

HOUSE BILL No. 6427

September 10, 2008, Introduced by Reps. Miller, Polidori, Gonzales, Spade, Clemente, Brown, Espinoza, Condino, Constan, Bauer, Hood, Rick Jones and Alma Smith and referred to the Committee on Labor.

A bill to amend 1936 (Ex Sess) PA 1, entitled "Michigan employment security act," by amending section 29 (MCL 421.29), as amended by 2002 PA 192.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 29. (1) ~~An~~ **EXCEPT AS PROVIDED IN SUBSECTION (5), AN**
 2 individual is disqualified from receiving benefits if he or she:
 3 (a) Left work voluntarily without good cause attributable to
 4 the employer or employing unit. An individual who left work is
 5 presumed to have left work voluntarily without good cause
 6 attributable to the employer or employing unit. An individual
 7 claiming benefits under this act has the burden of proof to
 8 establish that he or she left work involuntarily or for good cause
 9 that was attributable to the employer or employing unit. However,

1 if ~~the~~ **EITHER OF THE FOLLOWING CONDITIONS IS MET, THE LEAVING DOES**
2 **NOT DISQUALIFY THE INDIVIDUAL:**

3 (i) **THE** individual has an established benefit year in effect
4 and during that benefit year leaves unsuitable work within 60 days
5 after the beginning of that work. ~~the leaving does not disqualify~~
6 ~~the individual.~~

7 (ii) **THE INDIVIDUAL IS THE SPOUSE OF A FULL-TIME MEMBER OF THE**
8 **UNITED STATES ARMED FORCES, AND THE LEAVING IS DUE TO THE MILITARY**
9 **DUTY REASSIGNMENT OF THAT MEMBER OF THE UNITED STATES ARMED FORCES**
10 **TO A DIFFERENT GEOGRAPHIC LOCATION.**

11 (b) Was suspended or discharged for misconduct connected with
12 the individual's work or for intoxication while at work.

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

16 (d) Failed without good cause while unemployed to report to
17 the individual's former employer or employing unit within a
18 reasonable time after that employer or employing unit provided
19 notice of the availability of an interview concerning available
20 suitable work with the former employer or employing unit.

21 (e) Failed without good cause to accept suitable work offered
22 to the individual or to return to the individual's customary self-
23 employment, if any, when directed by the employment office or the
24 commission. An employer that receives a monetary determination
25 under section 32 may notify the unemployment agency regarding the
26 availability of suitable work with the employer on the monetary
27 determination or other form provided by the unemployment agency.

1 Upon receipt of the notice of the availability of suitable work,
2 the unemployment agency shall notify the claimant of the
3 availability of suitable work.

4 (f) Lost his or her job due to absence from work resulting
5 from a violation of law for which the individual was convicted and
6 sentenced to jail or prison. This subdivision does not apply if
7 conviction of an individual results in a sentence to county jail
8 under conditions of day parole as provided in 1962 PA 60, MCL
9 801.251 to 801.258, or if the conviction was for a traffic
10 violation that resulted in an absence of less than 10 consecutive
11 work days from the individual's place of employment.

12 (g) Is discharged, whether or not the discharge is
13 subsequently reduced to a disciplinary layoff or suspension, for
14 participation in either of the following:

15 (i) A strike or other concerted action in violation of an
16 applicable collective bargaining agreement that results in
17 curtailment of work or restriction of or interference with
18 production.

19 (ii) A wildcat strike or other concerted action not authorized
20 by the individual's recognized bargaining representative.

21 (h) Was discharged for an act of assault and battery connected
22 with the individual's work.

23 (i) Was discharged for theft connected with the individual's
24 work.

25 (j) Was discharged for willful destruction of property
26 connected with the individual's work.

27 (k) Committed a theft after receiving notice of a layoff or

1 discharge, but before the effective date of the layoff or
2 discharge, resulting in loss or damage to the employer who would
3 otherwise be chargeable for the benefits, regardless of whether the
4 individual qualified for the benefits before the theft.

5 (l) Was employed by a temporary help firm, which as used in
6 this section means an employer whose primary business is to provide
7 a client with the temporary services of 1 or more individuals under
8 contract with the employer, to perform services for a client of
9 that firm if each of the following conditions is met:

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

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

16 (B) That a failure to provide the temporary help firm with
17 notice of the employee's completion of services pursuant to sub-
18 subparagraph (A) constitutes a voluntary quit that will affect the
19 employee's eligibility for unemployment compensation should the
20 employee seek unemployment compensation following completion of
21 those services.

22 (ii) The employee did not provide the temporary help firm with
23 notice that the employee had completed his or her services for the
24 client within 7 days after completion of his or her services for
25 the client.

26 (m) Was discharged for ~~(i) Illegally~~ **ILLEGALLY** ingesting,
27 injecting, inhaling, or possessing a controlled substance on the

1 premises of the employer; ~~7, (ii) Refusing~~ **REFUSING** to submit to a
2 drug test that was required to be administered in a
3 nondiscriminatory manner; ~~7, or (iii) Testing~~ **TESTING** positive on a
4 drug test, if the test was administered in a nondiscriminatory
5 manner. If the worker disputes the result of the testing, a
6 generally accepted confirmatory test shall be administered and
7 shall also indicate a positive result for the presence of a
8 controlled substance before a disqualification of the worker under
9 this subdivision. As used in this subdivision:

10 (i) ~~(A)~~—"Controlled substance" means that term as defined in
11 section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

12 (ii) ~~(B)~~—"Drug test" means a test designed to detect the
13 illegal use of a controlled substance.

14 (iii) ~~(C)~~—"Nondiscriminatory manner" means administered
15 impartially and objectively in accordance with a collective
16 bargaining agreement, rule, policy, a verbal or written notice, or
17 a labor-management contract.

18 (2) A disqualification under subsection (1) begins the week in
19 which the act or discharge that caused the disqualification occurs
20 and continues until the disqualified individual requalifies under
21 subsection (3), except that for benefit years beginning before ~~the~~
22 ~~conversion date prescribed in section 75~~ **OCTOBER 1, 2000**, the
23 disqualification does not prevent the payment of benefits if there
24 are credit weeks, other than multiemployer credit weeks, after the
25 most recent disqualifying act or discharge.

26 (3) After the week in which the disqualifying act or discharge
27 described in subsection (1) occurs, an individual who seeks to

1 requalify for benefits is subject to all of the following:

2 (a) For benefit years established before ~~the conversion date~~
3 ~~described in section 75~~ **OCTOBER 1, 2000**, the individual shall
4 complete 6 requalifying weeks if he or she was disqualified under
5 subsection (1)(c), (d), (e), (f), (g), or (l), or 13 requalifying
6 weeks if he or she was disqualified under subsection (1)(h), (i),
7 (j), (k), or (m). A requalifying week required under this
8 ~~subsection shall be~~ **SUBDIVISION IS** each week in which the
9 individual does any of the following:

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

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

16 (iii) Receives a benefit payment based on credit weeks
17 subsequent to the disqualifying act or discharge.

18 (b) For benefit years established before ~~the conversion date~~
19 ~~prescribed in section 75~~ **OCTOBER 1, 2000**, if the individual is
20 disqualified under subsection (1)(a) or (b), he or she shall
21 requalify, after the week in which the disqualifying discharge
22 occurred by earning in employment for an employer liable under this
23 act or the unemployment compensation act of another state an amount
24 equal to, or in excess of, 7 times the individual's potential
25 weekly benefit rate, calculated on the basis of employment with the
26 employer involved in the disqualification, or by earning in
27 employment for an employer liable under this act or the

1 unemployment compensation act of another state an amount equal to,
2 or in excess of, 40 times the state minimum hourly wage times 7,
3 whichever is the lesser amount.

4 (c) For benefit years established before ~~the conversion date~~
5 ~~prescribed in section 75~~ **OCTOBER 1, 2000**, a benefit payable to an
6 individual disqualified under subsection (1)(a) or (b) ~~,~~ shall be
7 charged to the nonchargeable benefits account, and not to the
8 account of the employer with whom the individual was involved in
9 the disqualification.

10 (d) For benefit years beginning **ON OR** after ~~the conversion~~
11 ~~date prescribed in section 75~~ **OCTOBER 1, 2000**, ~~subsequent to~~ **AFTER**
12 the week in which the disqualifying act or discharge occurred, an
13 individual shall complete 13 requalifying weeks if he or she was
14 disqualified under subsection (1)(c), (d), (e), (f), (g), or (l), or
15 26 requalifying weeks if he or she was disqualified under
16 subsection (1)(h), (i), (j), (k), or (m). A requalifying week
17 required under this ~~subsection shall be~~ **SUBDIVISION IS** each week in
18 which the individual does any of the following:

19 (i) Earns or receives remuneration in an amount equal to at
20 least 1/13 of the minimum amount needed in a calendar quarter of
21 the base period for an individual to qualify for benefits, rounded
22 down to the nearest whole dollar.

23 (ii) Otherwise meets all of the requirements of this act to
24 receive a benefit payment if the individual ~~were~~ **WAS** not
25 disqualified under subsection (1).

26 (e) For benefit years beginning **ON OR** after ~~the conversion~~
27 ~~date prescribed in section 75~~ **OCTOBER 1, 2000** and beginning before

1 ~~the effective date of the amendatory act that added section 13/~~
2 **APRIL 26, 2002**, if the individual is disqualified under subsection
3 (1)(a) or (b), he or she shall requalify, after the week in which
4 the disqualifying act or discharge occurred by earning in
5 employment for an employer liable under this act or the
6 unemployment compensation law of another state at least the lesser
7 of the following:

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

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

10 (f) For benefit years beginning ~~after the conversion date~~
11 ~~prescribed in section 75 and ON OR after the effective date of the~~
12 ~~amendatory act that added section 13/~~ **APRIL 26, 2002**, if the
13 individual is disqualified under subsection (1)(a), he or she shall
14 requalify, after the week in which the disqualifying act or
15 discharge occurred by earning in employment for an employer liable
16 under this act or the unemployment compensation law of another
17 state at least 12 times the individual's weekly benefit rate.

18 (g) For benefit years beginning ~~after the conversion date~~
19 ~~prescribed in section 75 and ON OR after the effective date of the~~
20 ~~amendatory act that added section 13/~~ **APRIL 26, 2002**, if the
21 individual is disqualified under subsection (1)(b), he or she shall
22 requalify, after the week in which the disqualifying act or
23 discharge occurred by earning in employment for an employer liable
24 under this act or the unemployment compensation law of another
25 state at least 17 times the individual's weekly benefit rate.

26 (h) A benefit payable to the individual disqualified or
27 separated under disqualifying circumstances under subsection (1)(a)

1 or (b), shall be charged to the nonchargeable benefits account, and
2 not to the account of the employer with whom the individual was
3 involved in the separation. Benefits payable to an individual
4 determined by the commission to be separated under disqualifying
5 circumstances shall not be charged to the account of the employer
6 involved in the disqualification for any period after the employer
7 notifies the commission of the claimant's possible ineligibility or
8 disqualification. If a disqualifying act or discharge occurs during
9 the individual's benefit year, any benefits that may become payable
10 to the individual in a later benefit year based on employment with
11 the employer involved in the disqualification shall be charged to
12 the nonchargeable benefits account.

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

16 (a) For benefit years established before ~~the conversion date~~
17 ~~prescribed in section 75~~ **OCTOBER 1, 2000**, if the individual is
18 disqualified under subsection (1)(c), (d), (e), (f), (g), or (l) and
19 the maximum amount of benefits is based on wages and credit weeks
20 earned from an employer before an act or discharge involving that
21 employer, the amount shall be reduced by an amount equal to the
22 individual's weekly benefit rate as to that employer multiplied by
23 the lesser of either of the following:

24 (i) The number of requalifying weeks required of the individual
25 under this section.

26 (ii) The number of weeks of benefit entitlement remaining with
27 that employer.

1 (b) If the individual has insufficient or no potential benefit
2 entitlement remaining with the employer involved in the
3 disqualification in the benefit year in existence on the date of
4 the disqualifying determination, a reduction of benefits described
5 in this subsection ~~shall apply~~ **APPLIES** in a succeeding benefit year
6 with respect to any benefit entitlement based upon credit weeks
7 earned with the employer before the disqualifying act or discharge.

8 (c) For benefit years established before ~~the conversion date~~
9 ~~prescribed in section 75~~ **OCTOBER 1, 2000**, an individual
10 disqualified under subsection (1)(h), (i), (j), (k), or (m) is not
11 entitled to benefits based on wages and credit weeks earned before
12 the disqualifying act or discharge with the employer involved in
13 the disqualification.

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

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

19 (f) For benefit years established **ON OR** after ~~the conversion~~
20 ~~date prescribed in section 75~~ **OCTOBER 1, 2000**, if the individual is
21 disqualified under subsection (1)(c), (d), (e), (f), (g), or (l),
22 the maximum number of weeks otherwise applicable in calculating
23 benefits for the individual under section 27(d) shall be reduced by
24 the lesser of the following:

25 (i) The number of requalifying weeks required of the individual
26 under this ~~subsection~~ **SECTION**.

27 (ii) The number of weeks of benefit entitlement remaining on

1 the claim.

2 (g) For benefit years beginning **ON OR** after ~~the conversion~~
3 ~~date prescribed in section 75~~ **OCTOBER 1, 2000**, the benefits of an
4 individual disqualified under subsection (1)(h), (i), (j), (k), or
5 (m) shall be reduced by 13 weeks and any weekly benefit payments
6 made to the claimant thereafter shall be reduced by the portion of
7 the payment attributable to base period wages paid by the base
8 period employer involved in a disqualification under subsection
9 (1)(h), (i), (j), (k), or (m).

10 (5) If an individual leaves work to accept permanent full-time
11 work with another employer and performs services for that employer,
12 or if an individual leaves work to accept a recall from a former
13 employer, **ALL OF THE FOLLOWING APPLY:**

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

15 (b) Wages earned with the employer whom the individual last
16 left, including wages previously transferred under this subsection
17 to the last employer, for the purpose of computing and charging
18 benefits, are wages earned from the employer with whom the
19 individual accepted work or recall, and benefits paid based upon
20 those wages shall be charged to that employer.

21 (c) When issuing a determination covering the period of
22 employment with a new or former employer described in this
23 subsection, the commission shall advise the chargeable employer of
24 the name and address of the other employer, the period covered by
25 the employment, and the extent of the benefits that may be charged
26 to the account of the chargeable employer.

27 (6) In determining whether work is suitable for an individual,

1 the commission shall consider the degree of risk involved to the
2 individual's health, safety, and morals, the individual's physical
3 fitness and prior training, the individual's length of unemployment
4 and prospects for securing local work in the individual's customary
5 occupation, and the distance of the available work from the
6 individual's residence. Additionally, the commission shall consider
7 the individual's experience and prior earnings, but an unemployed
8 individual who refuses an offer of work determined to be suitable
9 under this section shall be denied benefits if the pay rate for
10 that work is at least 70% of the gross pay rate he or she received
11 immediately before becoming unemployed.

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

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

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

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

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

25 (a) An individual is disqualified from receiving benefits for
26 a week in which the individual's total or partial unemployment is
27 due to either of the following:

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

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

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

18 (c) An individual is not disqualified under this subsection if
19 the individual is not directly involved in the labor dispute. An
20 individual is not directly involved in a labor dispute unless any
21 of the following are established:

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

27 (ii) The individual is participating in, financing, or directly

1 interested in the labor dispute that causes the individual's total
2 or partial unemployment. The payment of regular union dues, in
3 amounts and for purposes established before the inception of the
4 labor dispute, is not financing a labor dispute within the meaning
5 of this subparagraph.

6 (iii) At any time a labor dispute in the establishment or
7 department in which the individual was employed does not exist, and
8 the individual voluntarily stops working, other than at the
9 direction of the individual's employing unit, in sympathy with
10 employees in some other establishment or department in which a
11 labor dispute is in progress.

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

15 (d) As used in this subsection, "directly interested" shall be
16 construed and applied so as not to disqualify individuals
17 unemployed as a result of a labor dispute the resolution of which
18 may not reasonably be expected to affect their wages, hours, or
19 other conditions of employment, and to disqualify individuals whose
20 wages, hours, or conditions of employment may reasonably be
21 expected to be affected by the resolution of the labor dispute. A
22 "reasonable expectation" of an effect on an individual's wages,
23 hours, or other conditions of employment exists, in the absence of
24 a substantial preponderance of evidence to the contrary, in any of
25 the following situations:

26 (i) If it is established that there is in the particular
27 establishment or employing unit a practice, custom, or contractual

1 obligation to extend within a reasonable period to members of the
2 individual's grade or class of workers in the establishment in
3 which the individual is or was last employed changes in terms and
4 conditions of employment that are substantially similar or related
5 to some or all of the changes in terms and conditions of employment
6 that are made for the workers among whom there exists the labor
7 dispute that has caused the individual's total or partial
8 unemployment.

9 (ii) If it is established that 1 of the issues in or purposes
10 of the labor dispute is to obtain a change in the terms and
11 conditions of employment for members of the individual's grade or
12 class of workers in the establishment in which the individual is or
13 was last employed.

14 (iii) If a collective bargaining agreement covers both the
15 individual's grade or class of workers in the establishment in
16 which the individual is or was last employed and the workers in
17 another establishment of the same employing unit who are actively
18 participating in the labor dispute, and that collective bargaining
19 agreement is subject by its terms to modification, supplementation,
20 or replacement, or has expired or been opened by mutual consent at
21 the time of the labor dispute.

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

24 (i) Representation of the workers by the same national or
25 international organization or by local affiliates of that national
26 or international organization.

27 (ii) Whether the workers are included in a single, legally

1 designated, or negotiated bargaining unit.

2 (iii) Whether the workers are or within the past 6 months have
3 been covered by a common master collective bargaining agreement
4 that sets forth all or any part of the terms and conditions of the
5 workers' employment, or by separate agreements that are or have
6 been bargained as a part of the same negotiations.

7 (iv) Any functional integration of the work performed by those
8 workers.

9 (v) Whether the resolution of those issues involved in the
10 labor dispute as to some of the workers could directly or
11 indirectly affect the advancement, negotiation, or settlement of
12 the same or similar issues in respect to the remaining workers.

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

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

21 (9) Notwithstanding subsections (1) to (8), if the employing
22 unit submits notice to the commission of possible ineligibility or
23 disqualification beyond the time limits prescribed by commission
24 rule, the notice shall not form the basis of a determination of
25 ineligibility or disqualification for a claim period compensated
26 before the receipt of the notice by the commission.

27 (10) An individual is disqualified from receiving benefits for

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