Legislative Analysis

UNEMPLOYMENT DUE TO COVID-19

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Senate Bill 886 (S-2) as passed by the Senate
Sponsor: Sen. Ken Horn
House Committee: [Pending]
Senate Committee: Economic and Small Business Development [Discharged]
Complete to 10-13-20

SUMMARY:

Senate Bill 886 would amend the Michigan Employment Security Act to add several provisions concerning unemployment benefits related to unemployment due to COVID-19. The provisions would be effective through December 31, 2020. The bill is in large measure a codification of Executive Order 2020-76 (see **Background**, below).

Claimant laid off or placed on leave of absence due to COVID-19

Under the bill, notwithstanding any other provision of the act, any benefit paid to a claimant who was laid off or placed on a leave of absence because of COVID-19 could not be charged to the account of the employer that otherwise would have been charged but instead would have to be charged to the nonchargeable account of the Unemployment Insurance Agency (UIA). This provision would not apply to an employer determined to have misclassified a worker. It also would not apply after December 31, 2020.

Maximum benefit amount

The act prescribes how an individual's maximum benefit amount is determined. Currently, an eligible claimant may receive benefits for not more than 20 weeks or less than 14 weeks in a benefit year. Under the bill, notwithstanding any other provision of the act, until December 31, 2020, each eligible individual filing an initial claim because of COVID-19 could receive benefits for not more than 26 weeks or less than 14 weeks in a benefit year.

Shared-work plans

The act allows an employer to apply to the UIA for approval of a shared-work plan if the employer meets certain requirements concerning reports, payments, account reserves, payment of wages, and hiring assurances. Under the bill, until December 31, 2020, notwithstanding any other provision of the act, the UIA could approve a shared-work plan submitted by an employer during the COVID-19 pandemic even if the above requirements were not met.

In addition, the employer must certify that the implementation of a shared-work plan is in lieu of layoffs that would affect at least 15% of the employees in the affected unit. Under the bill, until December 31, 2020, that figure would be 10%.

The UIA can approve a shared-work plan only if it meets certain requirements, including that all employees in the affected unit are participating employees except for an employee who has been employed in the unit for less than three months or one whose hours of work per week are 40 or more hours. The bill would remove the first exception (three months' employment) and provide that the second (over 40 hours a week) would apply only until December 31, 2020. Under the bill, beginning January 1, 2021, there would be no exceptions to the requirement that all employees in an affected unit must be participating employees.

Finally, for UIA approval, the reduction percentage must be at least 15% and no more than 45%. Under the bill, until December 31, 2020, it would have to be at least 10% and not more than 60%.

Leaving work for medical reasons

Under the act, an individual is disqualified from receiving unemployment under certain conditions. The bill would provide that, until December 31, 2020, an individual must be considered to have left work involuntarily for medical reasons if he or she leaves work for any of the following reasons:

- He or she is immuno-compromised and is under self-isolation or self-quarantine in response to elevated risk from COVID-19.
- He or she has displayed a commonly recognized principal symptom of COVID-19 that was not otherwise associated with a known medical or physical condition of the individual.
- He or she has had contact in the last 14 days with someone with a confirmed diagnosis of COVID-19.
- He or she needs to care for someone with a confirmed diagnosis of COVID-19.
- He or she has a family care responsibility as a result of a government directive.

Under the bill, until December 31, 2020, notwithstanding any other provision of the act, the UIA could consider an individual laid off if he or she became unemployed for any of the reasons described above.

The act also specifies conditions under which a leave of absence does not constitute being unemployed. Under the bill, until December 31, 2020, notwithstanding any other provision of the act, an individual on a leave of absence for any of the reasons identified above would have to be considered to be unemployed unless he or she was already on sick leave or received a disability benefit.

Hold-harmless provision

Under the bill, notwithstanding any other provision of the act, if the UIA determined a claim filed after March 15, 2020, but before the bill's effective date to be valid, that claim would be considered valid unless the UIA determined it to be fraudulent.

MCL 421.17 et seq.

BACKGROUND:

On October 2, 2020, in a 4–3 opinion, the Michigan Supreme Court ruled that the governor did not have the authority to declare a state of emergency or issue emergency orders after April 30, 2020.[1]

The governor's declarations of a state of emergency, and the executive orders issued under them, were primarily based on two acts: 1945 PA 302 (commonly known as the emergency powers of the governor act) and the Emergency Management Act (1976 PA 390).

Each act authorizes the governor to proclaim a state of emergency and issue orders responding to the emergency. 1945 PA 302 provides that these orders are effective until the state of emergency ends. Under the Emergency Management Act, a state of emergency or disaster must be terminated after 28 days unless the legislature approves an extension.

In its opinion, the Supreme Court ruled 1945 PA 302 to be an unconstitutional delegation of legislative power. Because the legislature had extended the state of emergency under the Emergency Management Act to April 30 but did not extend it past that time, the court also ruled that the governor had no authority to declare a state of emergency or issue emergency orders under that act after that date.

Although some COVID-19-related orders can be effective under other authority (the Public Health Code, for example), the governor's orders issued after April 30 have no continuing legal effect. In a court filing, the governor said that over 30 executive orders in effect on October 2 were based on authority granted under 1945 PA 302.

This bill would largely put into law the provisions of executive orders addressing unemployment insurance, the most recent of which was EO 2020-76.[2]

FISCAL IMPACT:

Senate Bill 886 would have significant fiscal implications for the UIA within the Department of Labor and Economic Opportunity (DLEO) and on other units of state and local government. The bill would codify numerous executive orders related to unemployment insurance. In sum, through December 31, 2020, the changes in the bill would extend the maximum period of benefit eligibility in a benefit year from 20 weeks to 26 weeks (a 30% increase), relax requirements on shared-work plans (including an increase to the maximum reduction percentage), and generally increase eligibility for unemployment benefits. These changes would increase liabilities from the Unemployment Compensation Fund by an indeterminate, but likely significant, amount.

[1] https://courts.michigan.gov/Courts/MichiganSupremeCourt/Clerks/Documents/2020-2021/161492/In%20re%20Certified%20Questions-OP.pdf

[2] Executive Order 2020-76, issued May 6, 2020 (http://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-76.pdf).

By allowing for expanded shared-work plans, the bill would allow for units of state and local government (in addition to other employers) to potentially reduce employment costs through December 31, 2020.

The bill would require that benefits for claimants laid off or placed on leave due to COVID-19 would be charged to the Nonchargeable Benefits Account, rather than the employer's individual account, through December 31, 2020. The Nonchargeable Benefits Account is used to cover unemployment benefit costs that are pooled among employers and benefits for employers that are out of business. Charging benefits to the Nonchargeable Benefits Account would expose employers to a maximum tax liability of 1%, whereas if the benefits were charged to the Chargeable Benefits Component, the tax liability could be as high as 6.3%. The Nonchargeable Benefits Component is assessed on the first $9,000 of an employee's wages (in the majority of cases) at a tax with a rate calculated according to the following table:

Scenario	**Nonchargeable Benefit Component**
Employer has benefits charged in previous 60 months	1.00%
Chargeable Benefits Component calculates to less than .2%	.50%
There are no benefits charged in previous 60 months	.10%
There are no benefits charged in previous 72 months	.09%
There are no benefits charged in previous 84 months	.08%
There are no benefits charged in previous 96 months	.07%
There are no benefits charged in previous 108 months	.06%

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