

FACT SHEET #164 JUNE 2015

EXCLUSIONS FROM UNEMPLOYMENT BENEFITS OF CERTAIN J-1 AND H-2B VISA HOLDERS, AND OIL/GAS/MINERAL LANDMEN

Act No. 241 of the Public Acts of 2014, effective August 26, 2014, provides new exclusions from unemployment benefits for services performed by certain categories of workers.

NEW CATEGORIES OF EXCLUSIONS

Beginning (retroactively) January 1, 2014, unemployment benefits will no longer be payable to: (1) a holder of an “H-2B” visa, which covers workers admitted to the United States temporarily to perform non-agricultural services, and (2) a holder of a “J-1” visa, which covers workers admitted under the “exchange visitor program.” However, only the following categories of “J-1” visa holder are excluded: international visitors, government visitors, camp counselors, au pairs and summer work travel. When services are excluded, the employer is not required to pay state unemployment taxes on those services.

J-1 and H-2B Visa Holders

The employer claiming the exclusion must be the employer for the “H-2B” visa holder, as documented on an approved “I-129 petition” for the worker, or must be the employer of the holder of the “J-1” visa holder, as documented on the “DS-2019” form. The employer shall maintain the supporting documentation for the exclusion for 6 years, and upon request, provide the unemployment agency with that documentation for compliance and verification purposes. Claiming the exclusion must be done through the employer’s MiWAM account. View or download the MiWAM Toolkit for Employers at michigan.gov/uia for formats to submit files electronically.

Oil, Gas, or Mineral “Landmen”

In the case of the exclusion of services of an oil, gas, or mineral “landman,” the services must have been performed by the landman essentially as an independent contractor. The exclusion applies if both of the following conditions are met: (1) payment is made on the basis of a daily (not hourly) rate and is based on completion of contracted tasks (not hourly work); and (2) there is a contract stating that the services are performed as an “independent contractor.”

The new exclusions (under Subsection 43(a) of the Michigan Employment Security Act (MES) Act) for the visa holders are effective retroactive to January 1, 2014. This means that when notified by an employer that he or she may qualify for the exclusion, the Agency will:

- review base period wages for a base period that begins after January 1, 2014,
- recalculate a claimant’s benefit entitlement and establish restitution if necessary, and
- credit the employer’s account for the charges to ensure that the charges are not used in calculating the rate for the subsequent years’ tax rate computations.

IMPLICATIONS ON THE EMPLOYER’S FEDERAL UNEMPLOYMENT TAXES

Employers in all states pay both a state unemployment insurance tax (in Michigan, under the *Michigan Employment Security Act*) and the federal unemployment tax under the *Federal Unemployment Tax Act (FUTA)*. FUTA provides that if an employer pays the state unemployment tax on services taxed under FUTA, then the employer receives a credit which decreases the FUTA tax from 6.0% (on the first \$7,000 of each worker’s annual wages) to 0.8%. FUTA does not cover services performed by a holder of a “J-1” visa, but does cover services performed by a holder of an “H2-B” Visa. Therefore, an employer that taxes advantage of the new exclusion of taxes on services performed by an “H-2B” Visa holder will be required to pay the full 6.0% FUTA tax on those services.

AMENDMENT OF “OBLIGATION ASSESSMENT” PROVISION

The recent amendment provides that despite the new exclusion for the services of a J-1 and H-2B Visa holder, the wages paid to those categories of workers will still be used to calculate the Obligation Assessment. This means the wages of those workers must be reported to the UIA in order to include them in the calculation of the Obligation Assessment, but the wages will not be used to calculate the employer’s regular unemployment tax rate.