer	13 9(11)V99	This numeric field should be left-filled with zeros if the payment amount is less than the maximum field length.
Payment Type	String	1 X(1)	Acceptable payment values are: R = Report, L = Loose, V = Voluntary*
		30	

* **Report Payment** (R) – a payment received for a designated quarter for the payment of unemployment tax, penalty and/or interest.

Loose Payment (L) – a payment received without a designated quarter for the payment of unemployment tax, penalty and/or interest.

Voluntary Payment (V) – please refer to Section 19 of the MES Act regarding voluntary payments.

ACH Credit Transmissions

The ACH Credit feature allows the employer to authorize payments to the UIA to pay unemployment quarterly taxes or reimbursements using both the National Automated Clearance House Association (NACHA) Cash Concentration & Disbursement (CCD)+ and Corporate Trade Exchange (CTX) standard formats. You must contact your bank in advance to notify them of your ACH transfer amount. Most banks require at least 24 hours lead time. Please contact your bank for specific deadlines.

UIA treats each employer account number as a separate entity. Therefore, if you are submitting a payment for multiple UIA account numbers, a separate addenda record must be submitted for each account. Use the CTX format if you are submitting a payment with multiple addenda records. (The maximum number of addenda per transmission is 99.)

Your bank will need the following information for the transaction:

State of Michigan (UIA) Information

Bank Account Number 270766842
Bank Routing Number 021409169

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COMPANY/BATCH HEADER RECORD (5)			ENTRY DETAIL RECORDS (6)	
Field 3 Originating Company Name	**Field 4** Company Discretionary Data	**Field 5** Originating Company Identification	**Field 3&4** UIA's Bank Transit & Routing Number	**Field 5** UIA's Bank Account Number
Your Company Name	270766842	Your Company UIA Number or FEIN	021409169	270766842

The UIA has adopted the following format for the addendum portion of the transaction (7 record):

Field	Contents
Segment Identifier (includes Record Type Code)	"705TXP"
Separator	"*"
TXP01	State of Michigan Unemployment Agency 10-digit assigned employer account number
Separator	"*"
TXP02	Tax Type Code: • If CCD+: o 13000 for Report Payment o 13010 for Loose Payment** • If CTX: o 13020 for Report Payment o 13030 for Loose Payment**
Separator	"*"
TXP03	Period for which tax was accrued in "YYMMDD" format. Must be the final day of the quarter the payment is intended for. Valid dates for 2012 include: **120331** / **120630** / **120930** / **121231**
Separator	"*"
TXP05	Amount of tax being paid "$$$$$$$$cc" format ("cc"), cents must be filled in even if you transfer whole dollar amounts
Terminator	"\"

** **Loose Payment** – a payment received without a designated quarter for the payment of unemployment tax, penalty and/or interest.

Compliance with filing Form UIA 1028, Employer's Quarterly Wage/Tax Report, online through MiWAM will help ensure efficient processing of the employer's quarterly tax report and payment.

For more information, employers may call the UIA Office of Employer Ombudsman (OEO) at either 1-855-484-2636 (4-UIAOEO) or 1-313-456-2300, or email OEO@michigan.gov. For information on how to set up a MiWAM account, please access the MiWAM Toolkit at www.michigan.gov/uia.

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Unemployment Insurance Agency
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LARA is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

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State of Michigan
Department of Licensing & Regulatory Affairs

UNEMPLOYMENT INSURANCE AGENCY

RICK SNYDER, Governor
State of Michigan

STEVE ARWOOD, Acting Director
Department of Licensing & Regulatory Affairs,

Unemployment Insurance Agency

Fact Sheet

The IRS 20-Factor Test Used by the UIA to Determine Classification as Independent Contractor versus Employee

IRS 20-Factor Test Announced in IRS Revenue Ruling 87-41

Michigan unemployment insurance law requires the Unemployment Insurance Agency (UIA) to use the IRS 20-factor test (discussed in IRS Revenue Ruling 87-41) for purposes of determining if a person performed services during 2013 and beyond, as an employee or as an independent contractor. If a person performing services is an employee, then the employee's wages are subject to state unemployment taxation and the employee may be eligible for unemployment benefits. If, however, the person is found to be an independent contractor, then the employer pays no state unemployment taxes on the individual's earnings and the person's services are not covered employment. To simplify this new analysis, the Agency has, similar to the IRS, grouped the factors into three general categories: (1) Behavioral Control; (2) Financial Control; and (3) Relationship Factors. While no one category or factor is controlling, the categories are intended to provide characteristics of each individual factor. Depending on the specific facts, a particular factor may straddle one or more of the three categories.

A. Behavioral Control Factors:

(1) **Instructions** An employee is required to follow instructions about when, where and how to do the work. The employer maintains control if the employer can require the instructions to be followed.

(2) **Training:** An employee receives initial and continuing training from the employer or the employer's agent. Independent contractors are not trained by the business for which they provide services.

(3) **Services rendered personally** An employee must perform the work directly for the business entity and cannot contract it out because the business entity wishes to direct and control the method and means by which the work is accomplished and the final product or service.

(4) **Hiring, supervising and paying assistants** An assistant hired, supervised, and paid by a business entity is generally an employee; an independent contractor can hire, supervise and pay its own assistants under a contract that directs and controls how the assistants perform the job and that provides for the independent contractor to provide materials to the assistants.

(5) **Continuing relationship** If there is a continuing relationship (even if occurring at frequent but irregular intervals) it is likely that there is an employment relationship.

(6) **Set hours of work** If the business entity sets the workers' hours of work, the worker will generally be an employee; an independent contractor would set his or her own schedule.

(7) **Full time required** An employee would usually work full-time for an employer while an independent contractor can work hours and days of his or her own choosing.

(8) **Work done on premises** If the work is required to be, or is usually, performed on the premises of the business entity, it is likely that the entity exercises direction and control over the worker as an employee; an independent contractor is required to fulfill the requirements of the contract but may work whenever he or she wishes to work to fulfill those requirements.

(9) **Order or sequence set** Evidence of direction or control would be when a worker is required to perform the work in the order or sequence set by the business entity, while an independent contractor works in the sequence of his or her own choosing.

(10) **Oral or written reports** An employee will be required to submit regular reports to the business entity, often in writing, to show the completion of work, evidencing control by the business entity.

B. Financial Control Factors:

(11) **Payments by hour, week or month** An employee will usually be paid for specified intervals of work, such as hourly, weekly, or monthly. An independent contractor is more likely to be paid as aspects of the total project are completed, but at no specific time interval.

(12) **Payment of expenses** Reimbursement to the worker by the business entity of expenses incurred by the worker in completing the job indicates the existence of an employment relationship.

(13) **Furnishing of tools and materials** Furnishing necessary tools, materials, and other equipment such as office equipment is generally an indication of an employment relationship.

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January 2013

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(14) **Significant investment** If the worker has a significant investment in the facilities where the work is performed, the worker is more likely to be an independent contractor.

(15) **Profit or loss** While an employee generally is paid for the time to complete the required work, and bears no liability for business expenses associated with completing the work, an independent contractor can generally make a profit or suffer a loss as a result of performing the service.

C. Relationship Factors:

(16) **Integration** An employee performs services that are integral or essential to the operation of the employer, rather than merely incidental to the business operation.

(17) **Working for more than one firm at a time** If a worker performs the service for multiple, unrelated business entities concurrently, the worker is likely an independent contractor.

(18) **Making services available to the general public** If a worker holds him- or herself out to the public as being regularly and consistently available to perform the service for anyone contracting with him or her, the worker is likely to be an independent contractor.

(19) **Right to discharge** If the employer retains the right to fire the worker, the worker is likely to be an employee.

(20) **Right to terminate** If the worker can quit work without breaching any contractual agreement, the worker is likely to be an employee.

IRS Has Summarized these Factors in the Following Way:

(1) **Behavioral Control** - Factors to consider are whether the employing entity gives instructions to the worker about how, when, or where to do the work and provides training to the worker. Implicit in this factor is whether the business retains the right to direct and control the worker's performance.

(2) **Financial Control** – The significant factor is the right of the business entity to control the business aspects of the worker's job.

(3) **Relationship Of Parties** - The nature of the relationship may be evidenced by the existence of a written contract; by any benefits provided by the business entity such as vacation pay or health insurance; whether the position is of indefinite duration or will cease when the work project is completed; and whether the service is a critical aspect of the business entity.

The above test applies only to services performed by an individual on or *after* January 1, 2013. If the services for which a determination is needed were performed prior to January 1, 2013, then the previously used "economic reality test" must be applied. In cases where an individual has performed services both before *and* after January 1, 2013, it may be necessary to apply both the new and old test. Further, where the nature of the services changed as of January 1, 2013, it is possible to have different determinations applicable to services performed before January 1, 2013 as compared to services performed after January 1, 2013. In such cases, the effective date of the determination applying the new test will be the date on which the nature of the services changed.

For further information about how the UIA applies the IRS 20-Factor test, call UIA's **Office of Employer Ombudsman (OEO)**, 1-855-484-2636 (4-UIAOEO) or 313-456-2300, or email OEO@michigan.gov.

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Purpose of this chapter

The purpose of this chapter is to offer a brief history of how unemployment insurance developed and evolved into the program that it is today in Michigan and the United States.

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Unemployment Insurance in Michigan: A History

The Great Depression of the 1930s had much to do with the start of unemployment insurance systems in Michigan and throughout the United States. But unemployment insurance (UI) was not a new idea.

The first UI program was organized in 1789 by a trade union in Berne, Switzerland. The first successful programs, however, were compulsory ones started by local and regional governments in Switzerland, France and Belgium in the late 1800s. The first national compulsory unemployment system began in Great Britain in 1911. By 1920, it had grown to cover most workers and became a model for other countries. UI programs soon spread to Italy and Germany, and by 1935, UI laws existed throughout Europe, covering 35.5 million workers.

Governor Frank Murphy (left) presents Michigan's first unemployment check for $15.50 to Joseph C. Fisher of Detroit.

In the United States, Massachusetts made the first attempt to introduce unemployment insurance in 1916. The effort failed. Other states considered UI legislation through the 1920s, but it was 1932 before Wisconsin passed the nation's first unemployment insurance law.

Congress approves UI

At the national level, there were several failed efforts to establish unemployment insurance legislation between 1916 and 1934. Finally, in August 1935, as social relief programs were failing under the weight of the Depression, Congress approved the Social Security Act, which included unemployment insurance legislation and guidelines for states to follow in establishing UI programs.

The unemployment insurance system created by Congress is a unique federal-state partnership, grounded in federal law but administered through state law by state officials. It is the first line of defense against the effects of unemployment. Through its payments to laid-off workers, the program ensures the unemployed can obtain some of life's necessities as they seek employment. Benefits are available as a matter of right to those who meet state qualifying and eligibility requirements.

Governor Frank Murphy and members of the Michigan Unemployment Compensation Commission accept one of the largest tax payments collected by the agency in 1937. The $3.5 million payment came from General Motors.

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Unemployed workers wrap their way around a Detroit Michigan Employment Security Commission office waiting to collect jobless benefits in the late 1950's. Michigan's cyclical economy often resulted in long unemployment lines before the agency adopted claims by mail and telephone certifications.

Michigan acts

In 1936, Michigan Governor-elect Frank Murphy appointed a Social Security Study Commission to study and draft unemployment insurance legislation. William Haber, an economics professor at the University of Michigan, chaired the commission. Dr. Haber and the social security class he taught drafted much of Michigan's unemployment insurance law.

Pressed by the federal government, Michigan's Legislature passed unemployment insurance legislation in a special session on December 24, 1936. Under federal law, employers in states without a functioning unemployment law by January 1, 1937, would not qualify for a 90 percent credit on their 1936 federal payroll taxes. Inaction would have cost Michigan employers $20 million.

The preamble to the legislation spelled out the program's broad objective: "Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the Legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family, to the detriment of the welfare of the people of this state."

Tax collections start in 1937

Michigan's UI law established an unemployment compensation fund and a system of free employment offices in compliance with the Federal Social Security and Wagner Peyser Acts. The law also created the Michigan Unemployment Compensation Commission (MUCC), to operate the state's employment security system.

When it began operations in 1937, the MUCC's first concern was the collection of taxes from employers. These taxes would be used to pay jobless benefits. For the year, the agency collected more than $43.1 million in unemployment taxes.

Through a statewide network of offices, the Commission began taking claims for jobless benefits in July 1938, six months earlier than planned. A serious statewide recession caused the state to take early action.

On August 1, 1938, Michigan issued its first unemployment check. The $15.50 check went to

Jobless workers crowd an MUCC office in the early 1950's waiting to collect unemployment checks that agency staff manually process.

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a jobless Detroiter. By year's end, MUCC had issued about $39.9 million in benefits to more than 434,000 workers. Among the states, Michigan paid the highest benefit rate with an average weekly payment of $13.49.

From its first unemployment check through 1998, Michigan has paid out more than $25.4 billion in unemployment benefits.

MESC Deputy Director A.R. Jazowski, pulls off the first unemployment check generated by the agency's newly automated benefit payment system in September 1983. By October of 1984, all MESC offices were using the automated system.

Michigan program adapts to change

Through the years, Michigan's unemployment insurance program has adapted to the times.

During the World War II years, claims activity was low as industry was in full production for the war effort. After the war, soldiers returned to the work force and industry retooled for the needs of a peacetime economy. Unemployment claims soared, and MUCC decentralized the claims process, giving branch offices responsibility for the entire process.

In the 1950s, the MUCC merged with the Michigan State Employment Service to become the Michigan Employment Security Commission (MESC).

Unemployment compensation coverage expanded in the 1950s. Congress approved a new GI bill of rights that granted jobless benefits to unemployed veterans. In 1954, coverage was extended to federal government employees, and two years later, Michigan's legislature brought state employees under the UI umbrella.

As the 1950s drew to a close, recession struck. In 1958, for the first time, the number of workers collecting jobless benefits exceeded half a million. As large numbers exhausted their benefits, Congress created a Temporary Unemployment Compensation program, entitling some 50,000 unemployed Michigan workers to further benefits.

By 1962, MESC began using computers to help process employer tax account information.

As the state and nation entered the mid-1970s, a rapidly moving recession crossed the country. In Michigan, MESC resources were strained, forcing the Commission to hire hundreds of temporary employees and to open dozens of payment offices.

To cope with the recession's impact on workers, unemployment benefits were liberalized to include up to 65 weeks of state and federal pay-

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ments, instead of the normal 26. The legislature extended coverage to municipal and school employees, as well as domestic and farm workers. Annual unemployment benefit payments surpassed the billion dollar mark in 1975, while the number of covered employers grew to 150,000 – seven and a half times the number of businesses in 1936.

Recession struck Michigan again in the early 1980s, forcing the state to borrow $2.6 billion from the federal government to continue benefit payments. A special employer tax was also levied to fund a data processing system for the UI tax and benefit programs.

The 1990s key on "customer service"

MESC adopted a "customer service" approach in the 1990s. The agency eliminated long claimant lines through claims by mail and automated telephone certification systems. Customer Service phone lines handled 30,000 employer and claimant calls in their first year, and the agency became one of the first to survey its customers. An Advocacy program was created to aid claimants and employers with appeals before agency referees and the Michigan Employment Security Board of Review.

The Unemployment Agency began operations in February 1998, following an executive order from Governor John Engler. The order split the employment service and unemployment insurance programs. The Unemployment Agency, part of the Department of Consumer & Industry Services, now administers the state's unemployment insurance program.

Further organizational changes occurred in early 2002, when Governor Engler issued Executive Order 2002-1 creating the Bureau of Workers' & Unemployment Compensation (BW&UC) within CIS.

A UIA Customer Relations (CR) staff member handles one of the more than 137,000 phone calls that CR staff field in an average year through the agency's toll-free customer assistance hotlines.

The newly formed bureau combined the Unemployment Agency, the Bureau of Workers' Compensation and the Wage and Hour Division. The executive order united functions with similar purposes into a single agency. Workers' compensation and unemployment benefits exist to replace wages lost by workers. The Wage and Hour Division collects wages and fringe benefits owed to workers.

Governor Engler said, "Merging these functions into a single agency will help facilitate data sharing, and Michigan workers will benefit by having a single place to go for answers to compensation questions."

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Improving customer service

The unemployment program completed a major project in 2000 with its conversion to a wage record system for establishing a claimant's monetary eligibility for jobless benefits.

Through wage record, the agency now uses employment and wage information submitted by employers every quarter to determine how much a jobless worker is entitled to in unemployment benefits. In the past, the agency contacted employers for weekly wage and separation information whenever a claim for benefits was filed.

To ease the claims filing process the agency successfully piloted an employer filed claims system with DaimlerChrysler in 2001 at two of their Detroit area facilities. Through employer filed claims, the company electronically files claims for unemployment benefits on behalf of their employees during plant shutdowns or mass layoffs.

The program will be a major convenience to idled workers, as they will not have to apply for unemployment benefits in person at a UIA office. It will also prevent overcrowding in the offices and allow agency staff to focus on processing claims.

Eventually, the state's major employers are expected to use the program. For the agency, employer filed claims could represent 20 percent of its new claimsload.

In another move to streamline services for unemployed workers, the agency has developed a system that will allow them to file benefit claims by telephone or through the Internet. With the full implementation of this "remote initial calim" process, jobless workers no longer need to stand in line at a UIA office to file their claims. The RIC process has also meant the closing of the agency's statewide network of offices, as three call centers will handle all of the incoming telephone calls from those applying for benefits.

Unemployment insurance has never been a static program. It has gone through many changes and will likely see further changes. But one constant remains. The program still protects workers who become unemployed. It helps keep the economy stable. UI benefit payments continue to give eligible jobless workers a temporary income as they search for new employment. Finally, unemployment insurance protects employers against the dispersal of trained workforce when temporary shutdowns are necessary.

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Purpose of this chapter

The purpose of this chapter is to educate Michigan employers about the use and content of the Unemployment Insurance Agency website at www.michigan.gov/uia/. The site contains information about UIA programs and services, as well as forms and publications, a list of agency contacts and office locations, and UIA news releases. The site is updated often, so return visits are advised.

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What is the Agency's Website?

The UIA has maintained a public web site on the Internet since 1996. Its URL or address is www.michigan.gov/uia. The site is an extension of the agency's brick and mortar offices, open 24 hours a day, seven days a week. Because of the convenience it offers with a few clicks of a computer mouse, the site is a natural outgrowth of the agency's philosophy of providing convenient, one-stop service to its customers.

Who are the primary customers of our web site?

- Employers in need of forms or information about unemployment tax rates, and those using the Employer Web Account Manager (EWAM) to file Wage Detail Reports (Form UIA 1017), Employer's Quarterly Tax Reports (Form UIA 1020), Amended Reports (Forms UIA 1021/1021R), Employer Protests (forms UIA 1471-C, 1471-L, and 1471-T), Discontinuance of Business (Form UIA 1772), and an Employer Request for Name/Address Change (Form UIA 1025) electronically.
- Unemployed workers seeking a telephone number or information about eligibility requirements for benefits, and those filing a claim for benefits online. They can also go online to choose, or change, their method of payment from check, debit card or direct deposit.

The site contains information about agency programs and services, such as the Work Opportunity Tax Credit, Advocacy Program and MARVIN, the automated telephone certification system for seeking unemployment insurance. Visitors can read and download numerous agency forms and publications; many forms are fillable.

Visitors also can find UIA news releases, Michigan unemployment insurance data, and important links to the Michigan Talent Bank and our parent, the Michigan Department of Energy, Labor & Economic Growth. Also available is in-depth information about SUTA (state unemployment tax act) dumping, which involves employers that are trying to reduce their high unemployment rates through various tax-avoidance practices. An extensive Contacts area includes locations of UIA Problem Resolution Offices (PROs), hotline numbers for employers and unemployed workers, and Tax Office numbers.

The site features a search engine for finding information based on keywords, as well as a Frequently Asked Questions section covering several topics.

Already visited our web site? We continuously update information so return visits are advised, while a "What's New" section helps visitors keep tabs on information and features that may not have been available during your last visit.

If you're new to the information superhighway, you need the following to access the Internet and our site: A computer; dial-up modem or broadband connection such as cable or DSL; account with an Internet Service Provider; and browser software. Our site also can be reached using computers at agency PROs, Michigan Works! service centers and many public libraries, or using laptops at businesses, such as local coffee shops, with free wireless or "wi-fi" hotspots. Important note: Your personal data may be at risk on some public computers and at some wi-fi hotspots, so please take security precautions.

To visit our site, just type www.michigan.gov/uia into your browser. We suggest bookmarking (adding it to your Favorites) our site in your browser to make return visits fast and easy. You also might want to bookmark important areas such the EWAM log-in at https://webacct.unemployment.state.mi.us/. When accessing EWAM, please ensure your browser's cookies (EWAM cookies are temporary, session-only cookies, or small files stored on your PC) are enabled.

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To enable cookies, please follow these instructions for Internet Explorer 6.0 and 7.0 for Windows:

1. Click Start menu from Desktop.
2. Point to Settings.
3. Click Control Panel.
4. Click the Internet Options icon. (for Windows XP, you need to first click on the Network and Internet Connections link)
5. Select the Privacy tab.
6. Move the Privacy settings slider to Medium.
7. Click OK.
8. Close Control Panel.

Definitions

Browser

A browser is software that enables users to view, navigate and download information on the World Wide Web. There are several popular browsers. Some are "freeware," or available for use without charge.

Dial-up

A dial-up is an Internet account that can connect any stand-alone PC directly to the Internet. The account is used by having PC-based software dial into an Internet service provider (ISP). The software connects with the ISP and establishes a link to the Internet that enables your software to access Internet information. Dial-in connections use a modem or terminal adapter to connect.

E-mail

E-mail or electronic mail is messages transmitted over the Internet from user to user. E-mail usually contains text, but also can carry with it files of any type as attachments.

FAQs

FAQs or Frequently Asked Questions are often maintained on websites to answer commonly asked questions. FAQs are a convenience for both website administrators and Website visitors. Look for UIA FAQs.

Domain Name

A domain name is the "official" name assigned to a computer. Organizations register names such as "woods.org" or "eastgate.edu." Unique names, such as "tramble7.woods.org" or "thunder.fr.eastgate.edu," are then assigned to their computers.

Home page

A home page (also homepage) is an initial page on a WWW server or a website's welcome document or entry point.

Hypertext

Hypertext is text in a document that contains a link to other text. You can click a mouse on a hypertext word and it will take you to the text designated in the link. Using hypertext, an organization's Website can link to any Web document in the world, yet still require only a mouse click to get there.

Internet

The Internet or Net is the world's largest network of computers. First known as ARPANET (Advanced Research Projects Administration), the Internet debuted in the late 1960s as a Department of Defense project. That's right, the Net began as a government project. So the UIA's website is a distant cousin of the early Net. Other names for the Net include "cyberspace" and the "information superhighway."

Modem

A modem is an electronic device that lets computers communicate. The name is derived from "modulator-demodulator" because of their function in processing data over analog phone lines.

PC

Personal computer.

Search engine

A search engine is software that searches for data based on some criteria. Search engines are popular tools for finding information on individual websites or on the entire Web and Internet. The Agency's site has its own search engine.

URL

A URL or Uniform Resource Locator is your main access channel to Internet sites. It's equivalent to having the phone number of a place you want to call. Those cruising through cyberspace constantly feed URLs into their browsers.

Website

A website (also Web site) is a server that contains Web "pages" and other files which are usually online 24 hours a day. A website can contain from one page to thousands of pages.

World Wide Web

The World Wide Web, AKA WWW, W3 or the Web, is an Internet client-server distributed information and retrieval system that transfers hypertext documents across computer systems. The web is a part of the Net – not synonymous with the Net – containing text, graphics, pictures, animation, audio and video. The Web was created by the CERN High-Energy Physics Laboratories in Geneva, Switzerland in 1991.

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UNEMPLOYMENT INSURANCE AGENCY

news release

JENNIFER M. GRANHOLM, Governor
State of Michigan

STANLEY "SKIP" PRUSS, Director
Department of Energy, Labor & Economic Growth

SUSAN CORBIN, Deputy Director
Department of Energy, Labor & Economic Growth

STEPHEN M. GESKEY, Director
Unemployment Insurance Agency

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FOR IMMEDIATE RELEASE

Unemployment Insurance Agency launches webcasts for the unemployed and employers

Listing of UIA webcasts

Filing a Claim for Unemployment and Finding a Job: A UIA & MWA Partnership	This presentation walks viewers through the whole unemployment filing process, including registering for work at the local MWA (Michigan Works!) office
How Do I File For Unemployment Benefits? • By Internet • By Telephone	The UIA has two methods of filing for unemployment benefits; by Internet and by telephone
Agency Public Service Announcement (PSA) About Online Services	This PSA gives a quick overview of UIA's online services for unemployed workers
Claim Portal - Online Services for Unemployed Workers	This web tutorial walks viewers through the process of setting up an account with CWAM (Claimant Web Account Manager)
MARVIN • By Internet • By Telephone	To certify for benefits, it is necessary that claimants contact MARVIN by Internet or by telephone
What Are My Payment Options?	This presentation explains the two ways in which individuals can get paid their unemployment benefits; by direct deposit and debit card
Do You Have a Problem With Your Claim?	This presentation covers some common problems unemployed workers may have with their claim
Claimant Frequently Asked Questions	This presentation covers some common frequently asked questions unemployed workers may have about UI claims

-more-

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Benefit Extensions	This presentation reviews the various extensions that are currently in effect
School Denial Periods	This presentation explains how school denial periods affect unemployment benefits
TRA (Trade Readjustment Allowance) • Before May 18, 2008 (Old Law) • On or After May 18, 2008 (New Law)	This presentation highlights the services available to those workers who lost their jobs due to U.S. trade policies (job loss due to foreign imports or shifts in production)
Employee Misclassification	Are you classified as an Independent Contractor? View this presentation to determine if you are classified correctly
Appeals Process - Tips for Claimants	This presentation summarizes the appeal process for those who disagree with a UIA decision
Advocacy Program	The Advocacy Program offers services which can help individuals prepare for their unemployment hearing
How an Employer's Unemployment Account is Charged	This presentation explains how benefit payments to a former employee translate into charges to an employer's account
Rapid Response	This presentation explains the Rapid Response program available to those employers that will have a mass layoff
1017: Filing Online	This web tutorial assists those filing their Wage Detail Report (UIA 1017) online
Employee Misclassification	This presentation helps employers determine if they are classifying their Independent Contractors correctly
Appeals Process - Tips for Employers	This presentation summarizes the appeal process employers have available when they disagree with a UIA decision
Employer Handbook	This presentation helps employers to see how the Employer Handbook can benefit their companies
SUTA Dumping	This presentation reviews SUTA Dumping and how if affects the UI Trust Fund
Advocacy Program	The Advocacy Program offers services which can help employers prepare for their unemployment hearing
Creating an EWAM Account	This presentation walks viewers through the process of creating an EWAM account

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Logging Into EWAM	This presentation walks viewers through the process for logging into EWAM. It is most helpful to those logging in for the first time
Navigating Within EWAM	This presentation covers how to navigate within EWAM
Assistance with EWAM	This presentation covers how to receive both automated and personal assistance with EWAM
EWAM - User Information	This presentation discusses how to use the **"User Information"** section of EWAM
EWAM - Employer Information	This presentation discusses how to use the **"Employer Information"** section of EWAM
EWAM - Services Offered	This presentation discusses how to use the **"Services Offered"** section of EWAM
EWAM - Filing Quarterly Tax & Payroll Reports	This presentation reviews the on-line process for filing an employer's quarterly Forms UIA 1020 and UIA 1020-R as well as the amended reports
EWAM - Requesting Statements	This presentation discusses how to request statements from inside EWAM (IRS Certification of Account, copy of quarterly statement of charges/credits)
EWAM - Accessing Account Information	This presentation reviews how employers can access information regarding their UIA accounts through EWAM
EWAM - Discontinuance/Transfer of Business	This presentation reviews how to submit a discontinuance or transfer of business through EWAM
Michigan Business One Stop - Overview	This presentation reviews the many benefits of using the Michigan Business One-Stop web portal

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