

SENATE BILL No. 387

May 23, 2013, Introduced by Senator SCHUITMAKER and referred to the Committee on Reforms, Restructuring and Reinventing.

A bill to amend 1969 PA 317, entitled
"Worker's disability compensation act of 1969,"
by amending section 161 (MCL 418.161), as amended by 2012 PA 83.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 161. (1) As used in this act, "employee" means:

2 (a) A person in the service of ~~the~~**THIS** state, a county, city,
3 township, village, or school district, under any appointment, or
4 contract of hire, express or implied, oral or written. A person
5 employed by a contractor who has contracted with a county, city,
6 township, village, school district, or ~~the~~**THIS** state, through its
7 representatives, shall not be considered an employee of the state,
8 county, city, township, village, or school district that made the
9 contract, if the contractor is subject to this act.

10 (b) Nationals of foreign countries employed pursuant to
11 section 102(a)(1) of the mutual educational and cultural exchange

1 act of 1961, Public Law 87-256, 22 USC 2452, shall not be
2 considered employees under this act.

3 (c) Police officers, fire fighters, or employees of the police
4 or fire departments, or their dependents, in municipalities or
5 villages of this state providing like benefits, may waive the
6 provisions of this act and accept like benefits that are provided
7 by the municipality or village but are not entitled to like
8 benefits from both the municipality or village and this act.
9 However, this waiver does not prohibit those employees or their
10 dependents from being reimbursed under section 315 for the medical
11 expenses or portion of medical expenses that are not otherwise
12 provided for by the municipality or village. This act shall not be
13 construed as limiting, changing, or repealing any of the provisions
14 of a charter of a municipality or village of this state relating to
15 benefits, compensation, pensions, or retirement independent of this
16 act, provided for employees.

17 (d) On-call members of a fire department of a county, city,
18 village, or township shall be considered to be employees of the
19 county, city, village, or township, and entitled to all the
20 benefits of this act if personally injured in the performance of
21 duties as on-call members of the fire department whether the on-
22 call member of the fire department is paid or unpaid. On-call
23 members of a fire department of a county, city, village, or
24 township shall be considered to be receiving the state average
25 weekly wage at the time of injury, as last determined under section
26 355, from the county, village, city, or township for the purpose of
27 calculating the weekly rate of compensation provided under this act

1 except that if the member's average weekly wage was greater than
2 the state average weekly wage at the time of the injury, the
3 member's weekly rate of compensation shall be determined based on
4 the member's average weekly wage.

5 (e) On-call members of a fire department or an on-call member
6 of a volunteer underwater diving team that contracts with or
7 receives reimbursement from 1 or more counties, cities, villages,
8 or townships is entitled to all the benefits of this act if
9 personally injured in the performance of their duties as on-call
10 members of a fire department or as an on-call member of a volunteer
11 underwater diving team whether the on-call member of the fire
12 department or the on-call member of the volunteer underwater diving
13 team is paid or unpaid. On-call members of a fire department shall
14 be considered to be receiving the state average weekly wage at the
15 time of injury, as last determined under section 355, from the fire
16 department for the purpose of calculating the weekly rate of
17 compensation provided under this act except that if the member's
18 average weekly wage was greater than the state average weekly wage
19 at the time of the injury, the member's weekly rate of compensation
20 shall be determined based on the member's average weekly wage. On-
21 call members of a volunteer underwater diving team shall be
22 considered to be receiving the state average weekly wage at the
23 time of injury, as last determined under section 355, from the fire
24 department for the purpose of calculating the weekly rate of
25 compensation provided under this act except that if the member's
26 average weekly wage was greater than the state average weekly wage
27 at the time of the injury, the member's weekly rate of compensation

1 shall be determined based on the member's average weekly wage.

2 (f) The benefits of this act are available to a safety patrol
3 officer who is engaged in traffic regulation and management for and
4 by authority of a county, city, village, or township, whether the
5 officer is paid or unpaid, in the same manner as benefits are
6 available to on-call members of a fire department under subdivision
7 (d), upon the adoption by the legislative body of the county, city,
8 village, or township of a resolution to that effect. A safety
9 patrol officer or safety patrol force when used in this act
10 includes all persons who volunteer and are registered with a school
11 and assigned to patrol a public thoroughfare used by students of a
12 school.

13 (g) A volunteer civil defense worker who is a member of the
14 civil defense forces as provided by law and is registered on the
15 permanent roster of the civil defense organization of the state or
16 a political subdivision of the state shall be considered to be an
17 employee of the state or the political subdivision on whose
18 permanent roster the employee is enrolled if engaged in the
19 performance of duty and shall be considered to be receiving the
20 state average weekly wage at the time of injury, as last determined
21 under section 355, from the state or political subdivision for
22 purposes of calculating the weekly rate of compensation provided
23 under this act.

24 (h) A volunteer licensed under section 20950 or 20952 of the
25 public health code, 1978 PA 368, MCL 333.20950 and 333.20952, who
26 is an on-call member of a life support agency as defined under
27 section 20906 of the public health code, 1978 PA 368, MCL

1 333.20906, shall be considered to be an employee of the county,
2 city, village, or township and entitled to the benefits of this act
3 if personally injured in the performance of duties as an on-call
4 member of a life support agency whether the on-call member of the
5 life support agency is paid or unpaid. An on-call member of a life
6 support agency shall be considered to be receiving the state
7 average weekly wage at the time of injury, as last determined under
8 section 355, from the county, city, village, or township for
9 purposes of calculating the weekly rate of compensation provided
10 under this act except that if the member's average weekly wage was
11 greater than the state average weekly wage at the time of the
12 injury, the member's weekly rate of compensation shall be
13 determined based on the member's average weekly wage.

14 (i) A volunteer licensed under section 20950 or 20952 of the
15 public health code, 1978 PA 368, MCL 333.20950 and 333.20952, who
16 is an on-call member of a life support agency as defined under
17 section 20906 of the public health code, 1978 PA 368, MCL
18 333.20906, that contracts with or receives reimbursement from 1 or
19 more counties, cities, villages, or townships is entitled to all
20 the benefits of this act if personally injured in the performance
21 of his or her duties as an on-call member of a life support agency
22 whether the on-call member of the life support agency is paid or
23 unpaid. An on-call member of a life support agency shall be
24 considered to be receiving the state average weekly wage at the
25 time of injury, as last determined under section 355, from the life
26 support agency for the purpose of calculating the weekly rate of
27 compensation provided under this act except that if the member's

1 average weekly wage was greater than the state average weekly wage
2 at the time of the injury, the member's weekly rate of compensation
3 shall be determined based on the member's average weekly wage.

4 (j) If a member of an organization recognized by 1 or more
5 counties, cities, villages, or townships within this state as an
6 emergency rescue team is employed by a state, county, city,
7 village, or township within this state as a police officer, fire
8 fighter, emergency medical technician, or ambulance driver and is
9 injured in the normal scope of duties including training, but
10 excluding activation, as a member of the emergency rescue team, he
11 or she shall be considered to be engaged in the performance of his
12 or her normal duties for the state, county, city, village, or
13 township. If the member of the emergency rescue team is not
14 employed by a state, county, city, village, or township within this
15 state as a police officer, fire fighter, emergency medical
16 technician, or ambulance driver, and is injured in the normal scope
17 of duties, including training, as a member of the emergency rescue
18 team, he or she shall be considered to be an employee of the team.
19 For the purpose of securing the payment of compensation under this
20 act, on activation, each member of the team shall be considered to
21 be covered by a policy obtained by the team unless the employer of
22 a member of the team agrees in writing to provide coverage for that
23 member under its policy. Members of an emergency rescue team shall
24 be considered to be receiving the state average weekly wage at the
25 time of injury, as last determined under section 355, from the team
26 for the purpose of calculating the weekly rate of compensation
27 provided under this act except that if the member's average weekly

1 wage was greater than the state average weekly wage at the time of
2 the injury, the member's weekly rate of compensation shall be
3 determined based on the member's average weekly wage. As used in
4 this subdivision, "activation" means a request by the emergency
5 management coordinator appointed pursuant to section 8 or 9 of the
6 emergency management act, 1976 PA 390, MCL 30.408 and 30.409, made
7 of and accepted by an emergency rescue team.

8 (k) A political subdivision of this state is not required to
9 provide compensation insurance for a peace officer of the political
10 subdivision with respect to the protection and compensation
11 provided by 1937 PA 329, MCL 419.101 to 419.104.

12 (l) Every person in the service of another, under any contract
13 of hire, express or implied, including aliens; a person regularly
14 employed on a full-time basis by his or her spouse having specified
15 hours of employment at a specified rate of pay; working members of
16 partnerships receiving wages from the partnership irrespective of
17 profits; a person insured for whom and to the extent premiums are
18 paid based on wages, earnings, or profits; and minors, who shall be
19 considered the same as and have the same power to contract as adult
20 employees. Any minor under 18 years of age whose employment at the
21 time of injury is shown to be illegal, in the absence of fraudulent
22 use of permits or certificates of age in which case only single
23 compensation shall be paid, shall receive compensation double that
24 provided in this act.

25 (m) Every person engaged in a federally funded training
26 program or work experience program that mandates the provision of
27 appropriate worker's compensation for participants and that is

1 sponsored by ~~the~~**THIS** state, a county, city, township, village, or
2 school district, or an incorporated public board or public
3 commission in ~~the~~**THIS** state authorized by law to hold property and
4 to sue or be sued generally, or any consortium thereof, shall be
5 considered, for the purposes of this act, to be an employee of the
6 sponsor and entitled to the benefits of this act. The sponsor is
7 responsible for the provision of worker's compensation and shall
8 secure the payment of compensation by a method permitted under
9 section 611. If a sponsor contracts with a public or private
10 organization to operate a program, the sponsor may require the
11 organization to secure the payment of compensation by a method
12 permitted under section 611.

13 (n) Every person performing service in the course of the
14 trade, business, profession, or occupation of an employer at the
15 time of the injury, if the person in relation to this service does
16 not maintain a separate business, does not hold himself or herself
17 out to and render service to the public, and is not an employer
18 subject to this act. On and after January 1, 2013, services are
19 employment if the services are performed by an individual whom the
20 Michigan administrative hearing system determines to be in an
21 employer-employee relationship using the 20-factor test announced
22 by the internal revenue service of the United States department of
23 treasury in revenue ruling 87-41, 1 C.B. 296. An individual for
24 whom an employer is required to withhold federal income tax is
25 prima facie considered to perform service in employment under this
26 act. If a business entity requests the Michigan administrative
27 hearing system to determine whether 1 or more individuals

1 performing service for the entity in this state are in covered
2 employment, the Michigan administrative hearing system shall issue
3 a determination of coverage of service performed by those
4 individuals and any other individuals performing similar services
5 under similar circumstances.

6 (o) An individual registered with the state of Michigan
7 verification system described in 42 USC 247d-7b shall be considered
8 an employee of the ~~state of Michigan~~ **THIS STATE** when engaged in the
9 performance of duties or services as a registrant, or when training
10 to provide those duties or services, except if another employer
11 provides coverage for that individual specifically for duties and
12 services arising from registration with this state. That individual
13 shall be considered to be receiving the state average weekly wage
14 at the time of injury or death, as last determined under section
15 355, from ~~the state of Michigan~~ **THIS STATE** for purposes of
16 calculating the weekly rate of compensation provided under this
17 act, except that if the individual's average weekly wage was
18 greater than the state average weekly wage at the time of injury or
19 death the individual's weekly rate of compensation shall be
20 determined based upon the individual's weekly average wage. ~~The~~
21 ~~state of Michigan~~ **THIS STATE** shall exercise all the rights and
22 obligations of an employer and carrier as provided for under this
23 act.

24 (P) **A RESERVE OR AUXILIARY OFFICER SHALL BE CONSIDERED AN**
25 **EMPLOYEE OF THIS STATE WHEN ENGAGED IN THE PERFORMANCE OF DUTIES OR**
26 **SERVICES AS A RESERVE OR AUXILIARY OFFICER, OR WHEN TRAINING TO**
27 **PROVIDE THOSE DUTIES OR SERVICES. THAT INDIVIDUAL SHALL BE**

1 CONSIDERED TO BE RECEIVING THE STATE AVERAGE WEEKLY WAGE AT THE
2 TIME OF INJURY OR DEATH, AS LAST DETERMINED UNDER SECTION 355, FROM
3 THIS STATE FOR PURPOSES OF CALCULATING THE WEEKLY RATE OF
4 COMPENSATION PROVIDED UNDER THIS ACT, EXCEPT THAT IF THE
5 INDIVIDUAL'S AVERAGE WEEKLY WAGE WAS GREATER THAN THE STATE AVERAGE
6 WEEKLY WAGE AT THE TIME OF INJURY OR DEATH, THE INDIVIDUAL'S WEEKLY
7 RATE OF COMPENSATION SHALL BE DETERMINED BASED UPON THE
8 INDIVIDUAL'S WEEKLY AVERAGE WAGE. THIS STATE SHALL EXERCISE ALL THE
9 RIGHTS AND OBLIGATIONS OF AN EMPLOYER AND CARRIER AS PROVIDED FOR
10 UNDER THIS ACT. AS USED IN THIS SUBDIVISION, "RESERVE OR AUXILIARY
11 OFFICER" MEANS AN INDIVIDUAL AUTHORIZED ON A VOLUNTARY OR IRREGULAR
12 BASIS BY A DULY AUTHORIZED POLICE AGENCY OF THIS STATE OR A
13 POLITICAL SUBDIVISION OF THIS STATE TO ACT AS A LAW ENFORCEMENT
14 OFFICER, WHO IS RESPONSIBLE FOR THE PRESERVATION OF THE PEACE, THE
15 PREVENTION AND DETECTION OF CRIME, AND THE ENFORCEMENT OF THE
16 GENERAL CRIMINAL LAWS OF THIS STATE.

17 (2) A policy or contract of worker's compensation insurance,
18 by endorsement, may exclude coverage as to any 1 or more named
19 partners or the spouse, child, or parent in the employer's family.
20 A person excluded pursuant to this subsection is not subject to
21 this act and shall not be considered an employee for the purposes
22 of section 115.

23 (3) An employee who is subject to this act, including an
24 employee covered pursuant to section 121, who is an employee of a
25 limited liability company of not more than 10 members and who is
26 also a manager and member, as defined in section 102 of the
27 Michigan limited liability company act, 1993 PA 23, MCL 450.4102,

1 and who owns at least a 10% interest in that limited liability
2 company, with the consent of the limited liability company as
3 approved by a majority vote of the members, or if the limited
4 liability company has more than 1 manager, all of the managers who
5 are also members, except as otherwise provided in an operating
6 agreement, may elect to be individually excluded from this act by
7 giving a notice of the election in writing to the carrier with the
8 consent of the limited liability company endorsed on the notice.
9 The exclusion remains in effect until revoked by the employee by
10 giving notice in writing to the carrier. While the exclusion is in
11 effect, section 141 does not apply to any action brought by the
12 employee against the limited liability company.

13 (4) An employee who is subject to this act, including an
14 employee covered pursuant to section 121, who is an employee of a
15 corporation that has not more than 10 stockholders and who is also
16 an officer and stockholder who owns at least 10% of the stock of
17 that corporation, with the consent of the corporation as approved
18 by its board of directors, may elect to be individually excluded
19 from this act by giving a notice of the election in writing to the
20 carrier with the consent of the corporation endorsed on the notice.
21 The exclusion remains in effect until revoked by the employee by
22 giving a notice in writing to the carrier. While the exclusion is
23 in effect, section 141 does not apply to any action brought by the
24 employee against the corporation.

25 (5) If the persons to be excluded from coverage under this act
26 pursuant to subsections (2) to (4) comprise all of the employees of
27 the employer, those persons may elect to be excluded from being

1 considered employees under this act by submitting written notice of
2 that election to the director upon a form prescribed by the
3 director. The exclusion shall remain in effect until revoked by
4 giving written notice to the director.