STATE OF MICHIGAN
RICK SNYDER
GOVERNOR

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

STEVEN H. HILFINGER
DIRECTOR

Questions and Answers Regarding Changes to the MES Act for Employers

1. ***For an employer that becomes a "contributing" employer on or after January 1, 2012, when will the employer become fully experience-rated?***
   For an employer that becomes a contributing employer on or after January 1, 2012, the employer will become fully "experience-rated" in a 4-year period, rather than the previous 5-year period:

2. ***Please explain what this change means in regards to the first year of liability and the chargeable benefits component.***
   This means that in the first year of liability, the employer will have the assigned "new employer" rate of 2.7%. Beginning in the second year (previously the third year) of liability, 1/3 of the employer's "chargeable benefits component" ("benefit ratio" component) is taken into consideration in calculating the employer's experience rate. In the third year of liability (previously the fourth year), 2/3 of the employer's "chargeable benefits component" is used in calculating the employer's experience rate. In the fourth year of liability, the rate is calculated based entirely on the employer's own experience factors. Previously, that did not occur until the employer's fifth year of liability.

3. ***Should an employer who becomes a "contributing" employer on or after January 1, 2013, expect the same changes regarding experience ratings?***
   For an employer that becomes a contributing employer on or after January 1, 2013, the employer will become fully "experience-rated" in a 3-year period, rather than the previous 5-year period: Beginning with the first year of liability, 1/3 of the employer's experience factors are used to calculate its rate. In the second year of liability, 2/3 of the employer's experience is used in the calculation. In the third year, all of the employer's own experience history is used in calculating the rate.

4. ***How does the amendment affect the number of years used to calculate an employer's chargeable benefits component?***
   In addition to compressing the period in which an employer's own experience history begins to be figured into the employer's rate calculation, the amendment also reduces the number of years used to calculate the "Chargeable Benefits Component" of the unemployment tax rate. Beginning in 2012, the previous 4 years of benefit charges and tax payments are considered in calculating the rate,

down from the previous 5-year “look-back” period.

5. ***Are there any changes to the “look-back” period for the 2013 tax year?***
   In 2013, the “look-back” period is reduced to a 3-year history of the employer’s benefit charges and tax payments.

6. ***What happens in an instance where a new employer resumes business after 3 years of inactivity?***
   An employer that resumes a business within 12 calendar quarters will resume its previous unemployment experience; after 12 quarters of inactivity, the employer reverts to a “new employer” with a 2.7% “new employer” rate. Previously, an employer would revert to the 2.7% “new employer” rate after 8 quarters of inactivity.

7. ***What happens in an instance in which the employer again becomes liable for payment of unemployment benefits within 6 years?***
   If an employer resumes business within 6 years, both its positive balance (as before) and its negative reserve are restored to its account history and used in the future calculation of tax rates.

8. ***How does the amendment affect successor employers?***
   Under the amendment, successor employers will be notified of benefit charges against the predecessor employer’s account, so that the successor employer will be aware of the charges that will be considered in calculating the successor employer’s unemployment experience rate.

9. ***How has the taxable wage base been affected by the new amendment?***
   The “taxable wage base” will increase to $9,500 in 2012, up from the previous $9,000. It will remain at $9,500 until the balance in the Unemployment Compensation Fund (the Trust Fund used to pay unemployment benefits in Michigan) reaches $2.5 billion, at which point it will revert to $9,000.

10. ***What can employers expect to occur when they employ a worker who qualifies for benefits based, in part, on work with that employer?***
    If an employer continues to employ a worker who qualifies for benefits based, in part, on work with that employer, and if the gross weekly wage the employer pays the work equals or exceeds the employer’s weekly benefit charge for the worker, the employer can notify the UIA once of that fact, and the employer will be relieved of all benefit charges for that worker for the remainder of that claim. Previously, weekly notice was required from the employer.

11. ***How has the new amendment changed the Seasonal Employer requirements?***
    To be considered a "seasonal employer" it will no longer be necessary for the employer to be part of an industry that is also seasonal. An employer must merely show that it operates during regularly recurring periods of 26 weeks or less within any 52-week period. However, as before, employers in the construction industry cannot receive "seasonal employer" designation.

12. ***How small employers' (with 25 or fewer employees) are tax liabilities addressed under the new amendment?***
    Beginning in 2013, if an employer employs 25 or fewer employees, and incurred 50% or more of its tax liability the previous year in the first calendar quarter, then the employer can spread out its tax liability in the current tax year over all 4 quarters, without incurring interest charges. The deferred payments must be paid on time in accordance with the deferral schedule.

13. ***How does the amendment address employers who employ domestic employees in their private residence?***
    If an employer is liable solely as an employer of domestic employees, the tax may be paid **annually**, rather than quarterly, although quarterly tax reports must still be filed.

14. ***How does the amendment address interstate arrangements when an employee has worked in two or more states?***
    If benefits are paid to a worker solely on the basis of combining wages for work in Michigan and another state(s), the account of the Michigan employer will not be charged for those benefits.

15. ***How does the new amendment address situations in which an employee may accept work considered unsuitable and then voluntarily leaves within 60 days?***
    A worker can avoid disqualification if he or she has a benefit claim in existence but accepts work that would be considered "unsuitable," and then voluntarily leaves that work within 60 days. Under prior law, the employer's account would be charged for those benefits. Under the amendment, the employer's account will no longer be charged in that circumstance.

16. ***How are adjudications of voluntary quits addressed under the new amendment?***
    Before the amendment, an employer's account would be charged for benefits if it was unnecessary to adjudicate the worker's quitting because the worker "requalified" for benefits based on work after the quit. The employer had to

specifically request that its account not be charged, and describe a quit where the claimant "would have been" disqualified. Under the amendment, the employer need not request to be "non-charged" in that circumstance. It will now be presumed that the claimant "would have been" disqualified, and the employer's account will automatically not be charged for the benefits.

17. ***What changes are expected of employers (with more than 5 employees) in regards to quarterly reporting?***
Beginning with the 2014 tax year, employers with more than 5 employees will be required to file quarterly reports **online**, no longer on paper. Beginning with the 2015 tax year, employers with 5 or fewer employees will be required to file quarterly reports **online**, but can request a limited extension upon a showing of economic hardship.

18. ***What changes are effective with the 2013 tax year regarding quarterly reporting?***
Beginning with the 2013 tax year, the quarterly wage report will be combined with the quarterly tax report, and only one quarterly report will be required.

19. ***Have there been any rate changes as a result of the new amendment?***
Yes. The penalty for filing a late, incomplete or erroneous wage report has increased:

    - To $50 (from $25) if filed within 30 days of the due date.
    - To $250 per quarter for each additional full quarter the report is late.
    - However, if the Agency notifies the employer of an error and the employer supplies a correction within 14 days, no penalty applies.

20. ***How does the law address those who do not comply with the new provisions?***
Penalties for intentional misrepresentation or non-compliance with the law will apply not just to business entities, but also to the owners and directors in their individual capacities.

21. ***Were there any changes made to the law regarding misclassification of employees?***
Until January 1, 2013, an employer may request a Determination by the UIA as to whether services it receives from an individual should be regarded as employment by an "employee" or whether the individual is properly classified as an "independent contractor." If the services should have been considered employment, the employer will only be charged for benefits paid based on those

services beginning the date of the Determination, and no penalties or interest will apply.

22. ***What measure will UIA use to help determine employee classification?***
Beginning January 1, 2013, the UIA will begin using the **20-factor IRS test** to determine "independent contractor" vs. employee status of a worker, rather than the "economic reality" test.

23. ***Under the new law, may UIA store documents electronically?***
The UIA may store documents electronically, rather than in paper form, and will keep them for at least as long as the paper documents were required to be kept.

24. ***May UIA share confidential information with law enforcement agencies and others if investigations are being conducted?***
Yes. Confidential information can be shared with police agencies pursuing criminal investigations, and third-party contractors providing housing on behalf of a state or local public housing authority.

25. ***May UIA initiate a lien on a claimant's or employer's bank account in an effort to obtain restitution for benefits overpayments?***
Yes. To collect restitution from a claimant or a tax owed by an employer, the UIA can place a lien on a claimant's or employer's bank account, or a lien on the claimant's or employer's real property.

26. ***Have references in the Act changed for the following: referee, Commission and Board of Review?***
Yes, obsolete references to "Referee" were changed to "Administrative Law Judge;" obsolete references to the "Michigan Employment Security Board of Review" were changed to "Michigan Compensation Appellate Commission;" and obsolete references to "Commission" or "Michigan Employment Security Commission" were changed to "Unemployment Agency."

27. ***Have there been changes regarding signed and/or written protests?***
A protest must now be signed, or it can be verified in a manner described in an Administrative Rule. An appeal must still be signed, or it can be verified by the Agency. An unsigned or otherwise unverified protest or appeal will not be accepted as a protest or appeal, but the Agency will notify the party of that fact and allow them to submit a signed or verified protest or appeal.

28. ***Can cases that are similar in nature be consolidated by an Administrative Law Judge?***
An ALJ may consolidate separate cases that involve the same, or substantially

similar, evidence or issues, and hold a single hearing for the taking of testimony and other evidence as to all the cases.

29. ***What changes have taken place regarding appeals?***
    The Michigan Compensation Appellate Commission (MCAC) may accept an application for a written argument if a request for an oral hearing is not granted and if the request for written argument is **approved by 2 or more members** assigned to review the appeal.

30. ***Can transcripts of hearings be requested?***
    A transcript of a hearing before an Administrative Law Judge will only be prepared if requested by a majority of the members of the panel of the MCAC reviewing the matter. Parties may request preparation of a transcript, but must pay the cost of producing it.