

Act No. 20
Public Acts of 2016
Approved by the Governor
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**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2016**

Introduced by Rep. Garcia

ENROLLED HOUSE BILL No. 5073

AN ACT to amend 1936 (Ex Sess) PA 1, entitled "An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to levy and provide for obligation assessments; to provide for the collection of those contributions and assessments; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of this act; and to repeal all acts and parts of acts inconsistent with this act," by amending section 41 (MCL 421.41), as amended by 2005 PA 19.

The People of the State of Michigan enact:

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

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

(2) (a) Any individual, legal entity, or employing unit that acquires the organization, trade, or business, or 75% or more of the assets of another organization, trade, or business, which at the time of the acquisition was an employer subject to this act.

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

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

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

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

(b) For the purposes of this subdivision, an individual who is a member of a crew furnished by a farm labor contractor to perform agricultural service for any farm operator shall be treated as an employee of that farm labor contractor if the farm labor contractor holds a valid certificate of registration under the migrant and seasonal agricultural worker protection act, 29 USC 1801 to 1872; or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by the farm labor contractor; and if the farm labor contractor is not an employee of the farm operator within the meaning of this act.

(c) For the purposes of this subdivision, in the case of an individual who is furnished by a farm labor contractor to perform agricultural service for a farm operator and who is not treated as an employee of the farm labor contractor under subparagraph (b), the farm operator and not the farm labor contractor shall be treated as the employer of the individual, and the farm operator shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the farm labor contractor, either on the farm labor contractor's own behalf or on behalf of the farm operator, for the agricultural service performed for the farm operator.

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

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

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

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

(6) An employing unit that paid cash remuneration of \$1,000.00 or more for domestic service in any calendar quarter in the current calendar year or the preceding calendar year. An employing unit that is determined to be an employer under this subdivision shall not be considered an employer of other covered services unless it meets the test of being an employer under another subdivision of this section.

(7) Any employing unit not otherwise an employer under this section for which services in employment are performed for which the employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; but services performed for the employing unit are employment for the purposes of this act only to the extent that those services are employment with respect to which the federal tax is payable.

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

(9) Notwithstanding subdivision (1), after December 31, 1977, "employer" includes any employing unit for which services are performed as described in section 42(8) or (9).

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

(11) Except as specifically provided in the franchise agreement, as between a franchisee and franchisor, the franchisee is considered the sole employer of workers for whom the franchisee provides a benefit plan or pays wages.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor