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BILL ANALYSIS

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Senate Bill 886 (as introduced 4-24-20)
Senate Bill 911 (as introduced 5-7-20)
Sponsor: Senator Ken Horn
Committee: Economic and Small Business Development (discharged)

Date Completed: 10-8-20

CONTENT

Senate Bill 886 would amend the Michigan Employment Security Act to do the following:

- **Prohibit any benefit paid to a claimant that was laid off or placed on a leave of absence because of COVID-19 from being charged to the account of the employer who otherwise would have been charged and instead require the benefit to be charged to the nonchargeable benefits account.**
- **Specify that for each eligible individual filing an initial claim because of COVID-19 not more than 26 weeks of benefits or less than 14 weeks of benefits would be payable to an individual in a benefit year.**
- **Specify that certain eligibility requirements for an individual to receive benefits would not apply if COVID-19 would prevent the individual from meeting the requirements.**
- **Specify that an individual would be considered to have left work involuntarily for medical reasons if he or she left work to self-isolate or self-quarantine in response to elevated risk from COVID-19 because he or she was immunocompromised, among other circumstances related to COVID-19.**
- **Require an individual to be considered unemployed during a leave of absence because the individual self-isolated or self-quarantined in response to elevated risk from COVID-19 because he or she was immunocompromised, among other circumstances related to COVID-19.**
- **Allow the Unemployment Insurance Agency (UIA) to approve a shared-work plan submitted by an employer during the COVID-19 pandemic even if the employer did not meet certain requirements prescribed by the Act.**

Senate Bill 911 would amend the State Employees' Retirement Act to allow retirees hired after March 15, 2020, by the UIA or the Michigan Occupational Safety and Health Administration (MIOSHA) to retain their pension allowance during the time of reemployment, until July 30, 2020.

Senate Bill 911 is tie-barred to Senate Bill 886.

Senate Bill 886

Nonchargeable Benefits Account

Under the Act, the UIA must maintain in the Unemployment Compensation Fund a nonchargeable benefits account and a separate experience account for each employer as

provided in the Act. All contributions to the Fund must be pooled and available to pay benefits to any individual entitled to them, irrespective of the source of the contributions. The Act specifies that the nonchargeable benefits account must be credited with certain proceeds, including the proceeds of the nonchargeable benefits component of employer's contribution rates determined as provided in the Act. The Act also specifies that the nonchargeable benefits account must be charged with certain benefits and repayments.

Under the bill, notwithstanding any other provision of the Act, any benefit paid to a claimant that was laid off or placed on a leave of absence because of COVID-19 could not be charged to the account of the employer who otherwise would have been charged but instead must be charged to the nonchargeable benefits account. The bill specifies that this provision would not apply to an employer determined to have misclassified an employee.

(The Act defines "experience account" as an account in the unemployment compensation fund showing an employer's experience with respect to contribution payments and benefit charges under the Act, determined and recorded in the manner provided in the Act. Usually, when an employee is laid off or placed on a leave of absence by an employer, regular and partial extended benefit payments are charged to an employer's account, known as an employer's "experience".)

Maximum Weeks of Benefit

The Act specifies that the maximum benefit amount payable to an individual in a benefit year is the number of weeks of benefits payable to an individual during the benefit year, multiplied by the individual's weekly benefit rate. The number of weeks of benefits payable to an individual is calculated by taking 43% of the individual's base period wages and dividing the result by the individual's weekly benefit rate; however, not more than 20 weeks of benefits or less than 14 weeks of benefits are payable to an individual in a benefit year. Under the bill, notwithstanding any other provision of the Act, for each eligible individual filing an initial claim because of COVID-19, not more than 26 weeks of benefits or less than 14 weeks of benefits would be payable to an individual in a benefit year.

Eligible Individual

Under the Act, an unemployed individual is eligible to receive benefits with respect to any week only if the UIA finds all the following:

-- The individual has made a claim for benefits pursuant to the Act and has provided the UIA with the prescribed documents and information.
-- The individual is able and available to appear at a location of the UIA's choosing for evaluation of eligibility for benefits, if required, and to perform suitable full-time work of a character that the individual is qualified to perform.
-- The individual participates in reemployment services, such as job search assistance services, if the UIA determined or redetermined that an individual is likely to exhaust regular benefits.

In addition, the UIA also must find that the individual has registered for work, has continued to report pursuant to UIA rules, and is actively engaged in seeking work. The UIA may waive the requirements that the individual must report, must register for work, must be available to perform sustainable full-time work, and must seek work under certain circumstances. Under the bill, notwithstanding any other provision of the Act, the requirements that the individual must report, register for work, be available for suitable full-time work, and seek work would not apply if COVID-19 would prevent the individual from meeting them.

Disqualified Individual

Under the Act, except as otherwise provided, an individual is disqualified from receiving benefits if he or she left work voluntarily without good cause attributable to the employer or employing unit. An individual who left work is presumed to have left work voluntarily without good cause attributable to the employer or employing unit. An individual claiming benefits under this act has the burden of proof to establish that he or she left work involuntarily or for good cause that was attributable to the employer or employing unit. An individual claiming to have left work involuntarily for medical reasons must have done all the following before the leaving:

-- Secured a statement from a medical professional that continuing in the individual's current job would be harmful to the individual's physical or mental health
-- Unsuccessfully attempted to secure alternative work with the employer;
-- Unsuccessfully attempted to be placed on a leave of absence with the employer to last until the individual's mental or physical health would no longer be harmed by the current job.

Under the bill, notwithstanding any other provision of the Act, an individual would be considered to have left work involuntarily for medical reasons if he or she left work to self-isolate or self-quarantine in response to elevated risk from COVID-19 because he or she was immunocompromised, displayed the symptoms of COVID-19, had contact in the last 14 days with an individual with a confirmed diagnosis of COVID-19, needed to care for an individual with a confirmed COVID-19 diagnosis, or had a family care responsibility that was the result of a government directive regarding COVID-19. The bill would allow the UIA, notwithstanding any other provision of the Act, to consider an individual laid off if the individual became unemployed for any of the reasons considered an involuntary leave of work listed above.

Consideration of Employment

Under the Act, an individual must not be considered to be unemployed during any leave of absence from work granted by an employer either at the request of the individual or pursuant to an agreement with the individual's duly authorized bargaining agent, or in accordance with law. An individual could neither be considered not unemployed not on a leave of absence solely because the individual elects to be laid off, pursuant to an option provided under a collective bargaining agreement or written employer plan that permits an election, if there is a temporary layoff because of lack of work and the employer had consented to the election.

Under the bill, notwithstanding any other provision of the Act, an individual on a leave of absence because the individual self-isolated or self-quarantined in response to elevated risk from COVID-19 because he or she was immunocompromised, displayed the symptoms of COVID-19, had contact in the last 14 days with an individual with a confirmed diagnosis of COVID-19, needed to care for an individual with a confirmed COVID-19 diagnosis or had a family care responsibility that was the result of a government directive regarding COVID-19, would have to be considered to be unemployed unless the individual was already on sick leave or received a disability benefit.

Shared-Work Plan

The Act allows an employer that meets the following requirements to apply to the UIA for approval of a shared-work plan:

-- The employer has filed all quarterly reports and other reports required under the Act and has paid all obligation assessments, contributions, reimbursements instead of contributions, interest, and penalties due through the date of the employer's application.

-- If the employer is a contributing employer, the employer's reserve in the employer's experience account as of the most recent computation date preceding the date of the employer's application is a positive number.
-- The employer has paid wages for the 12 consecutive calendar quarters preceding the date of the employer's application.

Under the bill, 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 employer did not meet the requirements described above. (The Act defines "shared-work plan" as a plan for reducing unemployment under which employees of an affected unit share a reduced workload through reduction in their normal weekly hours of work.)

Senate Bill 911

Under the State Employees' Retirement Act, a retiree (except one meeting certain qualifications, described below) who is rehired by the State has his or her pension payments suspended during the time of reemployment, with the pension reinstated when the reemployment is completed.

The Act allows the following categories of individuals to be rehired after retirement, and collect both an active employee paycheck and a pension allowance: a retiree hired by the Department of Corrections to provide health care services to individuals under the jurisdiction of the Department; a retired assistant attorney general appointed to the same post; a retiree the Department of Attorney General contracts with as a witness, expert, or consultant for litigation involving the State; a retiree hired by the Department of Natural Resources for active wildland fire suppression; a retiree the Legislative Services Bureau contract with as legal counsel; a retired psychiatrist hired by the Department of Health and Human Services (DHHS) to provide mental health services to individuals in State psychiatric hospitals; and a retired mental health professional other than a psychiatrist to work for the DHHS in State psychiatric hospitals.

The bill would add to the list of retirees exempt from the "double-dipping" prohibition, until July 30, 2020, retirees hired after March 15, 2020, by either the UIA or MIOSHA.

MCL 421.17 et al. (S.B. 866)
36.68c (S.B. 911)

Legislative Analyst: Tyler VanHuyse
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FISCAL IMPACT

Senate Bill 886

The bill would have a fiscal impact on the Unemployment Compensation Fund, the State, and local units of government. The bill would codify Executive Orders issued by the Governor that increased the number of individuals who qualify for unemployment compensation, extended the number of eligible weeks from 20 to 26, and the tax charged to businesses for unemployment insurance. All of these changes would have a negative fiscal impact on the Unemployment Compensation Fund. The expansion of eligibility would increase the number of possible claimants who could qualify for unemployment compensation, which would depend on the number of individuals who self-quarantined because of COVID-19. Increasing the number of weeks for which a person could be eligible for benefits could increase payouts to claimant by as much as 30%. Codifying the charge for individuals laid off or placed on a leave of absence because of COVID-19 to a business's nonchargeable benefits account would reduce the unemployment insurance tax to most employers. The nonchargeable account rate is capped at 1.0% of the first $9,000 dollars of an employee wages, while the chargeable account is based on the rate of employees previously laid off or placed on a leave of absence

by the employer, which typically is higher than 1%. The change likely would reduce the revenue generated from the unemployment insurance tax.

The State and local units of government could take further advantage of the expanded shared-work plans to reduce employee payroll costs during COVID-19. Additionally, the shared-work plans could reduce the total amount of unemployment compensation paid if it avoided layoffs to employees who would qualify for full unemployment compensation.

Senate Bill 911

Since the dates contained within the introduced bill have already passed, the bill would have no impact on the State, its retirees, or its departments.

Fiscal Analyst: Cory Savino
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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.