

HOUSE BILL No. 5170

October 24, 2017, Introduced by Rep. Bellino and referred to the Committee on Oversight.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 20 (MCL 421.20), as amended by 2013 PA 142.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20. (A) THE FOLLOWING APPLY TO BENEFITS PAID:

2 (1) ~~(a)~~ Benefits paid ~~shall~~ **MUST** be charged against the
3 employer's account as of the quarter in which the payments are
4 made. If the unemployment agency determines that any benefits
5 charged against an employer's account were improperly paid, an
6 amount equal to the charge based on those benefits ~~shall~~ **MUST** be
7 credited to the employer's account and a corresponding charge ~~shall~~
8 **MUST** be made to the nonchargeable benefits account as of the date
9 of the charge. **RECOVERY OF BENEFITS IMPROPERLY PAID TO THE CLAIMANT**

1 UNDER THIS SUBDIVISION MUST BE MADE PURSUANT TO SECTION 62 (A) .

2 (2) If an employer or employer's agent has a pattern of
3 failing to respond with timely or adequate information ~~required or~~
4 ~~requested under section 32,~~ **BY THE UNEMPLOYMENT AGENCY REGARDING A**
5 **CLAIMANT'S DISQUALIFICATION FROM RECEIVING BENEFITS OR PERIOD OF**
6 **INELIGIBILITY,** benefits paid to a claimant as a result of the
7 employer's or employer's agent's failure to provide timely or
8 adequate information ~~shall~~ **MUST** be charged to ~~that~~ **THE** employer's
9 account **AND THE EMPLOYER'S ACCOUNT MUST NOT BE CREDITED.** To
10 demonstrate a pattern sufficient to render the benefits chargeable,
11 the **NUMBER OF FAILURES, EXCLUDING FAILURES FOR WHICH AN EMPLOYER OR**
12 **EMPLOYER'S AGENT HAS ESTABLISHED GOOD CAUSE, DURING THE PRIOR**
13 **CALENDAR YEAR MUST BE 5 OR MORE AND EQUAL TO OR GREATER THAN 2% OF**
14 **ALL THE REQUESTS DIRECTED TO THE EMPLOYER DURING THE PRIOR CALENDAR**
15 **YEAR. THE** unemployment agency shall ~~document repeated~~ **MAKE A**
16 **DETERMINATION FOR AND ASSIGN A CASE NUMBER TO EACH** failure to
17 provide **A** timely or adequate ~~responses and shall take into~~
18 ~~consideration the number of instances of failure in relation to the~~
19 ~~number of requests. The number of failures must be more than 4 and~~
20 ~~constitute 2% or more of all the requests directed to the employer~~
21 ~~during the prior calendar year. A determination that an employer's~~
22 ~~account shall be charged and that the employer's account shall not~~
23 ~~be credited for the benefit payments is appealable in the same~~
24 ~~manner as other unemployment determinations. Recovery of benefits~~
25 ~~improperly paid to the claimant under this subsection shall be as~~
26 ~~provided in section 62(a).~~ **RESPONSE. A DETERMINATION MADE UNDER THIS**
27 **SUBDIVISION MAY BE APPEALED WITHIN 30 DAYS AFTER THE DATE IT WAS**

1 ISSUED, BUT AN APPEAL IS LIMITED TO THE DETERMINATION THAT THE
2 EMPLOYER FAILED TO PROVIDE A TIMELY OR ADEQUATE RESPONSE IN THAT
3 INSTANCE. EACH DETERMINATION MADE UNDER THIS SUBDIVISION MUST DO
4 ALL OF THE FOLLOWING:

5 (i) IDENTIFY AND STATE WHY A RESPONSE WAS NOT TIMELY OR NOT
6 ADEQUATE.

7 (ii) STATE THAT THE EMPLOYER MAY APPEAL THE DETERMINATION
8 WITHIN 30 DAYS AFTER THE DATE IT WAS ISSUED.

9 (iii) STATE THE NUMBER OF FAILURES THAT CONSTITUTE A PATTERN
10 UNDER THIS SUBDIVISION.

11 (3) BY JANUARY 11 EACH YEAR, BEGINNING IN 2019, THE
12 UNEMPLOYMENT AGENCY SHALL SEND A DETERMINATION TO AN EMPLOYER OR
13 EMPLOYER'S AGENT THAT DEMONSTRATED DURING THE PREVIOUS CALENDAR
14 YEAR A PATTERN OF FAILING TO RESPOND TIMELY OR ADEQUATELY UNDER
15 SUBDIVISION (2). A DETERMINATION MADE UNDER THIS SUBDIVISION IS
16 APPEALABLE IN THE SAME MANNER AS ANY OTHER DETERMINATION MADE BY
17 THE UNEMPLOYMENT AGENCY, BUT IS LIMITED TO THE DETERMINATION THAT
18 THE EMPLOYER DEMONSTRATED A PATTERN OF FAILING TO RESPOND TIMELY OR
19 ADEQUATELY UNDER SUBDIVISION (2). A DETERMINATION MADE UNDER THIS
20 SUBDIVISION MUST INCLUDE ALL OF THE FOLLOWING FOR EACH FAILURE:

21 (i) THE NAME OF THE CLAIMANT AND THE LAST 4 DIGITS OF THE
22 CLAIMANT'S SOCIAL SECURITY NUMBER.

23 (ii) WHETHER THE FAILURE WAS BECAUSE THE RESPONSE WAS NOT
24 TIMELY OR NOT ADEQUATE.

25 (iii) THE DATE OF THE UNEMPLOYMENT AGENCY'S ORIGINAL REQUEST
26 FOR INFORMATION.

27 (iv) THE CASE NUMBER THE UNEMPLOYMENT AGENCY ASSIGNED TO THE

1 FAILURE.

2 (v) A STATEMENT THAT THE EMPLOYER'S ACCOUNT WILL NOT BE
3 CREDITED FOR BENEFITS PAID ON ANY CLAIM FILED DURING THE CURRENT
4 CALENDAR YEAR IF THE EMPLOYER FAILS TO TIMELY OR ADEQUATELY RESPOND
5 TO THE UNEMPLOYMENT AGENCY'S REQUEST FOR INFORMATION MADE DURING
6 THE CURRENT CALENDAR YEAR REGARDING A CLAIMANT'S DISQUALIFICATION
7 FROM RECEIVING BENEFITS OR PERIOD OF INELIGIBILITY.

8 (vi) A STATEMENT THAT A DETERMINATION MADE UNDER THIS
9 SUBDIVISION IS APPEALABLE IN THE SAME MANNER AS ANY OTHER
10 DETERMINATION MADE BY THE UNEMPLOYMENT AGENCY.

11 (b) For benefit years established on or after October 1, 2000,
12 the claimant's full weekly benefit rate ~~shall~~**MUST** be charged to
13 the account or experience account of the claimant's most recent
14 separating employer for each of the first 2 weeks of benefits
15 payable to the claimant in the benefit year ~~in accordance with~~
16 **PURSUANT TO** the monetary determination issued ~~pursuant to~~**UNDER**
17 section 32. However, if the total sum of wages paid by an employer
18 totals \$200.00 or less, those wages ~~shall~~**MUST** be used for purposes
19 of benefit payment, but any benefit charges attributable to those
20 wages ~~shall~~**MUST** be charged to the nonchargeable benefits account.
21 Thereafter, remaining weeks of benefits payable in the benefit year
22 ~~shall~~**MUST** be paid ~~in accordance with~~**PURSUANT TO** the monetary
23 determination and ~~shall~~**MUST** be charged proportionally to all base
24 period employers, with the charge to each base period employer
25 being made on the basis of the ratio that total wages paid by the
26 employer in the base period bears to total wages paid by all
27 employers in the base period. However, if the claimant did not

1 perform services for the most recent separating employer or
2 employing entity and receive earnings for performing the services
3 of at least 40 times the state minimum hourly wage times 7 during
4 the claimant's most recent period of employment with the employer
5 or employing entity, then all weeks of benefits payable in the
6 benefit year ~~shall~~**MUST** be charged proportionally to all base
7 period employers, with the charge to each base period employer
8 being made on the basis of the ratio that total wages paid by the
9 employer in the base period bears to total wages paid by all
10 employers in the base period. If the claimant performed services
11 for the most recent separating employing entity and received
12 earnings for performing the services of at least 40 times the state
13 minimum hourly wage times 7 during the claimant's most recent
14 period of employment for the employing entity but the separating
15 employing entity was not a liable employer, the first 2 weeks of
16 benefits payable to the claimant ~~shall~~**MUST** be charged
17 proportionally to all base period employers, with the charge to
18 each base period employer made on the basis of the ratio that total
19 wages paid by the employer in the base period bears to total wages
20 paid by all employers in the base period. The "separating employer"
21 is the employer that caused the individual to be unemployed as
22 ~~defined~~**DESCRIBED** in section 48.

23 (c) For benefit years established before October 1, 2000,
24 charges for regular benefits to reimbursing employers or to a
25 contributing employer's experience account ~~shall~~**MUST** be as
26 formerly provided in this subsection.

27 (d) For benefit years beginning on or after October 1, 2000,

1 and except as otherwise provided in section 11(d) or (g) or section
2 46, the charges for regular benefits to any reimbursing employer's
3 account or to any contributing employer's experience account ~~shall~~
4 **MUST** not exceed either the amount derived by multiplying by 2 the
5 weekly benefit rate chargeable to the employer ~~in accordance with~~
6 **UNDER** subsection (b) if the employer is the separating employer and
7 is chargeable for the first 2 weeks of benefits, or the amount
8 derived from the percentage of the weekly benefit rate chargeable
9 to the employer ~~in accordance with~~ **UNDER** subsection (b), multiplied
10 by the number of weeks of benefits chargeable to base period
11 employers based on base period wages, to which the individual is
12 entitled as provided in section 27(d), if the employer is a base
13 period employer, or both of these amounts if the employer was both
14 the chargeable separating employer and a base period employer.

15 (e) For benefit years beginning before October 1, 2000,
16 benefits and charging for multiemployer credit weeks ~~shall~~ **MUST** be
17 determined as formerly provided in this subsection.

18 (f) For benefit years beginning on or after October 1, 2000
19 and before January 1, 2014, if a base period contributing employer
20 notifies the unemployment agency that it paid gross wages to a
21 claimant in a week at least equal to the employer's benefit charge
22 for that claimant for the week, then the unemployment agency shall
23 issue a monetary redetermination noncharging the account of the
24 employer for that week and for the remaining weeks of the benefit
25 year for benefits payable to the claimant that would otherwise be
26 charged to the employer's account. For benefit years beginning on
27 or after January 1, 2014, benefits payable to an individual for a

1 week and for each remaining payable week in the benefit year ~~shall~~
2 **MUST** be charged to the nonchargeable benefits account if either of
3 the following occurs:

4 (1) The individual reports gross earnings in the week with a
5 contributing base period employer at least equal to the employer's
6 benefit charges for that individual for the week.

7 (2) A contributing base period employer timely protests a
8 determination charging benefits to its account for a week in which
9 the employer paid gross wages to an individual at least equal to
10 the employer's charges for benefits paid to that individual for
11 that week.

12 (g) For benefit years beginning before October 1, 2000,
13 training benefits are determined as formerly provided in this
14 subsection.

15 (h) For benefit years beginning on or after October 1, 2000:

16 (1) Training benefits as provided in section 27(g), and
17 extended benefits as provided in section 64, ~~shall~~**MUST** be charged
18 to each reimbursing employer in the base period of the claim to
19 which the benefits are related, on the basis of the ratio that the
20 total wages paid by a reimbursing employer during the base period
21 bears to the total wages paid by all reimbursing employers in the
22 base period.

23 (2) Training benefits, and extended benefits to the extent
24 they are not reimbursable by the federal government and have been
25 allocated to a reimbursing employer, ~~shall~~**MUST** be charged to that
26 reimbursing employer. A contributing employer's experience account
27 ~~shall~~**MUST** not be charged with training benefits. Training benefits

1 based on service with a contributing employer, to the extent they
2 are not reimbursable by the federal government, ~~shall~~**MUST** be
3 charged to the nonchargeable benefits account. Extended benefits
4 paid and based on service with a contributing employer, to the
5 extent they are not reimbursable by the federal government, ~~shall~~
6 **MUST** be charged to that employer's experience account.

7 (3) If the training benefits or extended benefits are
8 chargeable only to a single reimbursing employer, the benefits
9 ~~shall~~**MUST** be charged ~~in accordance with~~**PURSUANT TO** subsection
10 (a). If the training benefits or extended benefits are chargeable
11 to more than 1 reimbursing employer, or to 1 or more reimbursing
12 employers and the nonchargeable benefits account, the benefits
13 ~~shall~~**MUST** be charged as of the quarter in which the payments are
14 made.

15 (4) Notice of charges made under this subsection ~~shall~~**MUST** be
16 given to each employer by means of a current listing of charges, at
17 least weekly, and subsequently by a quarterly summary statement of
18 charges. The listing shall specify the name and social security
19 number of each claimant paid benefits in the week, the weeks for
20 which the benefits were paid, and the amount of benefits chargeable
21 to that employer paid for each week. The quarterly summary
22 statement of charges shall list each claimant by name and social
23 security number and shall show total benefit payments chargeable to
24 that employer and made to each claimant during the calendar
25 quarter. The listing ~~shall be~~**IS** considered to satisfy the
26 requirements of sections 21(a) and 32(f) that notification be given
27 to each employer of benefits charged against that employer's

account by means of a listing of the benefit payment. All protest and appeal rights applicable to benefit payment listings shall also apply to the notice of charges. If an employer receives both a current listing of charges and a quarterly summary statement of charges under this subsection, all protest and appeal rights apply only to the first notice given.

(i) If a benefit year is established on or after October 1, 2000, the portion of benefits paid in that benefit year that are based on wages used to establish the immediately preceding benefit year that began before October 1, 2000 ~~shall~~**MUST** not be charged to the employer or employers who paid those wages but ~~shall~~**MUST** be charged instead to the nonchargeable benefits account.

(j) For benefit years beginning after March 30, 2009, benefits paid to a person who leaves employment to accompany a spouse who is a full-time member of the United States ~~armed forces~~**ARMED FORCES** and is reassigned for military service in a different geographic location are not chargeable to the employer, but ~~shall~~**MUST** be charged to the nonchargeable benefits account.

(K) AS USED IN SUBSECTION (A):

(1) "ADEQUATE" MEANS THAT AN EMPLOYER OR EMPLOYER'S AGENT ANSWERED EACH QUESTION OF THE UNEMPLOYMENT AGENCY'S REQUEST FOR INFORMATION, OR PROVIDED AN EXPLANATION AS TO WHY IT DID NOT ANSWER A QUESTION, OR PROVIDED A SUMMARY OF THE REQUESTED INFORMATION TO REASONABLY ALLOW THE UNEMPLOYMENT AGENCY TO MAKE ITS DETERMINATION.

(2) "GOOD CAUSE" MEANS ANY OF THE FOLLOWING:

(i) THE EMPLOYER OR EMPLOYER'S AGENT DID NOT POSSESS THE INFORMATION AND COULD NOT REASONABLY OBTAIN THE INFORMATION BY THE

1 DATE REQUESTED BY THE UNEMPLOYMENT AGENCY.

2 (ii) DISCLOSING THE INFORMATION WOULD ENDANGER THE HEALTH,
3 MORALS, OR SAFETY OF THE EMPLOYER OR THE EMPLOYER'S AGENT OR
4 EMPLOYEE.

5 (iii) THE EMPLOYER OR EMPLOYER'S AGENT PRESENTS A VALID LEGAL
6 OR EVIDENTIARY OBJECTION TO THE UNEMPLOYMENT AGENCY'S REQUEST FOR
7 INFORMATION, AS DETERMINED BY THE UNEMPLOYMENT AGENCY.

8 (3) "TIMELY" MEANS THAT THE UNEMPLOYMENT AGENCY RECEIVED A
9 RESPONSE TO ITS REQUEST FOR INFORMATION FROM AN EMPLOYER OR
10 EMPLOYER'S AGENT NOT LATER THAN 10 CALENDAR DAYS, NOT INCLUDING A
11 SATURDAY, SUNDAY, OR LEGAL HOLIDAY, AFTER THE MAILING DATE OR
12 TRANSMITTAL DATE OF ITS REQUEST.

13 Enacting section 1. This amendatory act takes effect January
14 1, 2018.

15 Enacting section 2. This amendatory act does not take effect
16 unless all of the following bills of the 99th Legislature are
17 enacted into law:

18 (a) Senate Bill No.____ or House Bill No. 5169 (request no.
19 03872'17).

20 (b) Senate Bill No.____ or House Bill No. 5167 (request no.
21 03873'17).

22 (c) Senate Bill No.____ or House Bill No. 5172 (request no.
23 03874'17).

24 (d) Senate Bill No.____ or House Bill No. 5165 (request no.
25 03877'17).

26 (e) Senate Bill No.____ or House Bill No. 5168 (request no.
27 03878'17).

1 (f) Senate Bill No.____ or House Bill No. 5166 (request no.
2 03879'17).

3 (g) Senate Bill No.____ or House Bill No. 5171 (request no.
4 03880'17).