**MICHIGAN EMPLOYMENT SECURITY ACT (EXCERPT)**
**Act 1 of 1936 (Ex. Sess.)**

## 421.20 Charging benefits against employer's account; benefits improperly paid; basis; failure of employer to provide information; determination; appeal; separate determination of amount and duration of benefits; charge to base period employer; "separating employer" defined; limitation on charges for regular benefits; training benefits and extended benefits; notice of charges; listing; spouse as full-time member of United States Armed Forces; definitions.

Sec. 20. (a) The following apply to benefits paid:

(1) Benefits paid must be charged against the employer's account as of the quarter in which the payments are made. If the unemployment agency determines that any benefits charged against an employer's account were improperly paid, an amount equal to the charge based on those benefits must be credited to the employer's account and a corresponding charge must be made to the nonchargeable benefits account as of the date of the charge. Recovery of benefits improperly paid to the claimant under this subdivision must be made pursuant to section 62(a).

(2) If an employer or employer's agent has a pattern of failing to respond with timely or adequate information requested by the unemployment agency regarding a claimant's disqualification from receiving benefits or period of ineligibility, benefits paid to a claimant as a result of the employer's or employer's agent's failure to provide timely or adequate information must be charged to the employer's account and the employer's account must not be credited. To demonstrate a pattern sufficient to render the benefits chargeable, the number of failures, excluding failures for which an employer or employer's agent has established good cause, during the prior calendar year must be 5 or more and equal to or greater than 2% of all the requests directed to the employer during the prior calendar year. The unemployment agency shall make a determination for and assign a case number to each failure to provide a timely or adequate response. A determination made under this subdivision may be appealed within 30 days after the date it was issued, but an appeal is limited to the determination that the employer failed to provide a timely or adequate response in that instance. Each determination made under this subdivision must do all of the following:

(*i*) Identify and state why a response was not timely or not adequate.

(*ii*) State that the employer may appeal the determination within 30 days after the date it was issued.

(*iii*) State the number of failures that constitute a pattern under this subdivision.

(3) By January 11 each year, beginning in 2019, the unemployment agency shall send a determination to an employer or employer's agent that demonstrated during the previous calendar year a pattern of failing to respond timely or adequately under subdivision (2). A determination made under this subdivision is appealable in the same manner as any other determination made by the unemployment agency, but is limited to the determination that the employer demonstrated a pattern of failing to respond timely or adequately under subdivision (2). A determination made under this subdivision must include all of the following for each failure:

(*i*) The name of the claimant and the last 4 digits of the claimant's social security number.

(*ii*) Whether the failure was because the response was not timely or not adequate.

(*iii*) The date of the unemployment agency's original request for information.

(*iv*) The case number the unemployment agency assigned to the failure.

(*v*) A statement that the employer's account will not be credited for benefits paid on any claim filed during the current calendar year if the employer fails to timely or adequately respond to the unemployment agency's request for information made during the current calendar year regarding a claimant's disqualification from receiving benefits or period of ineligibility.

(*vi*) A statement that a determination made under this subdivision is appealable in the same manner as any other determination made by the unemployment agency.

(b) For benefit years established on or after October 1, 2000, the claimant's full weekly benefit rate must be charged to the account or experience account of the claimant's most recent separating employer for each of the first 2 weeks of benefits payable to the claimant in the benefit year pursuant to the monetary determination issued under section 32. However, if the total sum of wages paid by an employer totals $200.00 or less, those wages must be used for purposes of benefit payment, but any benefit charges attributable to those wages must be charged to the nonchargeable benefits account. Thereafter, remaining weeks of benefits payable in the benefit year must be paid pursuant to the monetary determination and must be charged proportionally to all base period employers, with the charge to each base period employer being made on the basis of the ratio that total wages paid by the employer in the base period bears to total wages paid by all employers in the base

period. However, if the claimant did not perform services for the most recent separating employer or employing entity and receive earnings for performing the services of at least 40 times the state minimum hourly wage times 7 during the claimant's most recent period of employment with the employer or employing entity, then all weeks of benefits payable in the benefit year must be charged proportionally to all base period employers, with the charge to each base period employer being made on the basis of the ratio that total wages paid by the employer in the base period bears to total wages paid by all employers in the base period. If the claimant performed services for the most recent separating employing entity and received earnings for performing the services of at least 40 times the state minimum hourly wage times 7 during the claimant's most recent period of employment for the employing entity but the separating employing entity was not a liable employer, the first 2 weeks of benefits payable to the claimant must be charged proportionally to all base period employers, with the charge to each base period employer made on the basis of the ratio that total wages paid by the employer in the base period bears to total wages paid by all employers in the base period. The "separating employer" is the employer that caused the individual to be unemployed as described in section 48.

(c) For benefit years established before October 1, 2000, charges for regular benefits to reimbursing employers or to a contributing employer's experience account must be as formerly provided in this subsection.

(d) For benefit years beginning on or after October 1, 2000, and except as otherwise provided in section 11(d) or (g) or section 46, the charges for regular benefits to any reimbursing employer's account or to any contributing employer's experience account must not exceed either the amount derived by multiplying by 2 the weekly benefit rate chargeable to the employer under subsection (b) if the employer is the separating employer and is chargeable for the first 2 weeks of benefits, or the amount derived from the percentage of the weekly benefit rate chargeable to the employer under subsection (b), multiplied by the number of weeks of benefits chargeable to base period employers based on base period wages, to which the individual is entitled as provided in section 27(d), if the employer is a base period employer, or both of these amounts if the employer was both the chargeable separating employer and a base period employer.

(e) For benefit years beginning before October 1, 2000, benefits and charging for multiemployer credit weeks must be determined as formerly provided in this subsection.

(f) For benefit years beginning on or after October 1, 2000 and before January 1, 2014, if a base period contributing employer notifies the unemployment agency that it paid gross wages to a claimant in a week at least equal to the employer's benefit charge for that claimant for the week, then the unemployment agency shall issue a monetary redetermination noncharging the account of the employer for that week and for the remaining weeks of the benefit year for benefits payable to the claimant that would otherwise be charged to the employer's account. For benefit years beginning on or after January 1, 2014, benefits payable to an individual for a week and for each remaining payable week in the benefit year must be charged to the nonchargeable benefits account if either of the following occurs:

(1) The individual reports gross earnings in the week with a contributing base period employer at least equal to the employer's benefit charges for that individual for the week.

(2) A contributing base period employer timely protests a determination charging benefits to its account for a week in which the employer paid gross wages to an individual at least equal to the employer's charges for benefits paid to that individual for that week.

(g) For benefit years beginning before October 1, 2000, training benefits are determined as formerly provided in this subsection.

(h) For benefit years beginning on or after October 1, 2000:

(1) Training benefits as provided in section 27(g), and extended benefits as provided in section 64, must be charged to each reimbursing employer in the base period of the claim to which the benefits are related, on the basis of the ratio that the total wages paid by a reimbursing employer during the base period bears to the total wages paid by all reimbursing employers in the base period.

(2) Training benefits, and extended benefits to the extent they are not reimbursable by the federal government and have been allocated to a reimbursing employer, must be charged to that reimbursing employer. A contributing employer's experience account must not be charged with training benefits. Training benefits based on service with a contributing employer, to the extent they are not reimbursable by the federal government, must be charged to the nonchargeable benefits account. Extended benefits paid and based on service with a contributing employer, to the extent they are not reimbursable by the federal government, must be charged to that employer's experience account.

(3) If the training benefits or extended benefits are chargeable only to a single reimbursing employer, the benefits must be charged pursuant to subsection (a). If the training benefits or extended benefits are chargeable to more than 1 reimbursing employer, or to 1 or more reimbursing employers and the nonchargeable benefits account, the benefits must be charged as of the quarter in which the payments are made.

(4) Notice of charges made under this subsection must be given to each employer by means of a current listing of charges, at least weekly, and subsequently by a quarterly summary statement of charges. The listing shall specify the name and social security number of each claimant paid benefits in the week, the weeks for which the benefits were paid, and the amount of benefits chargeable to that employer paid for each week. The quarterly summary statement of charges shall list each claimant by name and social security number and shall show total benefit payments chargeable to that employer and made to each claimant during the calendar quarter. The listing is considered to satisfy the requirements of sections 21(a) and 32(f) that notification be given to each employer of benefits charged against that employer's account by means of a listing of the benefit payment. All protest and appeal rights applicable to benefit payment listings shall also apply to the notice of charges. If an employer receives both a current listing of charges and a quarterly summary statement of charges under this subsection, all protest and appeal rights apply only to the first notice given.

(i) If a benefit year is established on or after October 1, 2000, the portion of benefits paid in that benefit year that are based on wages used to establish the immediately preceding benefit year that began before October 1, 2000 must not be charged to the employer or employers who paid those wages but must be charged instead to the nonchargeable benefits account.

(j) For benefit years beginning after March 30, 2009, benefits paid to a person who leaves employment to accompany a spouse who is a full-time member of the United States Armed Forces and is reassigned for military service in a different geographic location are not chargeable to the employer, but must be charged to the nonchargeable benefits account.

(k) As used in subsection (a):

(1) "Adequate" means that an employer or employer's agent answered each question of the unemployment agency's request for information, or provided an explanation as to why it did not answer a question, or provided a summary of the requested information to reasonably allow the unemployment agency to make its determination.

(2) "Good cause" means any of the following:

(*i*) The employer or employer's agent did not possess the information and could not reasonably obtain the information by the date requested by the unemployment agency.

(*ii*) Disclosing the information would endanger the health, morals, or safety of the employer or the employer's agent or employee.

(*iii*) The employer or employer's agent presents a valid legal or evidentiary objection to the unemployment agency's request for information, as determined by the unemployment agency.

(3) "Timely" means that the unemployment agency received a response to its request for information from an employer or employer's agent not later than 10 calendar days, not including a Saturday, Sunday, or legal holiday, after the mailing date or transmittal date of its request.

**History:** 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;—Am. 1939, Act 324, Imd. Eff. June 22, 1939;—Am. 1941, Act 364, Imd. Eff. July 1, 1941;—Am. 1947, Act 360, Imd. Eff. July 8, 1947;—CL 1948, 421.20;—Am. 1949, Act 282, Imd. Eff. June 11, 1949;—Am. 1951, Act 251, Imd. Eff. June 17, 1951;—Am. 1954, Act 197, Imd. Eff. May 7, 1954;—Am. 1955, Act 281, Eff. July 15, 1955;—Am. 1965, Act 281, Eff. Sept. 5, 1965;—Am. 1967, Act 254, Imd. Eff. July 19, 1967;—Am. 1968, Act 338, Imd. Eff. July 19, 1968;—Am. 1974, Act 104, Eff. June 9, 1974;—Am. 1977, Act 277, Eff. Jan. 1, 1978;—Am. 1980, Act 388, Imd. Eff. Jan. 6, 1981;—Am. 1982, Act 535, Eff. Jan. 2, 1983;—Am. 1983, Act 164, Imd. Eff. July 24, 1983;—Am. 1994, Act 162, Imd. Eff. June 17, 1994;—Am. 2002, Act 192, Imd. Eff. Apr. 26, 2002;—Am. 2003, Act 174, Imd. Eff. Aug. 14, 2003;—Am. 2008, Act 479, Imd. Eff. Jan. 12, 2009;—Am. 2009, Act 20, Imd. Eff. Apr. 13, 2009;—Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011;—Am. 2013, Act 142, Imd. Eff. Oct. 29, 2013;—Am. 2017, Act 230, Eff. Jan. 1, 2018.

**Compiler's note:** Enacting section 1 of Act 142 of 2013 provides:

"Enacting section 1. The provisions in section 20(a) of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.20, as amended by this amendatory act, governing benefits that are considered to be improperly paid because of failure to provide the unemployment agency with timely or adequate information apply to benefit payments made after October 21, 2013."