

HOUSE BILL No. 5073

November 10, 2015, Introduced by Rep. Garcia and referred to the Committee on Commerce and Trade.

A bill to amend 1936 (Ex Sess) PA 1, entitled "Michigan employment security act," by amending section 41 (MCL 421.41), as amended by 2005 PA 19.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 41. "Employer" means any of the following:

2 (1) An employing unit that in each of 20 different calendar
3 weeks within a calendar year, whether or not the weeks were
4 consecutive, has or had in employment 1 or more individuals
5 irrespective of whether the same individual was employed in each
6 week, or by which total remuneration of \$1,000.00 or more for
7 employment was paid or payable within the calendar year.

8 (2) (a) Any individual, legal entity, or employing unit that
9 acquires the organization, trade, or business, or 75% or more of
10 the assets of another organization, trade, or business, which at

1 the time of the acquisition was an employer subject to this act.

2 (b) Any individual, legal entity, or employing unit that
3 becomes a transferee of business assets by any means otherwise than
4 in the ordinary course of trade from an employer, if there is
5 substantially common ownership, management, or control of the
6 transferor and transferee at the time of transfer.

7 (3) Any employing unit that has become an employer under
8 subdivision (1), (2), (4), (5), (6), (7), or (9) but has not, under
9 section 24 or 25, ceased to be an employer subject to this act.

10 (4) For the effective period of its election pursuant to
11 section 25, any other employing unit that has elected to become
12 fully subject to this act.

13 (5) (a) An employing unit that for some portion of a day in
14 each of 20 different calendar weeks, whether or not the weeks were
15 consecutive, in either the current or the preceding calendar year,
16 employed 10 or more individuals performing agricultural service,
17 regardless of whether the individuals were employed at the same
18 moment of time, or that, during any calendar quarter in either the
19 current or the preceding calendar year, paid remuneration in cash
20 of \$20,000.00 or more to employees performing agricultural service.

21 (b) For the purposes of this subdivision, an individual who is
22 a member of a crew furnished by a farm labor contractor to perform
23 agricultural service for any farm operator shall be treated as an
24 employee of that farm labor contractor if the farm labor contractor
25 holds a valid certificate of registration under the migrant and
26 seasonal agricultural worker protection act, 29 USC 1801 to 1872;
27 or substantially all the members of the crew operate or maintain

1 tractors, mechanized harvesting or crop-dusting equipment, or any
2 other mechanized equipment, which is provided by the farm labor
3 contractor; and if the farm labor contractor is not an employee of
4 the farm operator within the meaning of this act.

5 (c) For the purposes of this subdivision, in the case of an
6 individual who is furnished by a farm labor contractor to perform
7 agricultural service for a farm operator and who is not treated as
8 an employee of the farm labor contractor under ~~paragraph~~
9 **SUBPARAGRAPH** (b), the farm operator and not the farm labor
10 contractor shall be treated as the employer of the individual, and
11 the farm operator shall be treated as having paid cash remuneration
12 to the individual in an amount equal to the amount of cash
13 remuneration paid to the individual by the farm labor contractor,
14 either on the farm labor contractor's own behalf or on behalf of
15 the farm operator, for the agricultural service performed for the
16 farm operator.

17 (d) For the purposes of this subdivision, the term "farm labor
18 contractor" means an individual who does all of the following:

19 (i) Furnishes individuals to perform agricultural service for
20 a farm operator.

21 (ii) Pays, either on the individual's own behalf or on behalf
22 of a farm operator, the individuals furnished by the individual for
23 the agricultural service performed by them.

24 (iii) Has not entered into a written agreement with the farm
25 operator under which the farm labor contractor is designated as an
26 employee of the farm operator.

27 (6) An employing unit that paid cash remuneration of \$1,000.00

1 or more for domestic service in any calendar quarter in the current
2 calendar year or the preceding calendar year. An employing unit
3 that is determined to be an employer under this subdivision shall
4 not be considered an employer of other covered services unless it
5 meets the test of being an employer under another subdivision of
6 this section.

7 (7) Any employing unit not **OTHERWISE** an employer ~~by reason of~~
8 ~~any other paragraph of~~ **UNDER** this section for which services in
9 employment are performed ~~with respect to~~ **FOR** which the employing
10 unit is liable for any federal tax against which credit may be
11 taken for contributions required to be paid into a state
12 unemployment compensation fund; but services performed for the
13 employing unit ~~shall constitute~~ **ARE** employment for the purposes of
14 this act only to the extent that those services ~~constitute~~ **ARE**
15 employment with respect to which the federal tax is payable.

16 (8) For purposes of this section, a week that falls in 2
17 calendar years shall be considered to fall entirely within the
18 calendar year that contains the majority of days of that week.

19 (9) Notwithstanding subdivision (1), after December 31, 1977,
20 "employer" includes any employing unit for which services are
21 performed as ~~defined~~ **DESCRIBED** in section 42(8) or (9).

22 (10) For the purpose of determining the amount of
23 contributions due pursuant to section 44(2), ~~the provisions of~~
24 subdivisions (5) and (6) shall first apply with respect to
25 remuneration paid after December 31, 1977, for services performed
26 after that date.

27 **(11) EXCEPT AS SPECIFICALLY PROVIDED IN THE FRANCHISE**

1 AGREEMENT, AS BETWEEN A FRANCHISEE AND FRANCHISOR, THE FRANCHISEE
2 IS CONSIDERED THE SOLE EMPLOYER OF WORKERS FOR WHOM THE FRANCHISEE
3 PROVIDES A BENEFIT PLAN OR PAYS WAGES.

4 Enacting section 1. This amendatory act takes effect 90 days
5 after the date it is enacted into law.