4.00

TOTAL OR PARTIAL UNEMPLOYMENT

Sections 27(c), 44, 48

Section 48

REMUNERATION, Allocation of vacation pay, Circuit court, Judicial review, Jurisdiction, Layoff, Pro-rata vacation allowance

CITE AS: Brown v LTV Aerospace Corp, 394 Mich 702 (1975).

Appeal pending: No

Claimant: Russell W. Brown, et al
Employer: LTV Aerospace Corporation
Docket No: B70 773 38400 et al

SUPREME COURT HOLDING: (1) A pro-rata vacation allowance at the time of layoff is not a termination allowance and may be considered as vacation pay. (2) Where claimants are not numerous enough to require a class action, and their consolidated appeal is filed in a circuit other than Ingham, the appeal must be dismissed as to any claimant not residing in the circuit of filing.

FACTS: At the time of layoff, the claimants were paid a pro-rata share of their annual vacation pay. These payments were held to be remuneration under Section 48 of the Act. The claimants appealed to Macomb Circuit Court, where the appeal was dismissed as to claimant Boyer because he resided in Oakland County.

DECISION: (1) The pro-rata vacation pay was remuneration. (2) Boyer's appeal was properly dismissed.

RATIONALE: (1) Analysis of the union contract " ... indicates that the agreement speaks of vacation pay to an employee regularly employed, of one 'at the time of termination' and one 'terminated for lack of work and subsequently recalled' in exactly the same way. The emphasis is all on guaranteeing vacation pay in accord with credit earned because of time worked. The system is integral and it is no different 'at time of separation' from either regular annual anniversary payments or payments of allowances for those terminated and then recalled."

"The language of the statute is unambiguous, and it is clear that under [Section] 38 Boyer should have filed his appeal in either Oakland Circuit Court, the circuit court of the county in which he resided, or the Ingham Circuit Court.

"Section 38 is a statutory grant of jurisdiction to certain circuit courts; if an appeal is improperly filed in the wrong court, that court has no option but to dismiss the action for lack of jurisdiction."

Section 48

REMUNERATION, Allocation of vacation pay, Designation of vacation, Layoff, Severance pay

CITE AS: Hickson v Chrysler Corp, 394 Mich 724 (1975).

Appeal pending: No

Claimant: Joseph R. Hickson
Employer: Chrysler Corporation
Docket No: B70 5047 RO 39184

SUPREME COURT HOLDING: Where a labor agreement provides for the allocation of vacation pay to a portion of an indefinite layoff period, the payments are remuneration and not severance pay.

FACTS: "Soon after being laid off plaintiff received 28 days vacation pay from his employer in accordance with a Chrysler-UAW contract. The 28 days pay was comprised of:

> 1) 17-1/2 days vacation credit accrued in 1969 which prior to the layoff plaintiff and his employer had agreed the plaintiff would take between July 6 and July 29 and
> 2) 10-1/2 vacation days accrued in 1970 up to the time of the layoff which normally would not have been taken until 1971."

DECISION: The claimant's vacation pay constitutes remuneration under Section 48 of the Act.

RATIONALE: "In this case there can be no question that the Chrysler/UAW contract provided for the designation of the period for allocation of vacation pay."

"Receipt of 'termination, separation, severance, or dismissal allowances, and bonuses' suggests payment independent of and perhaps in addition to vacation payments. The payments in question were clearly 'for a vacation or a holiday.'"

Section 48

REMUNERATION, Allocation of vacation pay, Plant shutdown, Vacation pay

CITE AS: Van Wormer Industries v MESC, No. 84-2768 AE, Macomb Circuit Court (February 28, 1985).

Appeal pending: No

Claimant: Jerry L. McCullough
Employer: Van Wormer Industries
Docket No: B83 21674 96043W

CIRCUIT COURT HOLDING: Where an employer fails to properly allocate vacation pay to a period of lay-off, the vacation pay is not remuneration under Section 48 of the Act.

FACTS: On May 2, 1983, the employer posted a notice that the entire plant would be closed for a one week vacation period effective June 30, to July 11, 1983. The contract provided that employer could not shutdown the plant unless such action was announced by the employer not later than May 1st. May 1st was a Sunday. On May 2, 1983, the claimant requested and was granted vacation time for the period July 16, to July 31. Claimant filed for unemployment for the period of the plant shutdown.

DECISION: The claimant is eligible for benefits for the period of the plant shutdown under Section 48.

RATIONALE: "It is settled that an employer may lawfully designate a period during lay-off for the allocation of vacation, Brown v LTV Aerospace Corp, 394 Mich 702." In this case, the employer did not make a proper allocation.

"The terms of the collective bargaining agreement specify that the plant may be closed for a two week vacation period, announced by the employer not later than May 1st. (emphasis provided). It is undisputed that on May 2nd, the employer posted a notice stating the plant would be closed for a one week vacation period effective June 30, 1983 at 4:00 p.m. through July 11, 1983 at 7:30 p.m. The notice did not comply with specified requirements. ...

" ... it must be kept in mind that the Michigan Employment Security Act is remedial in nature and is to be liberally construed to provide coverage, and its disqualification provisions are to be narrowly interpreted. Kempf v Michigan Bell Telephone Co., 137 Mich App 574 (1974)."

Section 48

REMUNERATION, Unemployed, Attorney practicing law, Burden of proof, Compensation received, Eligibility

CITE AS: Phillips v UCC, 323 Mich 188 (1948).

Appeal pending: No

Claimant: Pleasant I. Phillips
Employer: Winters and Crampton Corp.
Docket No: B7 15029 8250

SUPREME COURT HOLDING: (1) The claimant has the burden of proof as to eligibility. (2) An attorney who practices law 8 to 12 hours per day is not unemployed. (3) Compensation earned, not compensation received, is the test of remuneration.

FACTS: The claimant, an attorney, began practicing law in 1900.He performed factory work " ... from August 12, 1944, until October 6, 1947, when he was laid off due to lack of work. He continued in the practice of law, maintaining a law office in which he spent from 8 to 12 hours per day." The receipts from the law office were $31.00 in the 7 weeks following the claimant's layoff.

DECISION: The claimant is not unemployed.

RATIONALE: "We believe that the words 'unemployed individual' are used in [Section] 28 in their ordinarily accepted sense and that, taken in that light, one who is engaged in rendering service for remuneration or who devotes his time to the practice of a profession by which a living is customarily earned cannot be said to be unemployed."

"Remuneration earned, not remuneration received, is the test under this section. Efforts expended in those weeks may well have earned fees paid at a subsequent date, a thing not at all unusual in a law practice."

"The burden was on plaintiff to prove his eligibility under [Section] 48. Dwyer v Unemployment Compensation Commission, 321 Mich 178. From the record it does not appear that he sustained that burden."

Section 44

REMUNERATION, Wages, Disability payments, Equal protection

CITE AS: Barnett v Good Housekeeping Shop, No. 58582 (Mich App March 14, 1983); lv den 418 Mich 873 (1983).

Appeal pending: No

Claimant: Rebekah Barnett
Employer: Good Housekeeping Shop
Docket No: O/P B78 53596 60992

COURT OF APPEALS HOLDING: The distinction in Section 44(5)(a) and (c) of the MES Act as to the treatment of disability payments as wages depending on whether the disability benefits are paid directly to an employee or through a disability plan does not constitute a denial of equal protection.

FACTS: Claimant, a 12 year employee, was on a medical leave and received 26 weeks of medical disability benefits through a disability insurance plan provided by the employer. When her disability ended claimant's employment was terminated. She applied for unemployment benefits but had insufficient credit weeks because the disability payments were not considered wages under Section 44(5) because they were paid through an insurance plan rather than directly to the employee.

DECISION: Claimant does not have sufficient credit weeks to establish a claim because disability payments she received do not constitute wages under Section 44 of the Act.

RATIONALE: "Equal protection in its guarantee of like treatment to all similarly situated citizens permits classification which is reasonable and not arbitrary and which is based upon material and substantial differences which have reasonable relation to the object or persons dealt with and to the public purpose or purposes sought to be achieved by the legislation involved. The equal protection clause does not forbid discrimination with respect to things that are different. Gauthier v Campbell, Wyant & Cannon Foundry Co, 360 Mich 510, 514; 104 NW2d 182 (1960). We find as did the trial court, that the legislative purpose in the distinction of section 44 is to encourage the establishment of plans and systems which would financially aid workers when they are ill and disabled and for which unemployment benefits are not payable because the individual employees are not qualified under section 28 of the act, because they are not able and available for work due to the sickness or disability."

Section 48

REMUNERATION, Allocation of vacation pay, Bonus, Contractual specification, Designation of vacation, Payment in lieu of vacation, Vacation shutdown

CITE AS: Blanding v Kelsey-Hayes Co, No. 80 022124 AE, Wayne Circuit Court (February 18, 1981).

Appeal pending: No

Claimant: James Blanding, et al
Employer: Kelsey-Hayes Co.
Docket No: B76 13949(1) 60456 et al

CIRCUIT COURT HOLDING: Where a contract requires payment of vacation pay in March of each year, and allows designation of a vacation shutdown period, the March payment is not remuneration.

FACTS: The claimants received their vacation pay in March of each year, as specified in the union contract. Section 19 of the contract allowed designation of a vacation shutdown period. "At various times in 1975 and 1976 the management at the three plants invoked the company's option, as provided in Section 19, to require vacations to be taken during a plant shutdown period."

DECISION: The payments in question are not remuneration under Section 48 of the Act.

RATIONALE: The Court cited Renown Stove Co v UCC, 328 Mich 436 (1950), and Hubbard v UCC, 328 Mich 444 (1950). "The lesson of the Hubbard and Renown Stove cases is that the questioned payments, being payable at the specific time and without regard to whether vacation time is also taken, do not qualify in the first instance under Section 48 as 'amounts paid ... for a vacation,' are bonuses instead, and are therefore not subject to the employer's right of allocation." "The rationale of the Supreme Court's interpretation of Section 48 seems clear. Although vacation pay is deemed remuneration, a payment cannot be considered remuneration for the period of unemployment if the employee is entitled to the payment in all events without regard to the period of unemployment."

Section 48

REMUNERATION, Back pay award, National Labor Relations Board, Payment of damages, Settlement agreement

CITE AS: Weideman v Interlakes Engineering Co, No. 744941 AE, Macomb Circuit Court (November 28, 1975).

Appeal pending: No

Claimant: William Weideman, et al
Employer: Interlakes Engineering Co.
Docket No: B73 3107 43951 et al

CIRCUIT COURT HOLDING: Back pay received as the result of an N.L.R.B. settlement agreement is remuneration under Section 48 of the Act, even where the amount is less than the claimed loss of wages.

FACTS: The claimants received $10,000.00 under a settlement agreement approved by the National Labor Relations Board. The claimants alleged their total wage loss was $26,000.00. "It is claimed that the Appellants assumed that the actual compensation for loss of wages was covered by their unemployment benefits from the MESC and that the $10,000.00 settlement was remuneration for loss of fringe benefits."

DECISION: The back pay is remuneration under the Act.

RATIONALE: The Court quoted the text of the settlement agreement:

> Paragraph 7 referred to states that the employer shall 'Make whole the below-named employees for any loss of pay they may have suffered by payment of a lump sum settlement of $10,000.00 ...' From the terms of the agreement it is clear that the stipulation and the order indicate that the lump sum settlement was a back pay award. Appellants claim that the stipulation is silent as to back pay. In addition this Court notes that the National Labor Relations Board has no authority to pay a discriminatee damages for anything other than lost wages.

REMUNERATION, Back pay award, Civil Rights Commission, Eligibility, Good cause for redetermination, Jurisdiction, Settlement agreement

CITE AS: Walters v Kelsey Hayes Wheel Co, No. 74 005517 AE, Wayne Circuit Court (January 31, 1980).

Appeal pending: No

Claimant: Johnnie Walters
Employer: Kelsey Hayes Wheel Co.
Docket No: B73 1040 43943

CIRCUIT COURT HOLDING: Back pay received as the result of a Civil Rights Commission settlement agreement more than one year after benefits are paid, is remuneration under Section 48 of the Act and is good cause for redetermination of the claimant's eligibility.

FACTS: The claimant filed a complaint with the Michigan Civil Rights Commission in July, 1967, following his discharge by the employer. "On September 29, 1972, claimant and employer settled the Civil Rights claim by a stipulation which provided that the employer pay to the claimant back pay totaling $9,897.75." "On October 30, 1972, employer notified the MESC of the stipulated settlement and requested a redetermination of claimant's eligibility for benefits."

DECISION: The back pay is remuneration under the Act.

RATIONALE: "The Commission held that inasmuch as more than one year has elapsed since the time the benefit payments were paid, the Commission lacked jurisdiction to redetermine claimant's eligibility.

"The Referee reversed the Commission."

"The transcript of the proceedings before the Referee on February 28, 1973, makes it clear that the settlement of $28,609.31 specifically included $9,897.75 as back pay for the time which claimant had drawn unemployment."

Section 48

REMUNERATION, Allocation of holiday pay, Contractual specification, Designation of holidays, Vacation shutdown, Weekly holiday payment

CITE AS: Turner v Creative Industries of Detroit, Inc., No. 44061 (Mich App April 30, 1980).

Appeal pending: No

Claimant: Jimmy Turner, et al
Employer: Creative Industries of Detroit, Inc.
Docket No: B76 3548 (1) 53458 et al

COURT OF APPEALS HOLDING: Where holiday pay is distributed in every weekly paycheck, as a percentage of straight time earnings, it is not allocated to the designated holidays.

FACTS: The union contract and a supplemental agreement established a vacation shutdown from December 22 through January 2. "The contract further provided that holiday pay would no longer be distributed to employees at the time of the holiday. Instead, 'each employee's weekly paycheck ... [would] include an amount equal to 4.2 percent of his straight time hours worked.'"

DECISION: The claimants are eligible for benefits for the vacation shutdown period.

RATIONALE: "In the instant case, both Creative Industries and the Union agreed on the designation of the Christmas season holidays. At issue then is whether holiday payment was ever adequately allocated to those holidays, as required by the statute. See General Motors Corp v Unemployment Compensation Comm, 331 Mich 303; 49 NW2D 305 (1951). "In General Motors Corp, supra at 306-310, the Supreme Court held that holiday pay was remuneration in part where the bargaining parties had allocated funds to a specific day - December 25. In the present case, however, there has been no allocation of holiday pay to any specific holiday. Rather, the parties have agreed that each employee will receive 4.2 per cent of his straight time in each paycheck to cover all holidays."

Section 48

REMUNERATION, Allocation of vacation pay, Arbitration, Contractual specification, Designation of vacation, Layoff

CITE AS: McCaleb v Harbor Industries, Inc, No. 77-5202 (Mich App September 8, 1978).

Appeal pending: No

Claimant: Victor E. McCaleb, et al
Employer: Harbor Industries, Inc.
Docket No: B75 15530 50209

COURT OF APPEALS HOLDING: (1) Where contractual specification of vacation procedures includes designation of vacation periods but does not treat the allocation of vacation pay, the employer may allocate such pay as it chooses. (2) Arbitration has no role in the determination of eligibility for benefits.

FACTS: The employer allocated vacation pay to a week in which the claimants were on layoff. A subsequent arbitration decision dealt with the selection of a vacation period.

DECISION: The claimants received remuneration under Section 48 of the Act.

RATIONALE: The Court affirmed the Ottawa Circuit Court, which held: "We interpret Section 10.1 of the Collective Bargaining Agreement as dealing with the scheduling of vacations by the employer, and employee participation in selecting individual vacation periods. Nothing is said about the allocation of vacation pay to any particular period. Neither does the arbitrator's decision reach such issue. (Properly so, because arbitration has no place in the Michigan system of administrative and judicial determination as to eligibility for statutory employment compensation benefits.) We reject appellant's request to add contractual language by implication as being without justification, particularly in view of the statutory grant of power to the employer to allocate vacation pay as he chooses in the absence of 'contractual specification.'"

Section 48

REMUNERATION, Lay-off pay, Collective Bargaining Agreement

CITE AS: Miko v Wyandotte Cement, Inc., No. 82-233794-AE, Wayne Circuit Court (February 8, 1983).

Appeal pending: No

Claimant: David Miko
Employer: Wyandotte Cement, Inc.
Docket No: B81 07873 78457

CIRCUIT COURT HOLDING: A lay-off payment constitutes separation pay and is not remuneration under the Act.

FACTS: The claimant received a lay-off allowance pursuant to the Collective Bargaining Agreement equivalent to one week's wages.

DECISION: The claimant is eligible for benefits for the period covered by the lay-off allowance.

RATIONALE: "Separation pay may stem from a collective bargaining agreement or an individual contract between the employer and employee," Gaydos v White Motors Corp., 54 Mich App 143.

"[B]efore an individual will be deemed to be unemployed, two requirements must be met. First, no service may be performed for the employer and second, no remuneration may be paid. ... That [claimant] did not perform any work for his employer is clear; however [claimant] had received an allowance from his employer pursuant to the collective bargaining agreement. The allowance that [claimant] received was labeled lay-off pay.

"Separation pay is not payment for past wages earned, but rather is considered recognition of services rendered. If the allowance was simply remuneration for past services, then a claimant having earned it, would be entitled to it, regardless of the reason for separation.

"[I]t is the court's opinion that the lay-off payment constituted separation pay and therefore falls within the Section 48 exemptions from remuneration. The payment served as compensation for job loss in recognition of past employment and not as remuneration for past services rendered."

Sections 27(c), 48

REMUNERATION, Lost remuneration, Availability for work, Emergency call-in, Full-time work, Lack of telephone, Non-receipt of message, Short notice

CITE AS: Nelson v General Foods Corp, No. 80 67AV, Calhoun Circuit Court (June 18, 1980).

Appeal pending: No

Claimant: Nella L. Nelson
Employer: General Foods Corp.
Docket No: B78 716 60234

CIRCUIT COURT HOLDING: Where the lack of a "sufficient method of communication with the company" results in lost remuneration in excess of an individual's benefit rate, the claimant is ineligible under Section 48 and 28(1)(c) of the Act.

FACTS: A laid-off production worker could have earned $536.00 in two weeks, as a substitute for absentees. She missed the work because she had no telephone and the employer was unsuccessful in efforts to contact her via a relative whose telephone number she had given.

DECISION: The claimant is not eligible for benefits.

RATIONALE: "The Board of Review stated: 'The employer was not attempting to contact the claimant regarding full-time suitable work.'

"The Board of Review did not define 'full-time' work. Obviously 8 hours a day is full-time work that day, 40 hours a week is full-time work that week.

"The Board of Review stated: 'The MESC Act does not require an employee to be available at a moments notice for emergency call-in work.'

"The Board of Review interpreted the requirements of the act in a different fashion than the Referee, by simply characterizing the practice of the company by the use of terms of disparagement such as 'emergency,' 'assistance work' and 'moments notice.' Evidently neither the union nor the employees took exception to this practice."

REMUNERATION, Discharge, Payment in lieu of notice, Severance pay

CITE AS: Hayman v S and H Travel Awards, No. 75 126038, Oakland Circuit Court (May 4, 1976).

Appeal pending: No

Claimant: Judith Hayman
Employer: S & H Travel Awards
Docket No: B74 11222 46917

CIRCUIT COURT HOLDING: Where an employer customarily asks its employees to leave on their dates of termination, and pays them "severance pay" determined by each person's salary and seniority, the additional money is not payment in lieu of notice.

FACTS: The Referee stated: "On the date of her dismissal, the claimant received three weeks of vacation and five weeks additional pay which has been considered by the employer to be payment in lieu of notice."

DECISION: The additional pay is not remuneration under the Act.

RATIONALE: The Court adopted the decision of the Referee, who held: "The testimony indicated that, because of the risk of former employees providing the names of prospective customers to competitors, whenever an employee's services were no longer needed, they were asked to leave employment on the same date that they were terminated. That is, employees were not given a certain time period as a notice of their termination during which they could seek other work. This being the case, the Referee does not find that the payment of five weeks of wages given to the claimant on her last day of employment could be considered payment in lieu of notice. The only time payment in lieu of notice could be given to an employee would be on occasions when it would be possible for notice to be given." "In addition, it appears from the testimony that the claimant was advised that the payment she would be receiving would be in the nature of a severance payment." "It also appears that the amount of the severance pay increased the longer an employee was employed by the company and the greater his or her, salary."

Section 48

REMUNERATION, Vacation pay, Commission Administrative Rule 302, Allocation of vacation pay

CITE AS: Tenneco Inc., v Briegar, No. 82-29572 AE, Jackson Circuit Court (December 30, 1983).

Appeal pending: No

Claimant: John J. Brieger
Employer: Tenneco, Inc. - Walker Mfg.
Docket No: B80 23129 RO1 76344

CIRCUIT COURT HOLDING: Where an employer allocates vacation pay to periods of lay-off, but fails to comply with the notice requirements of Commission Administrative Rule 302, the payment is not remuneration under Section 48.

FACTS: The claimant made a request for vacation pay. On June 6, 1980, he received a check representing his vacation pay with his vacation beginning the following week. The collective bargaining agreement provided that the company could schedule a shutdown of plant operations for a period in July or August, on the condition that 90 days prior notice be given. Written notice of a shutdown scheduled for August 28, was posted at plant locations on May 9, and July 2, 1980.

DECISION: The vacation payment is not remuneration under Section 48.

RATIONALE: "[T]he employment contract provides for plant closures, but makes no provision for allocation of vacation pay to those periods. The effectiveness of the allocation must hinge upon the company's compliance with the provisions of Rule 302."

Neither of the posted notices referred to the allocation of vacation pay or that employees might be ineligible for unemployment benefits upon receipt of the vacation pay.

"Since the notices in this case do not meet with the requirements of Rule 302, the decision of the MESC allowing benefits ... is affirmed."

Section 48

REMUNERATION, Vacation pay, Plant shut down, Commission Administrative Rule 302, Substantial compliance

CITE AS: Abbeg v Russell, Burdsall & Ward, Inc., No. 81-12-581 AE, Branch Circuit Court (October 5, 1982).

Appeal pending: No

Claimant: Clarence Abbeg, et al
Employer: Russell, Burdsall & Ward, Inc.
Docket No: B80 18840 75094, et al

CIRCUIT COURT HOLDING: Where "the employer complies substantially with the requirements contained in Commission Administrative Rule 302, the purpose of the notice is accomplished."

FACTS: The claimants were laid off from August 3 through August 16. The employer had scheduled a plant shut down for this period. "The claimants and their union president were given advance notice by the employer of the intended shutdown and on April 22, 1980, the employer posted notice on the plant's bulletin board which was followed by the employer's letter to the union president. ... [N]either of the written notices contained any statement regarding any possible effect of the shutdown or payment thereof on the (claimant's) eligibility for unemployment benefits."

DECISION: The notice was sufficient to comply with Commission Administrative Rule 302.

RATIONALE: "[T]he employer did comply substantially with the requirements contained in Rule 302 so that the purpose of the notice was accomplished. Written notices failed to mention any possible effect that the August, 1980 shutdown would have on the claimant's eligibility for unemployment compensation, but in other respects the notice was clear. The dates of shutdown were set forth as was the fact that this was considered a 'vacation' shutdown. The letter which the employer sent to the union president further clarified that employees would be required to take vacation during the shutdown to the extent that their vacation had been earned. Further, the employees must have understood the shutdown to be a vacation and circulated a petition of protest which showed they had such understanding." The payments in question are remuneration under Section 48 of the Act.

Section 48

REMUNERATION, Earnings, Voluntary services

CITE AS: MESC v Peterson, No. 59163 (Mich App September 29, 1982).

Appeal pending: No

Claimant: Doris C. Peterson
Employer: Eastern Michigan University
Docket No: B78 53074 65751

COURT OF APPEALS HOLDING: Monies given to the claimant by the employer for services which had been voluntarily rendered were not earnings and therefore could not be considered remuneration for purposes of Section 48.

FACTS: The claimant voluntarily agreed to work without pay on a two month research project. Approximately three months after the claimant had performed her voluntary services the employer gave the claimant $2000.00 for her efforts.

DECISION: The claimant was eligible for benefits during the period which she rendered voluntary services since no remuneration had been earned.

RATIONALE: When the claimant agreed to perform the services it was understood they were being provided on a voluntary basis. As a consequence the claimant had no enforceable claim for remuneration and the employer had no obligation to pay. Absent some enforceable claim or obligation monies received for services rendered cannot be considered remuneration for purposes of the MES Act.

Section 48

REMUNERATION, Severance pay

CITE AS: Jones (Gateway, Inc) 1983 BR 86593W (B82-18088).

Appeal pending: No

Claimant: Robert H. Jones
Employer: Gateway, Inc.
Docket No: B82 18088 86593W

BOARD OF REVIEW HOLDING: Where the claimant has no contractual entitlement to notice, any money paid by the employer upon termination is in the nature of a gift and therefore severance pay, which cannot be considered remuneration for purposes of Section 48.

FACTS: The claimant was employed as an executive director. The claimant received a call from the president of the employer's executive committee requesting that the claimant submit his resignation the following day. In the ensuing conversation, the claimant requested "severance pay" of 6 months, and the president said he did not anticipate that "severance" would be a problem. Thereafter an executive committee meeting was called and it was agreed to award the claimant a sum equal to three months wages even though the claimant's employment contract had no provision for notice in advance of discharge, pay in lieu of such notice or any severance arrangement.

DECISION: Claimant is entitled to benefits.

RATIONALE: The claimant had no contractual agreement entitling him to notice or to pay in lieu thereof. Therefore, he had no enforceable right to the money which was paid to him. Consequently, it was in the nature of a gift or bonus and as a result must be considered severance pay.

Section 48 and 50

REMUNERATION, Severance Pay, Payment in lieu of notice, Credit weeks

CITE AS: Hamilton v W.A. Foote Memorial Hospital, No. 84-33223-AE Jackson Circuit Court (October 3, 1984).

Appeal pending: No

Claimant: Joseph W. Hamilton
Employer: W. A. Foote Memorial Hospital
Docket No: B83 09754 93402W

CIRCUIT COURT HOLDING: Payments made to claimant after his separation and after he stopped performing services were severance pay, in light of the fact both parties characterized them as such and claimant had no right to payment in lieu of notice.

FACTS: The claimant worked for the employer as a controller. The employer requested the claimant's resignation. After the claimant resigned the employer continued to pay the claimant on a bi-weekly basis for a six month period. Notably, both parties referred to the payments as "severance pay". Upon filing for benefits the claimant asserted the monies received were remuneration under the Act and could be used to establish credit weeks.

DECISION: No remuneration was earned and no credit weeks could be established based on the payments in question.

RATIONALE: It is necessary to determine the understanding of the parties at the time of the separation. Here, both parties referred to the payment as severance pay. Further, the claimant did not perform any services during the six month period.

The court quoted from Bolta Products v Director of Employment Security, 356 Mass 684: "A payment in lieu of dismissal notice may be defined as a payment made under the circumstances where the employing unit, not having given an advance notice of separation to an employee, and irrespective of the length of service to the employee, makes a payment to the employee equivalent to the wages which he could have earned had he been permitted to work during the period of notice. Severance pay, on the other hand, may be defined as a payment to an employee at the time of his separation in recognition and consideration of the past service he has performed for the employer and the amount is usually based on the number of years of service."

Section 48

LEAVE OF ABSENCE, Waived rights leave

CITE AS: Urban (State of Michigan, 1986 BR 102223W (B85-13293).

Appeal pending: No

Claimant: Pamela A. Urban
Employer: Secretary of State (State of Michigan)
Docket No: B85 13293 102223W

BOARD OF REVIEW HOLDING: A "waived rights leave of absence" is not a leave of absence within the meaning of Section 48 of the MES Act.

FACTS: The claimant was a member of the Michigan State Employees Association. The contract executed between that organization and the State of Michigan provided for various types of leaves of absences. Article 16, Section D of that agreement provides that an employee may request a "waived rights leave of absence" of up to one year in those situations when an employee must leave his or her position for reasons beyond his or her control and for which a regular leave of absence is not granted. Employees requesting and granted a "waived rights leave of absence" do not have the right to return to state service at the end of the leave but will have the continuous nature of their service protected provided they return to work prior to the expiration of such leave.

In the instant matter the claimant sought and secured a "waived rights leave of absence". While on the "waived rights leave of absence" the claimant filed for unemployment benefits. The employer asserted the claimant was ineligible under Section 48(3) of the MES Act which reads "An individual shall not be deemed 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."

DECISION: The claimant is not ineligible for benefits.

RATIONALE: In American Telephone and Telegraph Company v MESC, 376 Mich 271 (1965) the Michigan Supreme Court held that a leave of absence meant a temporary authorized release from one's duties for a stated period with the right or duty to return at the end of the period. The claimant in this matter had no right to return at the end of the period at issue. Therefore the Board found the claimant was not on a leave of absence as defined in American Telephone and Telegraph and consequently was not ineligible under Section 48(3).

Section 48, 62

REMUNERATION, Arbitration settlement, Back pay, Restitution

CITE AS: Cox v Tri-County Labor Agency, No. 85-1861AE, Calhoun Circuit Court (March 13, 1986).

Appeal pending: No

Claimant: Wayne O. Cox
Employer: Tri-County Labor Agency
Docket No: B84 06074 97817W, 97818W

CIRCUIT COURT HOLDING: Receipt of a lump sum settlement of an arbitration award constituted back pay and hence remuneration within the meaning of the MES Act.

FACTS: The claimant was employed as an executive director by the employer until his termination. After his termination an arbitrator issued a decision which reinstated the claimant and ordered the employer to pay the claimant back pay. Shortly after the claimant was reinstated the employer again terminated him. At this point the claimant and the employer negotiated an agreement whereby which the employer paid the claimant a sum in satisfaction of the arbitration award. Claimant was paid unemployment benefits while the arbitration was pending. After claimant received the arbitration settlement the MESC sought restitution of the benefits received.

DECISION: The sum received by the claimant in settlement of the arbitration award included back pay. Thus it constituted remuneration within the meaning of the MES Act and therefore claimant was ineligible for benefits during the relevant period. Restitution was properly ordered.

RATIONALE: The arbitration award specifically indicated the employer would both reinstate the claimant and pay him back wages. The back wages payable to the claimant would have been remuneration. The claimant's receipt of a sum in lieu of reinstatement and back wages must also be considered remuneration since it was received in satisfaction of the same.

Section 48

REMUNERATION, Allocation of vacation pay, Bonus, Contractual specification, Designation of vacation, Payment in lieu of vacation

CITE AS: Renown Stove Company v U. C. C., 328 Mich 436 (1950).

Appeal pending: No

Claimant: George Sheldon, et al
Employer: Renown Stove Company
Docket No: B8 5900 1 9580

MICHIGAN SUPREME COURT HOLDING: Where the option to receive vacation with pay or payment in lieu of vacation rests with the employee, a payment received during a period of unemployment will be deemed a bonus rather than vacation pay.

FACTS: One group of employees worked under a contract which provided for vacation pay and specified the vacation period from July 5 to July 18, 1948. There was no option for payment in lieu of vacation. The second group's contract also provided for vacation pay but their vacation period was not specified and these claimants had the right to receive pay in lieu of vacation. Both groups of employees were laid off for lack of work in April, 1948 and filed for and began receiving unemployment benefits. On June 28, 1948, they received checks equal to either 1 or 2 weeks of wages. The employer contested the payment of benefits for the period following July 5, 1948 asserting that the workers had vacation pay for the same period.

DECISION: The claimants covered by the first agreement received vacation pay and are not entitled to receive unemployment benefits for the same period. Those covered by the second agreement received a bonus and not vacation pay and are entitled to receive benefits with respect to the period beginning July 5 during which they did not work.

RATIONALE: The controlling question is whether the employer paid the employees for or with respect to the 1 or 2 week period beginning July 5. The first agreement specified that the period from July 5 to July 18 was a vacation period and those claimants were not entitled to the June 28 payment for any other reason. But, the claimants who worked under the second agreement had the option to take a vacation with pay or work, and in addition to wages for such work, receive a bonus in lieu of the vacation with pay. Since the option rested with the employees, the June 28 payment was a bonus and not vacation pay.

Section 48

UNEMPLOYED, Unpaid vacation, Leave of absence defined

CITE AS: Employment Security Commission v Vulcan Forging Co, 375 Mich 374 (1965).

Appeal pending: No

Claimant: Henry Czarnata
Employer: Vulcan Forging Co.
Docket No: B58 2338 21038

SUPREME COURT HOLDING: Claimants who were on unpaid vacation pursuant to a collective bargaining agreement were unemployed according to the Act for those weeks with respect to which they performed no services and received no remuneration.

FACTS: The plant where claimants worked was shut for vacation in accordance with a collective bargaining agreement but the instant claimants received no vacation pay because they had insufficient senority.

DECISION: The claimants were unemployed for purposes of the Act.

RATIONALE: The court expressly overruled I.M. Dach Underwear Co. v E.S.C., 347 Mich 465 (1956). The court concluded that claimants' unpaid vacation status was not equivalent to a "leave of absence" because a leave of absence "signifies an authorized temporary absence from work for other than vacation purposes."

Section 48

LEAVE OF ABSENCE, Definition, Right to return, Employed person

CITE AS: Golden v Huron Valley Schools, No. 83-258818-AE Oakland Circuit Court (April 25, 1984).

Appeal pending: No

Claimant: William P. Golden
Employer: Huron Valley Schools
Docket No: B82 03503 R01 85873W

CIRCUIT COURT HOLDING: A claimant is considered an employed person under Section 48 of the Act when a claimant's request for a leave of absence in lieu of being fired is granted even if the leave is for an indefinite period and with no guarantee of re-employment.

FACTS: Claimant worked for the employer from September, 1954 until June, 1980. In August, 1980 he was charged criminally with embezzlement and commingling of funds. He was suspended with pay from August, 1980 until August, 1981. In June, 1981 he was convicted of the charged felonies. A hearing was scheduled to discharge claimant, however, the claimant and the employer reached a settlement. It was agreed claimant would request a leave of absence and the employer would grant the leave of absence until all his appeal rights were exhausted. Claimant began a leave of absence August 3, 1981 which continued through the date of the Referee hearing on March 22, 1982.

DECISION: Claimant was employed under Section 48 on August 3, 1981 and thereafter while on an approved leave of absence and was therefore ineligible for benefits.

RATIONALE: "The phrase 'leave of absence' is not defined in the statute. Appellant's suggested strict limitation of its meaning to only those leaves of absence where the employee has an 'absolute right' to return to work apparently arises from his understanding of American T. & T. Co. v Employment Security Commission, 376 Mich 271 (1965), and a now repealed provision of the Act, former Section 29(1)(d) ... A plain reading of the statute does not justify such a limited definition.

Appellant's reliance on American T.&.T. Co. v Employment Security Commission, supra, is misplaced. This Michigan Supreme Court decision was controlled by a now repealed section of the Act providing for pregnancy leaves. Even assuming the provision was presently in effect, its definition of 'leave of absence' is clearly confined to pregnancy leaves."

12/91
14, 15:NA

Section 44(5)

SICK PAY, Wages and credit weeks, Average weekly wage.

CITE AS: MESC v Worth, Oceana Circuit Court, No. 94-004703-AE (February 13, 1995); lv den, Mich App, July 7, 1995 (No. 184836); lv den, Mich, April 29, 1996 (No. 103801).

Appeal pending: No

Claimant: Jane Worth
Employer: Michigan Department of State.
Docket No. B92-27803-124350W

CIRCUIT COURT HOLDING: Payments made from insurance, annuities or a fund for disability coverage are not remuneration or considered wages under the Michigan Employment Security Act. However, "sick pay" is remuneration and constitutes wages under the Michigan Employment Security Act and as such must be considered when computing benefit rates.

FACTS: The claimant worked for the employer from December 1976 until November 1991. She was laid off for lack of work. The employer did not include in its wage calculations submitted to the MESC the amounts paid the claimant in the form of sick pay. The employer's computation of the claimant's average weekly wage was $413.70 which would entitle the claimant to $224.00 a week in benefits. The claimant computed her average weekly wage as $445.47 which would entitle her to $240.00 a week in benefits. The claimant used her gross wages without deducting any amounts received in the form of sick payments. At issue was the $16.00 per week difference in benefits.

DECISION: "Sick pay" is wages and therefore, claimant's average weekly wage was $445.47 which entitled the claimant to $240.00 a week in benefits

RATIONALE: Payments made from insurance, annuities or on account of accidents are not wages any more than an accident, retirement or death benefit would be considered a wage. Similarly, sickness disability payments are either insurance benefits payments or a form thereof and are not wage payments. However sick pay amounts to a decision of an employer to pay the day wages to an employee when the employee is ill. The sick payments are remuneration and wages under the Michigan Employment Security Act.

7/99
12, 24: N/A

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Section 48(2)

REMUNERATION, Pay in lieu of notice, Statutory construction

CITE AS: Vanderlaan v Tri-County Community Hospital, 209 Mich App 328 (1995)

Appeal pending: No

Claimant: James Vanderlaan
Employer: Tri-County Community Hospital
Docket No. B91-00104-117753

COURT OF APPEALS HOLDING: The MES Act does not require a contractual right to notice or payment in lieu of notice in order for monies received to be considered "amounts paid... in lieu of notice" thus rendering claimant ineligible for benefits.

FACTS: Claimant was discharged on June 14, 1990. Employee handbook provided that employer would give four weeks' notice to terminate, but could instead, pay four weeks' salary instead of notice. Claimant continued to receive regular pay checks for six weeks after he stopped working. The first four weeks were considered salary instead of notice by the employer and the last two were severance pay. The issue in this case was whether the four weeks pay were in lieu of notice and, therefore, remuneration. If so, claimant was not entitled to unemployment compensation for those weeks.

DECISION: Claimant received four weeks pay in lieu of notice (remuneration) following his termination and is ineligible for benefits.

RATIONALE: It is not necessary to prove a contractual right to notice in order to show pay in lieu of notice. The rules of statutory construction should be applied to give every word and phrase of Section 48(2) its plain and ordinary meaning. Contractual right is only one factor which may be considered in deciding whether or not claimant received remuneration. Other factors are employer's custom or policy and employee's expectation of payment.

7/99
14, 12, d3: N/A

Section 48

REMUNERATION, Salary continuation, Severance pay, Credit weeks

CITE AS: Ciaramitaro v Modern Hard Chrome Service, Macomb Circuit Court, No. 96-4644-AE (November 1, 1996).

Appeal pending: No

Claimant: Sam P. Ciaramitaro
Employer: Modern Hard Chrome Service
Docket No. B91-12323RR-131804W

CIRCUIT COURT HOLDING: Where claimant involuntarily retired and received a week's pay for each year he worked for employer, such pay was severance pay and was not remuneration under Section 48.

FACTS: Claimant retired involuntarily on February 2, 1990. As part of the early retirement package claimant received a 34 week "salary continuation" from February 8, 1990 through September 27, 1990. He did not apply for benefits until after those payments ended. The MESC held that the claimant received severance pay which is not remuneration and cannot be used to establish credit weeks.

DECISION: Claimant is ineligible for benefits because he had insufficient credit weeks in the 52 week period preceding his application to establish a claim.

RATIONALE: Claimant failed to prove that he was legally entitled to receive a continuing weekly salary if involuntarily retired. Claimant performed no services in exchange for the monies he received.

7/99
22, 24: F

Section 48

REMUNERATION, Vacation pay, Allocation, Payment in lieu of vacation

CITE AS: Smith v Hayes Albion, 214 Mich App 82 (1995); lv den 453 Mich 912 (1996)

Appeal pending: No

Claimant: Bernard Smith, et al
Employer: Hayes Albion
Docket No. B86-11358-111657, et al

COURT OF APPEALS HOLDING: Where collective bargaining agreement allowed employer to allocate vacation pay to plant shutdown period, vacation payments made were remuneration for the shutdown period and rendered claimants ineligible for benefits.

FACTS: Under 1985 collective bargaining agreement, seniority employees were entitled to vacation or pay in lieu of vacation as specified in Paragraph 90. Paragraph 91 provided that employer could schedule all vacation during a plant shutdown period if certain procedures were followed, such as notification to employees. Pursuant to the contract payments for accrued vacation time were made in February and June, 1986. Employer scheduled a two week shutdown from June 30, 1986, through July 11, 1986. Notices were posted indicating the earned vacation time and pay would be allocated to the shutdown period and that the allocation might render the employees ineligible for unemployment benefits.

DECISION: Claimants are ineligible for benefits under Section 48(2).

RATIONALE: Under Paragraph 90 of the collective bargaining agreement, employees had the option of receiving pay in lieu of vacation. Under Paragraph 91, the employer could allocate vacation pay to plant shutdown period. The fact these provisions appear in separate paragraphs does not mean the payment in lieu of vacation provided for in Paragraph 90 is independent of the period of unemployment (vacation shutdown) provided for in Paragraph 91. Thus the contract did not preclude the employer from designating the vacation pay to the shutdown period. As the employer maintained that discretion, the claimants' option to take pay in lieu of vacation was extinguished when the employer exercised its Paragraph 91 authority. Therefore the payments were not "bonuses" under Brown v LTV Aerospace Corp., 394 Mich 702 (1975).

7/99
14, 12, d13: C

Section 48

UNEMPLOYED, Leave of Absence

CITE AS: Rice v International Health Care Management, Inc., Monroe Circuit Court, No. 95-3309-AE (December 30, 1996).

Appeal pending: No

Claimant: Gail Rice
Employer: International Health Care Management, Inc.
Docket No. B93-06823-R01-128754W

CIRCUIT COURT HOLDING: Where claimant was given choice between a leave of absence and termination after she notified employer of her pregnancy, she did not voluntarily request the leave of absence and was, therefore, unemployed and eligible for benefits under Section 48.

FACTS: Claimant worked for employer as housekeeper, nurse aide, laundress beginning in 1986. Claimant notified employer that she was pregnant and had some medical restrictions. Claimant requested work within her restrictions or light duty work. Employer refused and offered claimant a "voluntary" leave of absence as alternative to termination. Claimant testified her leave was not voluntary, i.e. was not requested by her.

DECISION: Claimant is not ineligible for benefits under Section 48(3).

RATIONALE: Neither the Agency, the Referee, nor the Board of Review addressed the issue of voluntariness. Claimant's unrebutted sworn testimony was that she accepted a so-called voluntary leave of absence to avoid termination. The record does not support the conclusion that the claimant voluntarily requested a leave of absence. Therefore, the conclusion that she was ineligible for benefits under 48(3) was erroneous as a matter of law.

7/99
22, 24: L

Sections 48, 44

EMPLOYED, Unemployed, Remuneration, Retroactive pay

CITE AS: Fletcher v Atrex Corp. , Macomb Circuit Court, No. 96-7137-AE (October 22, 1997).

Appeal pending: No

Claimants: Clare Fletcher
Employer: Color Custom Compounding, Inc., d/b/a Atrex Corp.
Docket No. FSC 95-00061-136470W

CIRCUIT COURT HOLDING: Where claimant spent her time performing services, though not paid for those services until after the fact, she was nonetheless employed and received remuneration.

FACTS: Claimant had a benefit year in effect in May 1992 when she began performing services for Universal Plastics. At that time, that employer was unable to offer her a paying job. Nonetheless, claimant continued to perform services until she was officially hired there August 1, 1992, at which time she informed the Agency that she was employed. After claimant was hired she was compensated retroactively for the services she performed between May and August 1992. When the Agency became aware of this a determination was issued holding claimant ineligible for the May - August period under Section 48.

DECISION: Claimant is ineligible for benefits for the period May 3, 1992, through July 11, 1992, under Section 48.

RATIONALE: Remuneration is compensation for personal services and is not limited by the statute as to when it is paid - it may be paid after the service is rendered and not in the form of an hourly or weekly rate. The substantial amounts claimant received in addition to her regular wages after she was hired were, in fact, remuneration for services rendered during the period in question.

7/99
12, 21: B

Section 48

UNEMPLOYED, Self-employment, Attachment to labor market

CITE AS: Kenkel v Tremec Trading Co., Oakland Circuit Court, No. 94-476557 (January 30, 1995).

Appeal pending: No

Claimants: Matthew Kenkel
Employer: Tremec Trading Co.
Docket No. B93-05246-126675W

CIRCUIT COURT HOLDING: Self-employment does not, per se, disqualify an individual from receiving benefits so long as they receive no remuneration and remain genuinely attached to the labor market.

FACTS: Claimant's job with employer was eliminated in April 1992. At that time, claimant purchased 50 percent interest in a real estate franchise. Claimant was not involved in day to day running of business, but did assist with long term planning. He received no compensation for services provided. He testified that he was at all times available for and seeking work. Any time he spent at the business was to increase the equity of his holding.

DECISION: Claimant was unemployed within the meaning of Section 48.

RATIONALE: Claimant's situation was compared and contrasted with that of claimants in Phillips v UCC, 323 Mich 188 (1948) and Bolles v ESC, 361 Mich 378 (1960). Found to be similar to facts of Bolles which enunciated test of whether or not claimant remained genuinely attached to the labor market despite his self-employment. Distinguish from Phillips, because claimant had not returned to a profession in which he had previously worked and he earned no remuneration. Citing Bolles, the court noted the intent of the Act is to foster industry and self-help, not idleness and inactivity.

7/99
22, 21: J

Sections 44, 48

REMUNERATION, Bonus, Strike settlement agreement

CITE AS: Jackson v General Motors Corp., Wayne Circuit Court, No. 01-119168-AE (July 8, 2002); lv den No. 242842 (Mich App January 13, 2003)

Appeal pending: No

Claimant: Willie Jackson, Jr., et al
Employer: General Motors Corporation
Docket No. MUL1999-57622 et al 154957

CIRCUIT COURT HOLDING: Where the source of a one-time payment is a strike resolution agreement, absent which there was no expectation of receiving monies for the relevant period, the payments are bonuses, not wages, and are excluded from "remuneration" under Section 48(2).

FACTS: In August 1998 employees received special payments for the lay-off period of June 28, 1998 through July 3, 1998. Employer paid the monies as part of a strike settlement and attempted to allocate the monies to that period of time. The payments were to compensate employees laid off due to interruption in the flow of parts caused by the labor dispute at the struck facilities.

DECISION: Claimants are eligible for unemployment benefits for the lay-off period.

RATIONALE: Section 44 defines "remuneration" under the MES Act. Section 48(2) has a narrower scope, and addresses how to treat "lost remuneration," i.e. remuneration that falls outside the course of ordinary pay. Under Section 48(2), bonuses do not qualify as remuneration. The court found the one-time payments were bonuses, not wages, as the source of entitlement was the agreement resolving the strike, and absent the agreement, the claimants had no expectation of receiving monies for the relevant period.

Section 44 speaks to remuneration in general. The court conceded the payments might appear to be "back pay." However, the court decided that the specific language of Section 44 precluded such a finding in this case.

[NOTES: Section 48(2) was amended effective April 26, 2002, and no longer includes bonuses in its exclusions to remuneration. Section 44(1) was amended effective April 26, 2002, and now includes "back pay" as remuneration.]

11/04

Section 48

UNEMPLOYED, Leave of absence defined

CITE AS: Motycka v General Motors, 257 Mich App 578 (2003).

Appeal pending: No

Claimant: Marvin Motycka, et al
Employer: General Motors Corporation
Docket No. MUL1999-78153-RM1-155516W

COURT OF APPEALS HOLDING: The phrase "leave of absence" as used in Section 48(3) denotes an authorized temporary release from work.

FACTS: Claimants were on a 'pre-retirement leave' for a two-year period as articulated in their collective bargaining agreement due to their plant closing. During the 'pre-retirement leave,' the claimants received 85% of their wages, retained health benefits, and accrued service credit towards retirement. At the conclusion of the two-year period, the claimants were required to retire.

DECISION: The claimants were not on a leave absence and were "unemployed."

RATIONALE: "In American Telephone Co v ESC, 376 Mich 271, 279 (1965), our Supreme Court held that the normally accepted meaning of leave of absence was a temporary authorized release from work. GM suggests that American Telephone, supra, is distinguishable from the instant case because it construes a former section of the MES Act dealing with pregnancy leaves that has since been rescinded. However, GM fails to recognize that the Supreme Court reaffirmed the concept that a leave of absence is a temporary release from work in ESC v Vulcan Forging Co, 375 Mich 374, 379 (1965)." Motycka, at 583. The Court in Vulcan, supra, further held that a "leave of absence" is an "authorized temporary release from work for other an vacation purposes." Motycka, at 583 quoting Vulcan, supra at 379.

11/04