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## BENEFIT COMPUTATION FACTORS

Sections 27(b)(c)(f), 46, 46a

Section 27(f)

PENSION OFFSET, Statutory construction, Retroactivity of amendments

CITE AS: Gormley v General Motors Corp., 125 Mich App 781 (1983).

Appeal pending: No

Claimant: Charles M. Gormley
Employer: General Motors Corporation
Docket No: B80 16457 74672

COURT OF APPEALS HOLDING: "It is a general rule in Michigan, as well as in other jurisdictions, that all statutes are prospective in their operation except in such cases as the contrary clearly appears from the context of the statute itself."

FACTS: The claimant was receiving a military pension prior to his layoff from General Motors in July, 1980. The statute in effect mandated that the claimant's unemployment benefits be reduced because of the existence of the military pension. At the time of the claimant's appeal, a newly enacted pension offset provision provided for a pension offset only if the pension came from a "base period employer." The claimant contended that the new provision should be applied retroactively.

DECISION: The statute in question is not retroactive.

RATIONALE: Nothing in the language or context of the 1980 amendment to the Federal Employment Tax Act suggests a congressional intent that the amendment was to apply retroactively.

A remedial statute may be applied retroactively. A remedial statute is related to remedies or modes of procedure which do not create new or take away vested rights, but only operate in furtherance of a remedy or confirmation of rights already existing. Kalamazoo Ed Ass'n v Kal Schools, 406 Mich 579, 601.

Prior to the amendment claimant was barred from receiving full unemployment compensation benefits. However, the 1980 amendment allows claimants to receive full unemployment compensation benefits beginning November 1, 1980. The latter amendment creates a new right in claimant and others in claimant's position and cannot be considered as being a remedial statute.

Section 27(f)

PENSION OFFSET, Cost of benefit

CITE AS: Horney v U S Post Office, No. 82-2657-AE-B, Berrien Circuit Court (May 12, 1983).

Appeal pending: No

Claimant: Alan A. Horney
Employer: U S Post Office
Docket No: UCF80 16132 75134

CIRCUIT COURT HOLDING: The cost of the benefit cannot be construed to mean the present actuarial value of the benefit. "This Court interprets the statutory use of the word "costs" in its plain and ordinary meaning that is, the amount actually spent for something (perhaps of much greater value)".

FACTS: Claimant and employer paid matching contributions to the retirement fund totaling $28,848. The ultimate value of the pension (based on an actuarial computation) would be $134,000. There is no showing that other costs, beyond the contributions and the respective interest on said contributions were actually paid into the fund.

DECISION: Claimant's benefits are not subject to reduction under Section 27(f).

RATIONALE: "That the amount actually contributed by both parties plus interest may not be sufficient to pay the ultimate possible pension benefits that might be received by appellant and that any such contingent balance may have to come from other sources (the amount of which is now underterminate and may be nothing) does not make such contingent balance a "cost of benefits" in determining and reducing the amount of unemployment benefits to which appellant otherwise is entitled.

Section 27(f)

PENSION OFFSET, Cost of benefit, Employee contribution

CITE AS: Polites v Flint Public Schools, 132 Mich App 609 (1984).

Appeal pending: No

Claimant: James R. Polites
Employer: Flint Public Schools
Docket No: B79 02190 66513

COURT OF APPEALS HOLDING: Claimant contributed less than half the cost of the retirement benefit. The determination of whether claimant's benefits are to be subject to reduction under Section 27(f) focuses on the amount of claimant's contribution towards the cost of the benefit not a comparision of what claimant contributed to the employer's contribution.

FACTS: Claimant was employed by respondent school district as a teacher for approximately 23 years, retiring July 1, 1978. During his employment claimant contributed $14, 615.13 to this retirement fund, while respondent contributed $3,223.80. Contributions to claimant;s retirement fund were also made by the State of Michigan. Claimant's monthyly retirement benefit consisted of an annuity funded entirely by claimant's contribution which paid claimant $31.13 monthly and a pension benefit of $533.45 monthly funded entirely by the employer and the State of Michigan.

DECISION: Claimant's weekly benefit rate was properly subject to adjustment under Section 27(f).

RATIONALE: "... it is clear that, if the employer, has contributed to the retirement plan, unless the employee also contributing to the plan provided more than half of the cost of the benefits, the employee's unemployment compensation benefits must be reduced. Nothing in the statute suggest that the legislature intended that the employer's contributions simply be compared to the employee's in determining if a reduction is proper."

Section 27(f)

PENSION OFFSET, Cost of benefit

CITE AS: Zajac v U.S. Post Office, No. 80-2340 AE, Macomb Circuit Court (February 9, 1981).

Appeal pending: No

Claimant: John Zajac
Employer: U. S. Post Office
Docket No: UCFE77 10907 56170

CIRCUIT COURT HOLDING: The "cost of the benefit" is the present actuarial value of the retirement benefit.

FACTS: Claimant worked for the U.S. Postal Service from 1942-1976. While claimant was employed, matching contributions were made by the claimant and the employer to the Federal Retirement Program. Claimant's total contributions to the fund were $15,939. Claimant receives a gross monthly annuity of $913. As of the date of claimant's separation, the total present value of the retirement benefit was $93,452.33.

DECISION: Claimant's weekly benefit rate is subject to adjustment under Section 27(f) despite the fact that claimant and employer made matching contributions.

RATIONALE: Claimant's contribution is less than 1/2 the present actuarial value of the retirement benefit.

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Section 27(f)

PENSION OFFSET, Employee contribution

CITE AS: Solgat v Accurate Mechanical, Dickinson Circuit Court, No. D94-8517-AE (June 29, 1995).

Appeal pending: No

Claimant: Clement Solgat
Employer: Accurate Mechanical
Docket No. B91-16599-123338W

CIRCUIT COURT HOLDING: Where union employees receive a lump economic package pursuant to a labor contract and they decide how much to allocate to wages and how much will be devoted to fringe benefits such as pensions, the contribution to the pension fund is entirely that of the employee.

FACTS: Claimant was denied benefits after being laid off for lack of work in November 1990, because he was receiving a pension. Claimant had been a union pipefitter for many years. His union negotiated labor contracts under which employers agreed to pay pipefitters a certain amount of money. The union members then decided how much of the hourly rate would be paid to them in wages and how much would go to pay for various fringe benefits including the pension fund. The employers paid the lump sum amount for fringes directly into a fringe benefit fund. The balance was paid in wages.

DECISION: Claimant is entitled to receive unemployment benefits.

RATIONALE: The fact that taxes were not deducted from the funds forwarded to the union does not alter the fact the earned funds of the employees in the hands of the employer belonged in total to the employees. The employer merely disbursed it as directed once it had been earned by the performance of labor. "The plan was that of the employee and the contribution to the plan, in total, was that of the employee."

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24, 17, d12: J

Section 27(f)

PENSION OFFSET, IRA Rollover, Retirement Benefits Receipt

CITE AS: Koontz v Ameritech Services Inc, 466 Mich 304 (2002)

Appeal pending: No

Claimant: Nancy Koontz
Employer: Ameritech Services, Inc.
Docket No. B95-13491-138951

SUPREME COURT HOLDING: The governing statute, Section 27(f)(1), mandates coordination of claimant's unemployment benefits with her pension benefits.

FACTS: Claimant worked at employer's Traverse City office for 30 years until employer permanently closed that office. Claimant had the option of transferring to another location or retiring. Claimant chose to retire, and elected to roll over the lump-sum distribution of her employer-funded pension into her IRA instead of receiving a monthly annuity. Claimant applied for unemployment benefits and the Unemployment Agency determined her weekly benefit rate was subject to reduction under Section 27(f) by the pro-rated weekly retirement benefits the claimant would have received if she had taken the monthly annuity.

DECISION: Claimant's unemployment benefits are subject to reduction under Section 27(f).

RATIONALE: Section 27(f)(1) requires "narrow coordination," i.e. offset of unemployment benefits if the employer charged for unemployment benefits funded the retirement plan. In March 1980, Congress amended FUTA, 26 USC 3304(a)(15), to require "broad coordination," meaning unemployment benefits would be offset by retirement benefits regardless of whether the charged employer funded the retirement benefits. Michigan enacted Section 27(f)(5) to comply with the new federal law.

Congress then amended 26 USC 3304(a)(15) in September 1980 and returned to "narrow coordination," Michigan, however, did not similarly amend Section 27(f). Section 27(f)(1) "always requires coordination of pension benefits that the chargeable employer contributed." Section 27(f)(5) may require coordination of pension benefits based on previous work if required to conform to federal law.

"Liquidation" as used in Section 27(f)(4)(a)(ii) requires distribution of all assets held in a pension fund for all employees. Distribution of a single employee's vested interest is not liquidation of the pension fund. Claimant could have elected a monthly annuity.

Claimant "received" her retirement benefits within the meaning of Section 27(f)(1), notwithstanding the fact the employer transferred the funds to her IRA. The funds were transferred at her direction, she accepted them by directing their delivery to her account, and could still access the funds by making a withdrawal.

11/04

Sections 46(d), (now 46(g)); 46a(1)

CREDIT WEEKS, Proprietary interest, Alternative earnings qualifier, Statutory construction

CITE AS: Kulling v Kirk Design, Inc, Wayne Circuit Court, No. 89-910000-AE (February 1, 1990).

Appeal pending: No

Claimant: David Kulling
Employer: Kirk Design, Inc
Docket No. B87-16118-107903

CIRCUIT COURT HOLDING: The claimant was not entitled to establish a benefit year under Section 46a(1), the alternative earnings qualifier, because he owned more than a 50% proprietary interest in the employing unit and Section 46(d) (now 46(g)) controls.

FACTS: Claimant owned 100% of the employing corporation. On March 5, 1987 he stopped drawing his salary from the corporation. The corporation stopped operating on September 30, 1987. On October 25, 1987 the claimant filed for unemployment benefits. The MESC denied the claim because claimant had more than a 50% proprietary interest in the employing corporation, only established 18 credit weeks and thus could not establish a benefit year.

The claimant argued under the alternative qualifier provision, Section 46a(1), he should be able to establish a benefit year.

Section 46a(1) became effective on January 2, 1982 followed by Section 46(d) on July 24, 1983.

DECISION: The claimant was not entitled to establish a benefit year under Section 46a(1), the alternative qualifier.

RATIONALE: The court noted that Section 46(d) begins with the statement: "Notwithstanding subsection (a)..." and the fact subsection (d) was enacted after Section 46a and concluded the legislative intent of 46(d) was to limit an individual with a substantial interest in an employing unit from receiving benefits. Section 46a(1) operates as an exception to Section 46(a), not Section 46(d).

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14, 3, 4: N/A