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BILL ANALYSIS

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Senate Bill 886 (as enacted) **PUBLIC ACT 229 of 2020**
Senate Bill 911 (as enacted) **PUBLIC ACT 230 of 2020**
Sponsor: Senator Ken Horn
Senate Committee: Economic and Small Business Development (discharged)
House Committee: Ways and Means

Date Completed: 3-9-21

CONTENT

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

- **Until December 31, 2020, prohibit any benefit paid to a claimant that is laid off or placed on a leave of absence from being charged to the account of any employer who otherwise would have been charged and instead require the benefit to be charged to the nonchargeable benefits account.**
- **For weeks beginning before January 1, 2021, specify that for each eligible individual who files a claim for benefits and establishes a benefit year, not more than 26 weeks of benefits or less than 14 weeks of benefits may be payable to an individual in a benefit year.**
- **Modify certain requirements for an individual to receive a waiver from the Unemployment Insurance Agency (UIA) for weeks of unemployment for which the claimant is claiming extended benefits.**
- **Until December 31, 2020, allow the UIA to approve a shared-work plan submitted by an employer even if the employer does not meet certain requirements prescribed by the Act.**
- **For claims for weeks beginning before January 1, 2021, specify that an individual is considered to have left work involuntarily for medical reasons if he or she leaves work to self-isolate or self-quarantine in response to elevated risk from COVID-19 because he or she is immunocompromised, among other circumstances related to COVID-19.**
- **For claims for weeks beginning before January 1, 2021, allow the UIA to consider an individual laid off if the individual became unemployed for reasons described above.**
- **For claims for weeks of benefits beginning before January 1, 2021, allow an individual on leave of absence because of reasons described above to be considered to be unemployed unless the individual is already on sick leave or receives a disability benefit.**
- **Beginning May 1, 2020, and until October 20, 2020, in determining a claimant's nonmonetary eligibility to qualify for benefits, prohibit the UIA from issuing a determination with respect to the claimant's separation from a base period or benefit year employer other than the separating employer, and require the UIA to consider the claimant to have satisfied requalification requirements for benefits.**
- **For benefits charged after March 15, 2020, but before January 1, 2021, allow an employer one year after the date a benefit payment is charged against the employer's account to protest that charge.**

-- For a claim filed after March 15, 2020, but before October 20, 2020, prohibit the UIA from reconsidering a claim based solely on whether an applicable executive order issued by the Governor that was in effect at the time the claim was initially examined did or did not have the force of law.

Senate Bill 911 amended 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 December 31, 2020, and October 20, 2020, respectively.

Each bill took effect October 20, 2020.

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 is laid off or placed on a leave of absence must not be charged to the account of any employer who otherwise would have been charged but instead must be charged to the nonchargeable benefits account. The bill specifies that this provision does not apply after December 31, 2020.

(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, with respect to benefit years and claims for weeks beginning before January 1, 2021, for each eligible individual who files a claim for benefits and establishes a benefit year, not more than 26 weeks of benefits or less than 14 weeks of benefits may be payable to an individual in a benefit year.

Extended Benefits & Waiver

Under the Act, an unemployed individual is eligible to receive benefits with respect to any

week only if the UIA finds that the individual meets certain requirements. Among other requirements, the UIA 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 seek work if it finds that suitable work is unavailable in the locality where the individual resides and in those localities in which the individual has earned wages during or after the base period.

Previously, the Act specified that the waiver described above was not applicable to weeks of unemployment for which the claimant was claiming extended benefits and to which Section 64(7)(a)(ii) applied, unless the individual was participating in training approved by the UIA. The bill deleted this provision.

(The Act defines "extended benefits" as benefits, including additional benefits and unemployment benefits payable pursuant to 5 USC 8501 to 8525, payable for weeks of unemployment beginning in an extended benefit period to an individual as provided under the Act. Section 64(7)(a)(ii) specifies that, notwithstanding the provision of the Act that applies the terms and conditions of the Act for regular benefits to extended benefits, an individual is ineligible for payment of extended benefits for any week of unemployment if the UIA finds that during the period the individual failed to actively engage in seeking work.

Among other things, 5 USC 8501 to 8525 specifies that each state is entitled to cash benefits from the Federal government that are payable to an individual for the purpose of the individual's unemployment if the individual's base period wages included Federal wages.)

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.

Among other things, an application for approval of a shared work program must contain the employer's assurance that it will not hire new employees in, or transfer employees to, the affected unit during the effective period of the shared-work plan.

Under the bill, notwithstanding any other provision of the Act, until December 31, 2020, the UIA could approve a shared-work plan submitted by an employer 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.)

In addition, the Act requires an application for approval of a shared-work plan to contain the employer's certification 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 and would result in an equivalent reduction in work hours. Under the bill, until December 31, 2020, the application for a shared-work plan may also contain the employer's certification that the implementation is in lieu of layoffs that would affect at least 10% of the employees.

The Act requires the UIA to approve a shared-work plan only if the plan meets certain requirements. Among other requirements, the Act specified that a shared-work plan had to meet a requirement that all employees in the affected unit were participating employees, except that the following employees could not be participating employees:

-- An employee who had been employed in the affected unit for fewer than three months before the date the employer applied for approval.
-- An employee whose hours of work per week determined under the Act were 40 or more hours.

Instead, under the bill, a shared-work plan must meet a requirement that all employees in the affected unit are participating employees, except that, until December 31, 2020, an employee whose hours of work per week determined under the Act are 40 or more hours must not be a participating employee.

The Act requires the reduction percentage under an approved shared-work plan to meet the following requirements:

-- The reduction percentage must be the same for all participating employees.
-- The reduction percentage may not change during the period of the shared-work plan unless the plan is modified in accordance with the Act.

In addition, the Act requires the reduction percentage to be no less than 15% and no more than 45%. Under the bill, until December 31, 2020, the reduction percentage also may be no less than 10% and no more than 60%.

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, with respect to claims for weeks beginning before January 1, 2021, an individual is considered to have left work involuntarily for medical reasons if he or she leaves work to self-isolate or self-quarantine in response to elevated risk from COVID-19 because he or she is immunocompromised, displayed a commonly recognized principal symptom of COVID-19 that was not otherwise associated with a known medical or physical condition of the individual, had contact in the last 14 days with an individual with a confirmed diagnosis of COVID-19, needed to care or an individual with a confirmed diagnosis of COVID-19, or had a family care responsibility that was the result of a government directive regarding COVID-19.

The bill specifies that, notwithstanding any other provision of the Act, with respect to claims for weeks beginning before January 1, 2021, the UIA may consider an individual laid off if the individual became unemployed to self-isolate or self-quarantine in response to elevated risk from COVID-19 because he or she is immunocompromised, displayed a commonly recognized principal symptom of COVID-19 that was not otherwise associated with a known medical or physical condition of the individual, 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 diagnosis of COVID-19, or had a family care responsibility that was the result of a government directive regarding COVID-19.

Under the Act, if an individual leaves work to accept permanent full-time work with another employer or to accept a referral to another employer from the individual's union hiring hall and performs services for that employer, or if an individual leaves work to accept a recall from a former employer, all the following apply:

-- Circumstances specified by the Act that disqualify an individual from receiving benefits, such as those described above, do not apply.
-- Wages earned with the employer whom the individual last left, including wages previously transferred under the Act to the last employer, for the purpose of computing and charging benefits, are wages earned from the employer with whom the individual accepted work or recall, and benefits paid based upon those wages must be charged to that employer.
-- When issuing a determination covering the period of employment with a new or former employer, the UIA must advise the chargeable employer of the name and address of the other employer, the period covered by the employment, and the extent of the benefits that may be charged to the account of the chargeable employer.

Under the bill, beginning May 1, 2020, and until October 20, 2020, if an individual left work to accept permanent full-time work with another employer, the individual was considered to have met the requirements of the provision above regardless of whether the individual actually performed services for the other employer or whether the work was permanent fulltime work. In this instance, benefits payable to the individual had to be charged to the nonchargeable benefits account.

Consideration of Employment

Under the Act, an individual must not be considered 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 or 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, with respect to claims for weeks of benefits beginning before January 1, 2021, an individual on 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 a commonly recognized principal symptom of COVID-19 that was not otherwise associated with a known medical or physical condition of the individual, had contact in the last 14 days with an individual with a confirmed diagnosis of COVID-19, or needed to care for an individual with a confirmed COVID-19 diagnosis may be considered to be unemployed unless the individual is already on sick leave or receives a disability benefit.

Nonmonetary Eligibility

Under the Act, for the purpose of determining a claimant's nonmonetary eligibility and qualifications for benefits, if the claimant's most recent base period or benefit year separation was for a reason other than the lack of work, then a determination must be issued concerning that separation to the claimant and to the separating employer. If a claimant is not disqualified based on his or her most recent separation from employment and has satisfied the requirements that would otherwise disqualify the claimant from receiving benefits, the UIA must issue a nonmonetary determination as to that separation only.

If a claimant is not disqualified based on his or her most recent separation from employment and has not satisfied the requirements that would disqualify the claimant, the UIA must issue one or more nonmonetary determinations necessary to establish the claimant's qualification for benefits based on any prior separation in inverse chronological order. The UIA must consider all base period separations involving certain disqualifications for benefits under the Act in determining a claimant's nonmonetary eligibility and qualification for benefits.

Under the bill, notwithstanding any other provision of the Act, beginning May 1, 2020, and until October 20, 2020, in determining a claimant's nonmonetary eligibility to qualify for benefits, the UIA may not issue a determination with respect to the claimant's separation from a base period or benefit year employer other than the separating employer, and the UIA must consider the claimant to have satisfied the requirements of Section 29(2) and (3).

(Section 29(2) of the Act requires a disqualification from receiving benefits to begin the week in which the act or discharge that caused the disqualification occurs and continues until the disqualified individual requalifies under Section 29(3). Section 29(3) specifies that after the week in which a disqualifying act or discharge under the Act occurs, an individual who seeks to requalify for benefits is subject to certain requirements depending on the type of disqualification.)

Employer Protest

Under the Act, the issuance of each benefit check must be considered a determination by the UIA that the claimant receiving the check was covered during the compensable period, and eligible and qualified for benefits. A chargeable employer, after receiving a listing of the check as provided by the Act, may protest by requesting a redetermination of the claimant's eligibility or qualification as to that period and a determination as to later weeks and benefits still unpaid that are affected by the protest.

Under the bill, notwithstanding any other provision of the Act, for benefits charged after March 15, 2020, but before January 1, 2021, an employer has one year after the date a benefit payment is charged against the employer's account to protest that charge.

Consideration of Claims

Under the bill, notwithstanding any other provision of the Act, for a claim filed after March 15, 2020, but before October 20, 2020, the UIA may not reconsider the claim based solely on whether an applicable executive order issued by the governor that was in effect at the time the claim was initially examined did or did not have the force of law.

In addition, the bill specifies that a new, additional, or continued claim for unemployment benefits filed within 28 days after the last day the claimant worked is considered to have been filed on time under the Act and the rules promulgated thereunder. This provision does not apply after December 31, 2020.

New Employee Hiring

Notwithstanding any other provision of the Act, before hiring a new employee, the UIA must coordinate with the Department of Labor and Economic Opportunity (LEO) and the Michigan Works agencies to determine whether an existing employee of either of those entities may instead be utilized.

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 added to the list of retirees exempt from the "double-dipping" prohibition, until December 31, 2020, a retiree hired by the UIA after March 15, 2020, if all the following apply:

-- The Department of Labor and Economic Opportunity determined that, as a result of the retiree's previous employment with the State, the retiree possesses specialized expertise and experience necessary for the hiring of the retiree and that the hiring of the retiree is the most cost-effective option for the State.
-- The Department of Labor and Economic Opportunity reports the employment of the retiree within 30 days after employment or within 30 days after October 20, 2020, whichever occurs first, and within 30 days after termination of employment or within 30 days after the end of each fiscal year, whichever occurs first, to the State Budget Office (SBO) and the Department of Technology, Management, and Budget (DTMB).

In addition, the bill added to the list of exempt retirees, until October 20, 2020, a retiree hired by MIOSHA after March 15, 2020 if all the following apply:

-- The Michigan Occupational Safety and Health Administration determines that, as a result of the retiree's previous employment with the State, the retiree possesses specialized expertise and experience necessary for the hiring of the retiree and that the hiring of the retiree is the most cost-effective option for the State.
-- The Michigan Occupational Safety and Health Administration reports the employment of the retiree within 30 days after employment or within 30 days after October 20, 2020, whichever occurs first, and within 30 days after termination or within 30 days after the end of each fiscal year, whichever occurs first, to the SBO and the DTMB.

The bill specifies that the report required of MIOSHA must include the name of the retiree, the capacity in which the retiree is employed, the equivalent civil service position in which the retiree is employed, the hourly wage paid to the retiree, and the total hours of service provided by the retiree for the fiscal year.

The bill also specifies that LEO and MIOSHA may submit the reports required as described above electronically.

MCL 421.17 et al. (S.B. 886)
38.68C (S.B. 911)

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

Senate Bill 886

The bill will have a fiscal impact on the Unemployment Compensation Fund, the State, and local units of government. The bill codifies 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 will have a negative fiscal impact on the Unemployment Compensation Fund. The expansion of eligibility will increase the number of possible claimants who may qualify for unemployment compensation, which will depend on the number of individuals who self-quarantined because of COVID-19. Increasing the number of weeks for which a person may be eligible for benefits may increase payouts to claimant by as much as 30%. The bill requires that $220.0 million be deposited into the Michigan Unemployment Compensation Fund in supplemental Senate Bill 748. However, the Governor vetoed the appropriations, so the expanded number of eligible weeks did not continue after December 31, 2020. This reduced the potential reduction to the Michigan Unemployment Compensation Fund.

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 will reduce the unemployment insurance tax to most employers. The nonchargeable account rate is capped at 1.0% of the first $9,500 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 will reduce the revenue generated from the unemployment insurance tax.

The State and local units of government may 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

The bill will have no fiscal impact on State or local government.

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