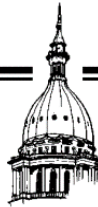




Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 4949 (Substitute H-4 as passed by the House)
House Bill 4950 (Substitute H-3 as passed by the House)
House Bill 4951 (Substitute H-2 as passed by the House)
House Bills 4952, 4953, and 4954 (as passed by the House)
Sponsor: Representative Frank Foster (H.B. 4949-4951)
Representative Ken Goike (H.B. 4952-4954)
House Committee: Commerce
Senate Committee: Reforms, Restructuring and Reinventing

Date Completed: 10-8-13

CONTENT

The bills would amend the Michigan Employment Security Act with respect to the recovery or repayment of improperly paid benefits; the allocation of monetary sanctions for fraudulent violations; a claimant's disqualification for benefits; an employer's failure to provide timely or adequate information; and the charging of benefits against an employer's account.

House Bill 4949 (H-4) would do the following:

- Provide for the recovery of benefits if the Unemployment Insurance Agency (UIA) or an appellate authority reversed a prior qualification for benefits.
- Require, rather than permit, the UIA to waive recovery of improperly paid benefits when the payment was not the individual's fault and repayment would be "contrary to equity and good conscience"; and define that term.
- Revise the date for the cancelation of benefits if a claimant intentionally made a false statement or misrepresentation; and allow an employer to protest a claim to establish a successive benefit year in such a case.

House Bill 4950 (H-3) would require benefits to be charged to an employer's account if the employer had a pattern of failing to respond with timely or adequate information, as requested or required by the UIA, and benefits were paid due to that failure.

House Bill 4951 (H-2) would require 15% of amounts recovered from benefits obtained fraudulently to be credited to the Unemployment Compensation Fund, and otherwise revise the allocation of amounts recovered by the UIA in cases of willful violations.

House Bill 4952 provides that an individual would be considered to have refused an offer of suitable work if a prospective employer withdrew an offer because the individual tested positive for a controlled substance, without a valid prescription, or refused to take a drug test.

The bill also would require a claimant to repay benefits that should not have been paid, if an employer notified the UIA of possible ineligibility or disqualification beyond the prescribed time limits.

House Bill 4953 would delete provisions under which benefits are considered proper payments if the UIA does not receive different information within 10 days after mailing a monetary determination; or if the UIA requests additional information from an employer and fails to receive a response within 10 days.

House Bill 4954 would include in the Unemployment Compensation Fund amounts credited from the recovery of monetary sanctions.

All of the bills are tie-barred to the others.

House Bill 4949 (H-4)

Recovery of Benefits

Currently, if the UIA determines that a person has obtained benefits to which he or she is not entitled, the Agency may recover the amount received plus interest by various methods described in the Act. Under the bill, this also would apply if a subsequent determination by the UIA or a decision of an appellate authority reversed a prior qualification for benefits.

The Act permits the UIA to waive recovery of an improperly paid benefit if the payment was not the fault of the individual and if repayment would be contrary to equity and good conscience. The bill would require the UIA to waive recovery in these situations.

The bill would define "contrary to equity and good conscience" as any of the following:

- The claimant provided incorrect wage information without the intent to misrepresent, and the employer either provided no wage information upon request or provided inaccurate wage information that resulted in the overpayment.
- The claimant's disposable household income, excluding social welfare benefits, was at or below the annual update of the poverty guidelines most recently published in the Federal Register, and the claimant had applied for a waiver of recovery.
- The improper payments resulted from an administrative or clerical error by the UIA.

For this purpose, an administrative or clerical error would not include a requirement to repay benefits as the result of a change in judgment at any level of administrative adjudication or court decision concerning the facts or application of law to a claim adjudication.

If a waiver were granted under the household income condition, it would apply from the date the application was filed.

Intentional False Statement or Misrepresentation

If the UIA determines that a person has intentionally made a false statement or misrepresentation, or has concealed material information to obtain benefits, regardless of whether he or she obtains benefits as a result, the person's rights to benefits for the benefit year in which the act occurred must be canceled as of the date the UIA receives notice of, or initiates investigation of, a possible false statement, misrepresentation, or concealment of material information, whichever date is earliest. In addition, wages used to establish that benefit year may not be used to establish another benefit year.

The bill would retain these provisions but would require rights to benefits to be canceled as of the date the claimant made the false statement or misrepresentation or concealed material information.

The bill also would allow a chargeable employer to protest a claim filed after October 1, 2014, to establish a successive benefit year under Section 46(c), if the UIA made a determination, or a court or administrative tribunal made a decision, finding that the claimant made a false statement, made a misrepresentation, or concealed material information related to his or her report of earnings for a preceding benefit year claim. If an employer protested a claim, any unreported earnings from the preceding benefit year that were falsely stated, misrepresented, or concealed could not be used to establish a benefit year for a successive claim.

(Section 46(c) requires a claimant to have earned a certain level of wages during a base period in order to establish a benefit year, and generally provides that wages previously used to establish a benefit year that resulted in the payment of benefits may not be used to establish a benefit year.)

House Bills 4950 (H-3) & 4953

The Act establishes the Unemployment Compensation Fund and requires the UIA to maintain in it a nonchargeable benefits account and a separate experience account for each employer. Under Section 20(a), benefits paid to an individual must be charged against an employer's account, and an employer's account must be credited if the UIA determines that benefits charged against it were improperly paid.

If benefits are paid to an individual as a result of an employer's failure to provide the UIA with separation, employment, and wage data as required by Section 32, the benefits must be considered properly paid to the extent that they are chargeable to the noncomplying employer.

House Bill 4950 (H-3) would delete that provision. The bill specifies that, if an employer or employer's agent had a pattern of failing to respond with timely or adequate information required or requested under Section 32, benefits paid to a claimant as a result of that failure would have to be charged to the employer's account. To demonstrate a pattern sufficient to make the benefits chargeable, the UIA would have to document repeated failures to provide timely or adequate responses, and would have to consider the number of instances of failure in relation to the number of requests. The number of failures would have to be more than four and constitute at least 2% of all the requests directed to the employer during the prior calendar year.

A determination that an employer's account would be charged and would not be credited for the benefit payments could be appealed in the same manner as other unemployment determinations may be appealed. Recovery of benefits improperly paid to the claimant under these provisions would have to be as provided in Section 62(a) (which House Bill 4949 (H-4) would amend).

These amendments to Section 20(a) would apply to benefit payments made after October 21, 2013.

House Bill 4953 would amend Section 32, which applies to monetary and nonmonetary determinations made by the UIA.

Section 32 requires the UIA to mail a monetary determination to the claimant, each base period employer, and the separating employer. Among other things, the monetary determination must state the claimant's weekly benefit rate, the amount of wages paid by each base period employer, and the maximum benefit amount that could be charged to each employer's account.

Benefits paid in accordance with the monetary determination must be considered proper payments and may not be changed unless the UIA receives new, corrected, or additional information from the employer within 10 calendar days after mailing the determination, and the information results in a change in that determination. The bill would delete that provision, and would require charges to the employer and payments to the claimant to be as provided in Section 20(a).

Currently, new, additional, or corrected information received by the UIA after that 10-day period must be considered a request for reconsideration by the employer of the monetary determination. The bill would refer to information the UIA received more than 10 days after mailing the monetary determination.

Under Section 32, if the UIA requests additional monetary or nonmonetary information from an employer and does not receive a written response within 10 calendar days after the request is mailed, the Agency must make a determination based upon the available information at the time the determination is made.

The determination must be final and any payment made must be considered a proper payment with respect to benefits paid before the week following the receipt of the employer's reply and chargeable against the employer's account as a result of the late reply. The bill would delete this provision, and would require charges to the employer and payments to the claimant to be as provided in Section 20(a).

House Bills 4951 (H-2) & 4954

House Bill 4951 (H-2) would amend Section 54 of the Act, which prescribes sanctions against a person, including a claimant, an employing entity, and an owner, director, or officer of an employing entity, who willfully violates or intentionally fails to comply with the Act or a regulation of the UIA promulgated under it, for which a penalty is not otherwise provided by the Act.

Among other things, a person is subject to specific administrative fines and other penalties if the person makes a false statement or representation knowing it is false, or knowingly and willfully with intent to defraud fails to disclose a material fact, to obtain or increase a benefit or other payment, to prevent or reduce the payment of benefits to an individual entitled to them, to avoid becoming or remaining a subject employer, or to avoid or reduce a contribution or other payment required from an employing unit. Depending on the amount that was or could have been obtained as a result of the violation, the UIA may recover that amount and additional damages.

When the UIA recovers these amounts, deductions from insurance benefits must be applied solely to the amount of the benefits liable to be repaid under Section 54. All other recoveries must be applied first to repayment amounts owed, which must be deposited in the Unemployment Compensation Fund; then to administrative sanctions and damages; and then to interest. The amounts applied to administrative sanctions, damages, and interest must be credited to the Contingent Fund (which is used for administration of the UIA and payment of interest on advances from the Federal government). The bill would delete these requirements.

Instead, the bill would require amounts recovered by the UIA to be credited in the following order:

- From the penalty assessment recovered, an amount equal to 15% of any benefit overpayments resulting from fraud would have to be credited to the Unemployment Compensation Fund.

- For the balance of deductions from unemployment insurance benefits, the liability for benefit repayment under Section 54 would have to be credited.
- For all other recoveries, the balance would have to be credited first to the Unemployment Compensation Fund for repayment of any remaining amounts owed, and then to the Contingent Fund to be applied first to administrative sanctions and damages and then to interest.

The bill would apply to a deduction or recovery made pursuant to a determination or redetermination issued after October 21, 2013.

House Bill 4954 would amend Section 26, which establishes the Unemployment Compensation Fund and lists the contributions, payments, interest, property, earnings, and other amounts that make up the Fund. The bill would include in the list amounts credited to the Fund under Section 54.

House Bill 4952

Disqualification for Benefits: Drug Test

The Act specifies circumstances that disqualify an individual from receiving benefits. Among other things, an individual is disqualified if he or she failed without good cause to accept suitable work offered to him or her.

Under the bill, for one year after its effective date, an individual would be considered to have refused an offer of suitable work if the prospective employer required a drug test as a condition of the offer, and the employer withdrew the offer after either of the following:

- The individual tested positive for a controlled substance and lacked a valid, documented medical prescription for it from a treating physician.
- The individual refused without good cause to submit to the drug test.

The drug test would have to be administered under the same terms and conditions as a drug test administered under a current provision that disqualifies an individual from benefits if he or she was discharged for illegally using or possessing a controlled substance on the employer's premises; refusing to submit to a drug test that was required to be administered in a nondiscriminatory manner; or testing positive on a drug test that was administered in a nondiscriminatory manner.

Repayment

Currently, if an employing unit notifies the UIA of possible ineligibility or disqualification beyond the time limits prescribed by Agency rule, the notice cannot form the basis of a determination of ineligibility or disqualification for a claim period compensated before the UIA receives the notice.

Under the bill, instead, if an employing unit notified the UIA of possible ineligibility or disqualification beyond the time limits, and the Agency concluded that benefits should not have been paid, the claimant would have to repay the benefits paid during the entire period of ineligibility or disqualification. The UIA could not charge interest on these repayments.

MCL 421.62 (H.B. 4949)
421.20 (H.B. 4950)
421.54 (H.B. 4951)
421.29 (H.B. 4952)
421.32 (H.B. 4953)
421.26 (H.B. 4954)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

House Bill 4949 (H-4)

The bill would reduce unemployment insurance (UI) benefits paid by the Unemployment Insurance Agency by a likely small amount. This reduction in payments also would lead to a similar reduction in State unemployment tax revenue, as those tax collections are largely based on benefits paid by the UIA.

House Bills 4950 (H-3) & 4953

The bills would bring Michigan into conformity with Section 252 of Public Law 112-40, which requires that states establish timeliness and adequacy standards for relieving charges on employers' experience accounts due to improperly paid benefits. According to the UIA, failure to enact such a standard could jeopardize the Federal Unemployment Tax Act (FUTA) tax credits received by 74% of Michigan employers. While this would not necessarily affect the UIA's operations, as the FUTA tax is administered by the U.S. Department of Labor, it would have a large impact on Michigan employers, which could have secondary effects on State and local units of government. Additionally, since State and local units are exempt from FUTA taxes, a credit reduction would not affect them.

House Bills 4951 (H-2) & 4954

The bills would have a positive fiscal impact on the Unemployment Compensation Fund (UCF) and a negative fiscal impact on the Contingent Fund - Penalty and Interest Account (Contingent Fund). The bills would require that an amount equal to 15% of UI benefits fraudulently obtained be first credited to the UCF from any penalty assessments received. Under current law, that 15% would be credited to the Contingent Fund. The UCF may be used only for the payment of UI benefits, whereas the Contingent Fund may be used for UIA administration and payment of Federal UCF advances under Title XII of the Social Security Act, so the bills would generally decrease the amount of revenue available for UIA administration but also very slightly decrease the likelihood that the UIA would need to seek Title XII advances in the future.

The bills also would bring Michigan into conformity with Section 251 of Public Law 112-40, which requires that, from amounts recovered from individuals who fraudulently obtained UI benefits, an amount equal to not less than 15% of the fraudulently obtained benefit be credited to the UCF. The UIA has indicated that failure to make this change in disbursement of fraudulent benefit recoveries could lead to an unknown reduction in the UI administration block grants received by the UIA. These block grants are the primary source of administration funds for the UIA. In the FY 2013-14 budget, approximately \$83.7 million of the UIA's total appropriation of \$89.3 million comes from these block grants.

House Bill 4952

The bill would reduce unemployment insurance benefits paid by the Unemployment Insurance Agency by an unknown amount. This reduction in payments also would lead to a similar reduction in State unemployment tax revenue, as those tax collections are largely based on benefits paid by the UIA.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.