

HOUSE BILL No. 4200

January 30, 1997, Introduced by Reps. Baade, DeHart, Prusi, Hanley and Goschka and referred to the Committee on Labor and Occupational Safety.

A bill to amend 1936 (Ex Sess) PA 1, entitled "Michigan employment security act," by amending section 29 (MCL 421.29), as amended by 1995 PA 25.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 29. (1) An individual is disqualified from receiving
2 benefits if he or she:

3 (a) Left work voluntarily without good cause attributable to
4 the employer or employing unit. However, if the individual has
5 an established benefit year in effect and during that benefit
6 year leaves unsuitable work within 60 days after the beginning of
7 that work, the leaving does not disqualify the individual.

8 (b) Was discharged for misconduct connected with the
9 individual's work or for intoxication while at work unless the
10 discharge was subsequently reduced to a disciplinary layoff or
11 suspension.

1 (c) Failed without good cause to apply for available
2 suitable work after receiving from the employment office or the
3 commission notice of the availability of that work.

4 (d) Failed without good cause while unemployed to report to
5 the individual's former employer or employing unit within a rea-
6 sonable time after that employer or employing unit provided
7 notice of the availability of an interview concerning available
8 suitable work with the former employer or employing unit.

9 (e) Failed without good cause to accept suitable work
10 offered to the individual or to return to the individual's cus-
11 tomary self-employment, if any, when directed by the employment
12 office or the commission.

13 (f) Lost his or her job due to absence from work resulting
14 from a violation of law for which the individual was convicted
15 and sentenced to jail or prison. This subdivision does not apply
16 if conviction of an individual results in a sentence to county
17 jail under conditions of day parole as provided in ~~Act No. 60 of~~
18 ~~the Public Acts of 1962, being sections 801.251 to 801.258 of the~~
19 ~~Michigan Compiled Laws— 1962 PA 60, MCL 801.251 TO 801.258, or if~~
20 the conviction was for a traffic violation that resulted in an
21 absence of less than 10 consecutive work days from the
22 individual's place of employment.

23 (g) Is discharged, whether or not the discharge is subse-
24 quently reduced to a disciplinary layoff or suspension, for par-
25 ticipation in either of the following:

26 (i) A strike or other concerted action in violation of an
27 applicable collective bargaining agreement that results in

1 curtailment of work or restriction of or interference with
2 production.

3 (ii) A wildcat strike or other concerted action not autho-
4 rized by the individual's recognized bargaining representative.

5 (h) Was discharged for an act of assault and battery con-
6 nected with the individual's work.

7 (i) Was discharged for theft connected with the individual's
8 work.

9 (j) Was discharged for willful destruction of property con-
10 nected with the individual's work.

11 (k) Committed a theft after receiving notice of a layoff or
12 discharge, but before the effective date of the layoff or dis-
13 charge, resulting in loss or damage to the employer who would
14 otherwise be chargeable for the benefits, regardless of whether
15 the individual qualified for the benefits before the theft.

16 (l) Was employed by a temporary help firm, which as used in
17 this section means an employer whose primary business is to pro-
18 vide a client with the temporary services of 1 or more individu-
19 als under contract with the employer, to perform services for a
20 client of that firm if each of the following conditions is met:

21 (i) The temporary help firm provided the employee with a
22 written notice before the employee began performing services for
23 the client stating in substance both of the following:

24 (A) That within 7 days after completing services for a
25 client of the temporary help firm, the employee is under a duty
26 to notify the temporary help firm of the completion of those
27 services.

1 (B) That a failure to provide the temporary help firm with
2 notice of the employee's completion of services pursuant to
3 sub-subparagraph (A) constitutes a voluntary quit that will
4 affect the employee's eligibility for unemployment compensation
5 should the employee seek unemployment compensation following com-
6 pletion of those services.

7 (ii) The employee did not provide the temporary help firm
8 with notice that the employee had completed his or her services
9 for the client within 7 days after completion of his or her serv-
10 ices for the client.

11 (m) Was discharged for (i) Illegally ingesting, injecting,
12 inhaling, or possessing a controlled substance on the premises of
13 the employer, (ii) Refusing to submit to a drug test that was
14 required to be administered in a nondiscriminatory manner, or
15 (iii) Testing positive on a drug test, if the test was adminis-
16 tered in a nondiscriminatory manner. If the worker disputes the
17 result of the testing, a generally accepted confirmatory test
18 shall be administered and shall also indicate a positive result
19 for the presence of a controlled substance before a disqualifica-
20 tion of the worker under this subdivision. As used in this
21 subdivision:

22 (A) "Controlled substance" means that term as defined in
23 section 7104 of the public health code, ~~Act No. 368 of the~~
24 ~~Public Acts of 1978, being section 333.7104 of the Michigan~~
25 ~~Compiled Laws~~ 1978 PA 368, MCL 333.7104.

26 (B) "Drug test" means a test designed to detect the illegal
27 use of a controlled substance.

1 (C) "Nondiscriminatory manner" means administered
2 impartially and objectively in accordance with a collective bar-
3 gaining agreement, rule, policy, a verbal or written notice, or a
4 labor-management contract.

5 (n) Has an income exceeding \$100,000.00 for the calendar
6 year in which he or she applies for benefits. This subdivision
7 shall not take effect unless both of the following occur:

8 (i) Within 30 days of the effective date of the act that
9 added subdivision (l), the governor requests from the United
10 States department of labor a determination confirming whether
11 this subdivision is in conformity with the federal unemployment
12 tax act, chapter 23 — of the internal revenue code of 1986, 26
13 U.S.C. 3301 to 3311, and the social security act, CHAPTER 531, 49
14 Stat. 620, and whether conformity with those federal acts is a
15 condition for a full tax credit against the tax imposed under the
16 federal unemployment tax act (FUTA), or is a condition for state
17 receipt of federal administrative grant funds under the social
18 security act.

19 (ii) The United States department of labor determines that
20 this subdivision is in conformity with the acts described in sub-
21 paragraph (i), or verifies that conformity with those federal
22 acts is not a condition for a tax credit or a grant described in
23 subparagraph (i).

24 (2) A disqualification under subsection (1) begins the week
25 in which the act or discharge that caused the disqualification
26 occurs and continues until the disqualified individual
27 requalifies under subsection (3), except that for benefit years

1 beginning before the conversion date prescribed in section 75,
2 the disqualification does not prevent the payment of benefits if
3 there are credit weeks, other than multiemployer credit weeks,
4 after the most recent disqualifying act or discharge.

5 (3) After the week in which the disqualifying act or dis-
6 charge described in subsection (1) occurs, an individual who
7 seeks to requalify for benefits is subject to all of the
8 following:

9 (a) For benefit years established before the conversion date
10 described in section 75, the individual shall complete 6 requali-
11 fying weeks if he or she was disqualified under
12 subsection (1)(c), (d), (e), (f), (g), or (l), or 13 requalifying
13 weeks if he or she was disqualified under subsection (1)(h), (i),
14 (j), (k), or (m). A requalifying week required under this sub-
15 section shall be each week in which the individual does any of
16 the following:

17 (i) Earns or receives remuneration in an amount at least
18 equal to an amount needed to earn a credit week, as that term is
19 defined in section 50.

20 (ii) Otherwise meets all of the requirements of this act to
21 receive a benefit payment if the individual were not disqualified
22 under subsection (1).

23 (iii) Receives a benefit payment based on credit weeks sub-
24 sequent to the disqualifying act or discharge.

25 (b) For benefit years established before the conversion date
26 prescribed in section 75, if the individual is disqualified under
27 subsection (1)(a) or (b), he or she shall requalify, after the

1 week in which the disqualifying discharge occurred by earning in
2 employment for an employer liable under this act or the unemploy-
3 ment compensation act of another state an amount equal to, or in
4 excess of, 7 times the individual's potential weekly benefit
5 rate, calculated on the basis of employment with the employer
6 involved in the disqualification, or by earning in employment for
7 an employer liable under this act or the unemployment compensa-
8 tion act of another state an amount equal to, or in excess of, 40
9 times the state minimum hourly wage times 7, whichever is the
10 lesser amount.

11 (c) For benefit years established before the conversion date
12 prescribed in section 75, a benefit payable to an individual dis-
13 qualified under subsection (1)(a) or (b), shall be charged to the
14 nonchargeable benefits account, and not to the account of the
15 employer with whom the individual was involved in the
16 disqualification.

17 (d) For benefit years beginning after the conversion date
18 prescribed in section 75, subsequent to the week in which the
19 disqualifying act or discharge occurred, an individual shall com-
20 plete 6 requalifying weeks if he or she was disqualified under
21 subsection (1)(c), (d), (e), (f), (g), or (l), or 13 requalifying
22 weeks if he or she was disqualified under subsection (1)(h), (i),
23 (j), (k), or (m). A requalifying week required under this sub-
24 section shall be each week in which the individual does any of
25 the following:

26 (i) Earns or receives remuneration in an amount equal to at
27 least 1/13 of the minimum amount needed in a calendar quarter of

1 the base period for an individual to qualify for benefits,
2 rounded down to the nearest whole dollar.

3 (ii) Otherwise meets all of the requirements of this act to
4 receive a benefit payment if the individual were not disqualified
5 under subsection (1).

6 (e) For benefit years beginning after the conversion date
7 prescribed in section 75, if the individual is disqualified under
8 subsection (1)(a) or (b), he or she shall requalify, after the
9 week in which the disqualifying act or discharge occurred by
10 earning in employment for an employer liable under this act or
11 the unemployment compensation law of another state at least the
12 lesser of the following:

13 (i) Seven times the individual's weekly benefit rate.

14 (ii) Forty times the state minimum hourly wage times 7.

15 (f) A benefit payable to the individual disqualified or sep-
16 arated under disqualifying circumstances under subsection (1)(a)
17 or (b), shall be charged to the nonchargeable benefits account,
18 and not to the account of the employer with whom the individual
19 was involved in the separation. Benefits payable to an individ-
20 ual determined by the commission to be separated under disquali-
21 fying circumstances shall not be charged to the account of the
22 employer involved in the disqualification for any period after
23 the employer notifies the commission of the claimant's possible
24 ineligibility or disqualification. If a disqualifying act or
25 discharge occurs during the individual's benefit year, any bene-
26 fits that may become payable to the individual in a later benefit
27 year based on employment with the employer involved in the

1 disqualification shall be charged to the nonchargeable benefits
2 account.

3 (4) The maximum amount of benefits otherwise available under
4 section 27(d) to an individual disqualified under subsection (1)
5 is subject to all of the following conditions:

6 (a) For benefit years established before the conversion date
7 prescribed in section 75, if the individual is disqualified under
8 subsection (1)(c), (d), (e), (f), (g), or (l) and the maximum
9 amount of benefits is based on wages and credit weeks earned from
10 an employer before an act or discharge involving that employer,
11 the amount shall be reduced by an amount equal to the
12 individual's weekly benefit rate as to that employer multiplied
13 by the lesser of either of the following:

14 (i) The number of requalifying weeks required of the indi-
15 vidual under this section.

16 (ii) The number of weeks of benefit entitlement remaining
17 with that employer.

18 (b) If the individual has insufficient or no potential bene-
19 fit entitlement remaining with the employer involved in the dis-
20 qualification in the benefit year in existence on the date of the
21 disqualifying determination, a reduction of benefits described in
22 this subsection shall apply in a succeeding benefit year with
23 respect to any benefit entitlement based upon credit weeks earned
24 with the employer before the disqualifying act or discharge.

25 (c) For benefit years established before the conversion date
26 prescribed in section 75, an individual disqualified under
27 subsection (1)(h), (i), (j), (k), or (m) is not entitled to

1 benefits based on wages and credit weeks earned before the
2 disqualifying act or discharge with the employer involved in the
3 disqualification.

4 (d) The benefit entitlement of an individual disqualified
5 under subsection (1)(a) or (b) is not subject to reduction as a
6 result of that disqualification.

7 (e) A denial or reduction of benefits under this subsection
8 does not apply to benefits based upon multiemployer credit
9 weeks.

10 (f) For benefit years established after the conversion date
11 prescribed in section 75, if the individual is disqualified under
12 subsection (1)(c), (d), (e), (f), (g), or (l), the maximum number
13 of weeks otherwise applicable in calculating benefits for the
14 individual under section 27(d) shall be reduced by the lesser of
15 the following:

16 (i) The number of requalifying weeks required of the indi-
17 vidual under this subsection.

18 (ii) The number of weeks of benefit entitlement remaining on
19 the claim.

20 (g) For benefit years beginning after the conversion date
21 prescribed in section 75, the benefits of an individual disquali-
22 fied under subsection (1)(h), (i), (j), (k), or (m) shall be
23 reduced by 13 weeks and any weekly benefit payments made to the
24 claimant thereafter shall be reduced by the portion of the pay-
25 ment attributable to base period wages paid by the base period
26 employer involved in a disqualification under subsection (1)(h),
27 (i), (j), (k), or (m).

1 (5) If an individual leaves work to accept permanent
2 full-time work with another employer and performs services for
3 that employer, or if an individual leaves work to accept a recall
4 from a former employer:

5 (a) Subsection (1) does not apply.

6 (b) Wages earned with the employer whom the individual last
7 left, including wages previously transferred under this subsec-
8 tion to the last employer, for the purpose of computing and
9 charging benefits, are wages earned from the employer with whom
10 the individual accepted work or recall, and benefits paid based
11 upon those wages shall be charged to that employer.

12 (c) When issuing a determination covering the period of
13 employment with a new or former employer described in this sub-
14 section, the commission shall advise the chargeable employer of
15 the name and address of the other employer, the period covered by
16 the employment, and the extent of the benefits that may be
17 charged to the account of the chargeable employer.

18 (6) In determining whether work is suitable for an individu-
19 al, the commission shall consider the degree of risk involved to
20 the individual's health, safety, and morals, the individual's
21 physical fitness and prior training, the individual's length of
22 unemployment and prospects for securing local work in the
23 individual's customary occupation, and the distance of the avail-
24 able work from the individual's residence. Additionally, the
25 commission shall consider the individual's experience and prior
26 earnings, subject to the following limitation:

1 (a) An individual unemployed for 1 to 12 weeks who refuses
2 an offer of work determined to be suitable under this section
3 shall be denied benefits if the pay rate for that work is at
4 least 80% of the gross pay rate he or she received immediately
5 before becoming unemployed.

6 (b) An individual unemployed for 13 to 20 weeks who refuses
7 an offer of work determined to be suitable under this section
8 shall be denied benefits if the pay rate for that work is at
9 least 75% of the gross pay rate he or she received immediately
10 before becoming unemployed.

11 (c) An individual unemployed for more than 20 weeks who
12 refuses an offer of work determined to be suitable under this
13 section shall be denied benefits if the pay rate for that work is
14 at least 70% of the gross pay rate he or she received immediately
15 before becoming unemployed.

16 (7) Work is not suitable and benefits shall not be denied
17 under this act to an otherwise eligible individual for refusing
18 to accept new work under any of the following conditions:

19 (a) If the position offered is vacant due directly to a
20 strike, lockout, or other labor dispute.

21 (b) If the remuneration, hours, or other conditions of the
22 work offered are substantially less favorable to the individual
23 than those prevailing for similar work in the locality.

24 (c) If as a condition of being employed, the individual
25 would be required to join a company union or to resign from or
26 refrain from joining a bona fide labor organization.

1 (8) All of the following apply to an individual who seeks
2 benefits under this act:

3 (a) An individual is disqualified from receiving benefits
4 for a week in which the individual's total or partial unemploy-
5 ment is due to either of the following:

6 (i) A labor dispute in active progress at the place at which
7 the individual is or was last employed, or a shutdown or start-up
8 operation caused by that labor dispute.

9 (ii) A labor dispute, other than a lockout, in active
10 progress or a shutdown or start-up operation caused by that labor
11 dispute in any other establishment within the United States that
12 is both functionally integrated with the establishment described
13 in subparagraph (i) and operated by the same employing unit.

14 (b) An individual's disqualification imposed or imposable
15 under this subsection is terminated if the individual performs
16 services in employment with an employer in at least 2 consecutive
17 weeks falling wholly within the period of the individual's total
18 or partial unemployment due to the labor dispute, and in addition
19 earns wages in each of those weeks in an amount equal to or
20 greater than the individual's actual or potential weekly benefit
21 rate with respect to those weeks based on the individual's
22 employment with the employer involved in the labor dispute.

23 (c) An individual is not disqualified under this subsection
24 if the individual is not directly involved in the labor dispute.
25 An individual is not directly involved in a labor dispute unless
26 any of the following are established:

1 (i) At the time or in the course of a labor dispute in the
2 establishment in which the individual was then employed, the
3 individual in concert with 1 or more other employees voluntarily
4 stopped working other than at the direction of the individual's
5 employing unit.

6 (ii) The individual is participating in, financing, or
7 directly interested in the labor dispute that causes the
8 individual's total or partial unemployment. The payment of regu-
9 lar union dues, in amounts and for purposes established before
10 the inception of the labor dispute, is not financing a labor dis-
11 pute within the meaning of this subparagraph.

12 (iii) At any time a labor dispute in the establishment or
13 department in which the individual was employed does not exist,
14 and the individual voluntarily stops working, other than at the
15 direction of the individual's employing unit, in sympathy with
16 employees in some other establishment or department in which a
17 labor dispute is in progress.

18 (iv) The individual's total or partial unemployment is due
19 to a labor dispute that was or is in progress in a department,
20 unit, or group of workers in the same establishment.

21 (d) As used in this subsection, "directly interested" shall
22 be construed and applied so as not to disqualify individuals
23 unemployed as a result of a labor dispute the resolution of which
24 may not reasonably be expected to affect their wages, hours, or
25 other conditions of employment, and to disqualify individuals
26 whose wages, hours, or conditions of employment may reasonably be
27 expected to be affected by the resolution of the labor dispute.

1 A "reasonable expectation" of an effect on an individual's wages,
2 hours, or other conditions of employment exists, in the absence
3 of a substantial preponderance of evidence to the contrary, in
4 any of the following situations:

5 (i) If it is established that there is in the particular
6 establishment or employing unit a practice, custom, or contrac-
7 tual obligation to extend within a reasonable period to members
8 of the individual's grade or class of workers in the establish-
9 ment in which the individual is or was last employed changes in
10 terms and conditions of employment that are substantially similar
11 or related to some or all of the changes in terms and conditions
12 of employment that are made for the workers among whom there
13 exists the labor dispute that has caused the individual's total
14 or partial unemployment.

15 (ii) If it is established that 1 of the issues in or pur-
16 poses of the labor dispute is to obtain a change in the terms and
17 conditions of employment for members of the individual's grade or
18 class of workers in the establishment in which the individual is
19 or was last employed.

20 (iii) If a collective bargaining agreement covers both the
21 individual's grade or class of workers in the establishment in
22 which the individual is or was last employed and the workers in
23 another establishment of the same employing unit who are actively
24 participating in the labor dispute, and that collective bargain-
25 ing agreement is subject by its terms to modification, supplemen-
26 tation, or replacement, or has expired or been opened by mutual
27 consent at the time of the labor dispute.

1 (e) In determining the scope of the grade or class of
2 workers, evidence of the following is relevant:

3 (i) Representation of the workers by the same national or
4 international organization or by local affiliates of that
5 national or international organization.

6 (ii) Whether the workers are included in a single, legally
7 designated, or negotiated bargaining unit.

8 (iii) Whether the workers are or within the past 6 months
9 have been covered by a common master collective bargaining agree-
10 ment that sets forth all or any part of the terms and conditions
11 of the workers' employment, or by separate agreements that are or
12 have been bargained as a part of the same negotiations.

13 (iv) Any functional integration of the work performed by
14 those workers.

15 (v) Whether the resolution of those issues involved in the
16 labor dispute as to some of the workers could directly or indi-
17 rectly affect the advancement, negotiation, or settlement of the
18 same or similar issues in respect to the remaining workers.

19 (vi) Whether the workers are currently or have been covered
20 by the same or similar demands by their recognized or certified
21 bargaining agent or agents for changes in their wages, hours, or
22 other conditions of employment.

23 (vii) Whether issues on the same subject matter as those
24 involved in the labor dispute have been the subject of proposals
25 or demands made upon the employing unit that would by their terms
26 have applied to those workers.

1 (9) Except for an individual disqualified under subsection
2 (1)(g), or an individual whose disqualifying discharge under
3 subsection (1)(b) is determined or redetermined to be a disci-
4 plinary layoff or suspension, an individual is disqualified from
5 receiving benefits for the duration of the individual's disci-
6 plinary layoff or suspension if the individual becomes unemployed
7 because of a disciplinary layoff or suspension based upon any of
8 the following:

9 (a) Misconduct directly or indirectly connected with work.

10 (b) Participation in a strike or other concerted activity
11 resulting in a curtailment of work or restriction of or interfer-
12 ence with production contrary to an applicable collective bar-
13 gaining agreement.

14 (c) Participation in a wildcat strike or other concerted
15 activity not authorized by the individual's recognized bargaining
16 representative.

17 (10) If a disqualifying discharge under subsection (1)(b) is
18 determined or redetermined to be a suspension, the disqualifica-
19 tion provided under subsection (9) applies from the date of the
20 discharge.

21 (11) Notwithstanding subsections (1) to (10), if the employ-
22 ing unit submits notice to the commission of possible ineligibil-
23 ity or disqualification beyond the time limits prescribed by com-
24 mission rule, the notice shall not form the basis of a determina-
25 tion of ineligibility or disqualification for a claim period com-
26 pensated before the receipt of the notice by the commission.

1 (12) An individual is disqualified from receiving benefits
2 for any week or part of a week in which the individual has
3 received, is receiving, or is seeking unemployment benefits under
4 an unemployment compensation law of another state or of the
5 United States. If the appropriate agency of the other state or
6 of the United States finally determines that the individual is
7 not entitled to unemployment benefits, the disqualification
8 described in this subsection does not apply.

9 (13) BENEFITS PAID TO AN INDIVIDUAL INVOLUNTARILY UNEMPLOYED
10 DUE TO A MENTAL OR PHYSICAL ILLNESS OR CONDITION SHALL NOT BE
11 CHARGED TO THE INDIVIDUAL'S EMPLOYER OR EMPLOYING UNIT. THE BEN-
12 EFITS PAID TO THAT INDIVIDUAL SHALL BE CHARGED TO THE NONCHARGE-
13 ABLE BENEFITS ACCOUNT DESCRIBED IN SECTION 17.