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BILL ANALYSIS

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Senate Bill 1094 (as enrolled)
Sponsor: Senator Bruce Caswell
Senate Committee: Reforms, Restructuring and Reinventing
House Committee: Commerce

Date Completed: 6-21-12

CONTENT

The bill would amend the Michigan Employment Security Act (MESA) to allow employers to apply for approval of shared-work plans, and allow participating employees to claim reduced unemployment insurance benefits during the period of a plan without being unemployed.

Specifically, the bill would allow employers to apply to the Unemployment Insurance Agency (UIA) for the approval of a shared-work plan if all the following conditions were met:

-- The employer filed all reports required under MESA, and had paid all contributions and other amounts due.
-- If the employer were a contributing employer, the employer's experience account reserve balance was positive.
-- The employer paid wages for the three years before applying for the shared-work plan.

Employers would be allowed to apply for more than one shared-work plan. Applications for shared-work plans would have to include all of the following:

-- Certification from the employer that the shared-work plan would be in lieu of temporary layoffs affecting more than 15% of the employees in the affected unit, and would result in an equivalent reduction in work hours.
-- Assurance from the employer that it would provide requested reports to the UIA within the time frames prescribed.
-- Assurance from the employer that it would not hire employees in, or transfer employees into the affected work unit while the shared-work plan was effective.
-- Assurance from the employer that it would not lay off participating employees, or reduce their hours more than the reduction percentage, except during holidays, vacation periods, equipment maintenance periods, or similar circumstances.
-- Certification from the employer that it had obtained the approval of any applicable collective bargaining unit, and had notified all affected employees who were not in a collective bargaining unit of the shared-work plan.
-- A list of any week or weeks when affected employees were anticipated to work fewer hours than originally anticipated in the plan due to holidays, vacations, equipment maintenance periods, or similar circumstances.
-- Certification that the shared-work plan was consistent with the employer's obligations under State and Federal law.
-- Assurance that the employer would abide by all terms and conditions of MESA as they relate to shared-work plans.
-- Any other relevant information required by the UIA.

The UIA would have to approve applications for a shared-work plan only if the following requirements were met:

-- The shared-work plan applied to only one affected unit.
-- All employees in the affected unit were participating in the shared-work plan, except for employees who had been employed by the affected unit for less than three months, or who worked more than 40 hours per week.
-- There were at least two participating employees.
-- The participating employees were identified by name and social security number.
-- The number of hours worked while the shared-work plan was in effect would be the employee's normal number of work hours reduced by a standard reduction percentage, as stated in the application.
-- The plan included an estimate of the number of layoffs that would be avoided under the shared-work plan.
-- The plan indicated how the employer would give advance notice, if feasible, to affected employees.
-- As a result of the shared-work plan, there would be a corresponding reduction in wages.
-- The shared-work plan did not affect fringe benefits of participating employees.
-- The specified effective period of the shared-work plan was 52 weeks or less, and the benefits payable under the shared-work plan would not exceed 20 times the weekly benefit amount for each participating employee.
-- The reduction percentage was not less than 15%, or greater than 45%, it applied to all participating employees equally, and it could not change during the effective period of the shared-work plan unless the employer specifically applied for a change to the UIA.

The UIA would have to approve or disapprove a shared-work plan within 15 days after the date it received an application meeting the criteria for a shared-work plan. The UIA would have to express its decision in writing, and include with any disapproval of a plan reasons for that disapproval. Approval of a shared-work plan would be at the discretion of the UIA, and would not be subject to the appeals process as provided in MESA.

Shared-work plans would be effective for the number of consecutive weeks indicated in the employer's application, or a lesser number, as approved by the UIA. The effective period of the plan would begin the first calendar week after approval of the plan by the UIA.

Participating employees would be allowed to file unemployment insurance (UI) benefit claims without actually being unemployed during the effective period of the shared-work plan. An employee's benefits would be calculated by multiplying the reduction percentage by the employee's weekly benefit rate, as calculated under Section 27 of MESA. While an affected employee was collecting benefits in this manner, the weeks of benefits paid would not count toward the 20-week limit on the duration of benefits, but they would count toward the maximum amount of benefits payable. Additionally, the UIA could not deny UI benefits to participating employees due to work search requirements as long as the employees were available for their normal work week with the participating employer.

For purposes of determining a participating employee's benefits under a shared-work plan, a participating employee would receive benefits under the plan only if he or she were paid by the employer for the number of hours specified in the plan. If he or she were paid more or less than that amount, benefit eligibility would be determined without regard to the shared-work plan.

The UIA would have to establish a schedule of two-week consecutive periods during the effective period of a shared-work plan, and the participating employer would have to file UI benefit claims on behalf of participating employees by the end of the week following the end of each period.

The UI benefits paid under a shared-work program would be funded as follows:

-- If Federal funding for the full reimbursement of costs related to benefits paid under a shared-work plan were available, benefits paid would not be charged to the participating employer's chargeable benefits account. However, the UIA could not use these Federal funds to reimburse claims under a shared-work plan for seasonal, temporary, or intermittent employees.
-- If Federal funding for the partial reimbursement of costs related to benefits paid under a shared-work plan

were available, half of benefits paid would be charged to the participating employer's chargeable benefits account. Benefits paid or deposits made under this provision would not be used to calculate the employer's contribution rate. The UIA could not use these Federal funds to reimburse claims under a shared-work plan for seasonal, temporary, or intermittent employees.

-- If Federal funding for the full or partial reimbursement of costs related to benefits paid under a shared-work plan were not available, all benefits paid under a shared-work plan would be charged to the chargeable benefits account of the participating employer.

The UIA could terminate a shared-work plan for any of the following reasons:

-- The plan was not being executed according to approved terms and conditions.
-- The participating employer failed to comply with the assurances given in the plan.
-- The participating employer or a participating employee violated any criteria on which the approval of the plan was based.

A participating employer could terminate a shared-work plan by written notice to the UIA.

The UIA would be required to submit to the Governor, the Secretary of the Senate, and the Clerk of the House of Representatives for referral to the chair and minority vice-chair of the appropriate committees an annual report on shared-work plans. The first report would be due on March 1 following the first complete calendar year during which the bill was in effect, and each March 1 thereafter. The report would be required to contain the following:

-- The number of approved shared-work plans.
-- The number of participating employers.
-- The number of participating employees.
-- The amount of compensation and aid to participating employees.
-- Any other information determined by the UIA to be relevant in assessing the impact of shared-work plans on the Unemployment Compensation Fund (UCF).

Any provision of the bill that would cause the United States Department of Labor (DOL) to withhold approval required to operate a shared-work program would not apply.

The UIA would be required to transmit the DOL approval or disapproval of the shared-work program to the Secretary of the Senate and the Clerk of the House of Representatives.

The bill would take effect January 1, 2013. An employer could not apply for, and the UIA could not approve, a shared work plan that would begin more than five years after that date.

Proposed MCL 421.28b

FISCAL IMPACT

The State's operational finances would be unaffected by the bill, but to the extent that shared-work plans would serve to reduce future unemployment claims, savings to the Unemployment Compensation Fund could be realized. The UCF is funded from State Unemployment Tax Act taxes, which are paid by Michigan employers. As unemployment rises, SUTA taxes generally increase, and as unemployment falls, SUTA taxes generally decrease. Since SUTA tax rates are calculated on an individual basis for employers, reducing the number of workers laid-off from a particular employer would serve to reduce its SUTA tax rate over time.

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