Legislative Analysis

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UNEMPLOYMENT INSURANCE: BENEFIT CHARGES AGAINST CONTINUING EMPLOYERS

House Bill 4394 (Substitute H-1)
Sponsor: Rep. Joe Haveman
Committee: Commerce

Complete to 7-15-11

A SUMMARY OF HOUSE BILL 4394 AS PASSED BY THE HOUSE 6-22-11

House Bill 4394 (H-1) would add a new Section 27c to the Michigan Employment Security Act to provide that, in the case of a claimant working for more than one employer, the claimant's benefits would not be charged to the continuing (current) employer. Although the continuing employer would not be charged for any benefits paid out, the wages paid by that continuing employer would still be used to determine the claimant's monetary eligibility for benefits, as well as the weekly benefit amount and the maximum duration (in weeks) of benefits.[1]

[Proponents of the bill offer the following example: under the bill, if an individual is working at two jobs and loses one but keeps the other, the employer where the individual continues to work would not be charged for the unemployment benefits provided to the individual for the loss of the other job.]

More specifically, the bill provides that if a claimant's base period includes multiple employers, the employer that continues to employ the claimant after the claim for benefits is filed, may file a request for redetermination with the Unemployment Insurance Agency (UIA) within 30 days after the UIA mails the initial notice of monetary determination.[2] In its request for a redetermination, the continuing employer would have to affirm the following:

- The continuing employer has employed the claimant since the end of the base period.

- That for each week of the claimant's benefit year, the continuing employer will pay the employee an amount at least equal to the average weekly wage the employer paid the claimant during the base period (excluding employee-requested unpaid leave days).

[1] In the case of a continuing employer being "charged" unemployment benefits, Section 20(f) of the MESA [MCL 421.20(f)], provides that if benefits for a week are charged to 2 or more base period employers, the share of the benefits allocated and charged shall be charged to the nonchargeable benefits account (rather than an employer's experience account) if the claimant earns remunerations during that week with an employer that equals or exceeds the amount of benefits charged to that employer.

[2] Under Section 32 of the MESA (MCL 421.32), employers have 10 calendar days to object to a monetary determination by the UIA.

- The continuing employer will notify the UIA within 10 days after the end of a week in which the claimant claimed benefits that it failed to employ the claimant or failed to pay the claimant the required weekly wage.

If the continuing employer fails to employ the claimant and fails to pay the worker at least his/her average weekly wage during the base period, the original monetary determination would apply for any remaining weeks in the benefit year.[3]

Upon receiving a request for redetermination by a continuing employer under the bill, the UIA would have 15 days to redetermine the weekly benefit amount and the maximum number of weeks of benefits for which the claimant would be eligible, and send a notice of redetermination to the employer. The amount and duration of benefits would be based on the following principles:

- The wages used to determine the initial monetary eligibility for benefits would continue to be used for redetermining initial monetary eligibility. (This would include the wages paid by the continuing employer, if that employer is also a base period employer.)[4]

- The wages paid by the continuing employer would be excluded for the purposes of determining the weekly benefit amount and the maximum duration of benefits.[5]

- With respect to "underemployed" claimants, the act provides that if the total amount of benefits and earnings is at least 150% of the weekly benefit amount, each dollar in earnings above 150% of the weekly benefit amount reduces benefits payable by $1. The bill provides that earnings from the continuing employer would not reduce benefits payable to a claimant under this provision.[6]

[3] Presumably, in subsection (3), the bill should say "or" rather than "and". Otherwise, the continuing employer could affirm that it will employ the claimant and pay at least the average weekly wage, but fail to do one of those requirements (e.g. pay below the average weekly wage) and still not have the original monetary determination reinstated.

[4] Section 46 of the MESA (MCL 421.46) provides that a benefit year shall not be established (i.e. a person is not eligible for benefits) unless the person has, within the base period, wages (1) in at least 2 quarters; (2) in the high quarter at least equal to 388.06 multiplied by the state minimum wage ($7.15), or $2,871; and (3) in the entire base period equal to at least 1.5 multiplied by the wages in the high quarter. Under Section 45 of the MESA (MCL 421.45), the "base period" is the first 4 of the last 5 completed calendar quarters. Alternatively, if a person is not eligible under the regular earnings calculation, a person may be eligible for benefits under an alternate earnings qualifier (AEQ) where the individual must have wages in at least two quarters in the base period and wages in the entire base period at least equal to the state average weekly wages multiplied by 20. If an individual does not have sufficient earnings within the regular base period using either the regular earnings calculation or the AEQ, both earnings calculations are applied to an alternate base period, consisting of the four most recent completed calendar quarters prior to the first day of the individual's benefit year.

[5] Under Section 27 of the MESA (MCL 421.27), the weekly benefit amount is 4.1% of the wages paid in the calendar quarter within the base period with the highest total wages. As noted in the previous footnote, this "high quarter" is determined for the purposes of establishing initial monetary eligibility. The maximum duration of benefits (in weeks) is calculated as 43% of the claimant's base period wages, divided by the weekly benefit amount, limited to 20 weeks.

[6] Also, for the "underemployed", the act permits claimants to receive partial UI benefits, where the weekly benefit amount is reduced by $0.50 for each $1.00 in earnings during that week. As introduced, the bill would have excluded wages earned in employment with a continuing employer from this reduction. The Substitute H-1 does not exclude wages from a continuing employer from this provision.

BACKGROUND INFORMATION:

Under the MESA, an employer's state unemployment tax rate is based on its "experience rating" where, in general, employers that have more former employees receiving unemployment benefits have a higher tax rate than those employers with fewer former employees receiving benefits. The UIA maintains for each employer an account which tracks the amount of benefits paid out to former employees and the amount of state unemployment taxes paid. Benefits paid to an employer's former employees are "charged" against this account. The main component of the state unemployment tax rate is the Chargeable Benefits Component (CBC) rate, which is determined by dividing the employer's total amount of benefit charges for the past five years (ending the previous June 30th) by the employer's total taxable payroll over the same time period.[7] Under this calculation, the higher the benefit charges, the higher the tax rate.

When a displaced worker files a claim for unemployment benefits, the UIA processes the claim and issues a monetary determination, which is sent to the separating employer and each base period employer.[8] The monetary determination notifies employers that a claimant has filed an application for UI benefits, and provides information to employers on the claimant's weekly benefit amount, maximum duration of benefits, the amount of wages earned with the separating employer and base period employers, the maximum amount of benefits that could be charged to the employer, and the reason for separation from employment given by the claimant. Employers have 10 calendar days from the "mail date" to object to the determination, otherwise the benefit payments will not be changed. (If the claimant's reason for separation is "quit," the employer has 30 calendar days in which to object to the determination.) A redetermination may be further appealed by an employer.

FISCAL IMPACT:

The bill would have an indeterminate impact on the Unemployment Trust Fund, potentially affecting benefit payouts and state UI tax revenue, and the Unemployment Insurance Agency. While adding an entirely new section to the Michigan Employment Security Act, the bill affects (directly or indirectly) many other sections of the act that cover substantially the same topic.[9] The bill contains other provisions where the meaning or ultimately the UIA's interpretation and implementation are not known.

Section 20(f) of the MESA provides that in instances where there are multiple base period employers, if a continuing employer pays a claimant more in wages than what the employer is charged for benefits, any benefit charges attributable to that employer are charged instead to the nonchargeable benefits account rather than the employer's experience account. (By providing that benefits in this case are not chargeable, the continuing employer's state UI tax rate isn't impacted.) The bill, in contrast, provides that a continuing employer would not be charged if it pays the claimant at least the claimant's

[7] Under Section 44 of the MESA (MCL 421.44) the state UI tax is imposed on the first $9,000 in wages for each employee. (States are generally free to establish the taxable wage base for state tax purposes, subject to a federally-established minimum of $7,000 for each employee.)

[8] Section 32 of the MESA (MCL 421.32).

[9] The bill's provisions apply "notwithstanding conflicting requirements in other provisions in this act."

average weekly wage. Although the substitute bill deleted a provision that would have explicitly provided that benefits are to be charged to other base period employers, by operation of the MESA itself, the bill shifts the benefits attributable to a continuing employer to other base period employers.[10] This would tend to increase the other employers' tax rates and increase revenue credited to the Unemployment Trust Fund.

Section 20 of the MESA (MCL 421.20) generally provides that the first two weeks of benefits are to be charged to the separating employer. That would not change under the bill. The section further provides that, after those two weeks, benefits are to be charged to all base period employers based on the ratio of the employer's total wages paid to the claimant in the base period to the total wages paid to the claimant in the base period by all base period employers.

The bill provides that wages used to determine "qualification" (a word not used in the act in that context) for benefits in the initial monetary determination shall continue to be used for the purposes of redetermining the weekly benefit amount and duration of benefits. It is not clear what "benefit qualification purposes" means, but that phrase could be construed to mean the establishment of a benefit year (monetary eligibility), the determination of the weekly benefit amount, or the determination of the maximum duration of benefits.[11]

Under the act, initial monetary eligibility is tied to wages in the "high quarter" and in the entire base period. The weekly benefit amount is based on the "high quarter" wages, while the duration of benefits is tied to the base period wages and the weekly benefit amount. At the same time, the bill says that wages paid by the continuing employer base period shall be excluded. It's not clear in what manner. One possible interpretation could be that the benefit amounts calculated under a redetermination, under the bill, would be based on the same benefits as the original monetary determination (including wages paid by the continuing employer during the base period), with (as provided in the act) the benefit charges allocated among all other base period employers, excluding the continuing employer. This would effectively mean that benefit charges otherwise allocated to the continuing employer – based on its base period wages to the claimant, but potentially not charged under Section 20(f) – would instead be allocated to the other remaining base period employers.

The chart below provides an example of a claimant with three base period employers with total base period wages of $33,000 and high quarter wages of $8,700, and how the three base period employers would fare under current law and under HB 4394.

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[10] For additional information on benefit charging see, Michigan Unemployment Insurance Agency, *How Unemployment Benefits Are Charged to Employers*, Fact Sheet No. 92, August 2008, http://www.michigan.gov/documents/uia_92-EmpChrg1_90416_7.pdf and *How UIA Charges an Employer's Account for Benefits*, Michigan Unemployment Insurance Agency, Advocacy Program Fact Sheet, December 2007, http://www.michigan.gov/uia/0,1607,7-118-26898_27143_27144-137877--,00.html.

[11] If, for instance, the bill intends to say the wages used in the initial monetary determination to establish a "benefit year" – a defined term - shall also be used in the redetermination under the bill to establish a benefit year, the bill could use the phrase "benefit year". Similarly, if "benefit qualification purposes" is intended to apply to the calculation of the weekly benefit amount, the bill could refer specifically to the section of the MESA – Sec. 27(b)(1) – that establishes the formula for the weekly benefit amount.

		Current Law		House Bill 4394	
	BP Wages	**Share**	**Allocated WBA**	**Share**	**Allocated WBA**
Continuing Employer	$18,000	54.5%	$194.18		
Separating Employer	$10,000	30.3%	$107.88	66.7%	$237.33
Base Period Employer 3	$5,000	15.2%	$53.94	33.3%	$118.67
	$33,000	**100.0%**	**$356.00**	**100.0%**	**$356.00**
Quarterly Wages					
BP Q1	$7,800		High Quarter Wages:	$8,700	
BP Q2	$8,000		Base Period Wages:	$33,000	
BP Q3	$8,500				
BP Q4	$8,700		4.1% of HQ Wages:	$356.70	
Total Base Period Wages	**$33,000**		Maximum WBA:	$356.00	

Note: (1) MCL 421.20 provides that benefits are to be charged to all BP employers based on the ratio of the employer's total wages paid to the claimant in the based period to the total wages paid to the claimant in the base period by all base period employers.
(2) By providing that wages used in the original monetary determination shall be used for "benefit qualification purposes" in the redetermination, the weekly benefit amount would be based on $33,000 in base period wages, which would include wages paid by the continuing employer.
(3) MCL 421.20(f) provides that if the continuing employer, in this example, pays the claimant at least $194.56 in a week, the continuing employer those benefits are not charged to the employer.
(4) Actual benefit charges to the three employers would be based on how the first two weeks of benefits are charged, the number of weeks of benefits received, and any reductions in the WBA based on partial earnings in a week.

The act currently reduces weekly benefits to claimants if any earnings and benefits in a week are 150% of the weekly benefit amount. This provision already applies to earnings from employment with the continuing employer. Under the bill, such earnings would not be used to reduce benefits. This would effectively increase benefit payouts and outlays from the Unemployment Trust Fund.

Under the act, employers have 10 days in which to protest a monetary determination. Under the bill, in the instance of a continuing employer, that protest period is 30 days. Additionally, under the act, if an employer pays wages to a claimant at least equal to the amount of benefits charged to that employer, any benefits attributable to that employer would not be charged. This provision isn't amended by the bill, but the bill provides that continuing employers would have to pay the claimant at least the claimant's average weekly wage in order to be "excluded" under a redetermination. Given that weekly wages exceed weekly benefit amounts, in order to be "held harmless" (i.e. excluded or non-charged) the continuing employer would have to pay the claimant more in wages under the bill than it would under the act.

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