



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.

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.

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.

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; select menu option #2.

The information on this sheet is intended to provide a general understanding of the subject matter.

It does not have the force or effect of law or regulation.

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