

Michigan Employment Security Act

The Michigan Employment Security Act governs the state's unemployment compensation program. As in many other states, the law provides temporary payments to employees who lose their jobs through no fault of their own. The program draws from a public policy that assumes "unemployment is a serious menace to the health, welfare and morale" of Michigan's citizens, and is designed to lighten the job-loss burden for workers and their families.

The state administers the unemployment compensation law through the Unemployment Insurance Agency of the Michigan Department of Labor & Economic Growth (www.Michigan.gov/cis). Employees make no contributions to the program, which employers fund entirely.

The law is complex and in some cases holds an employer liable for unemployment insurance (UI) payments even when a former employee wasn't fired but quit.

Employers are required to post information about the state's unemployment compensation program in the workplace. (To download a copy of the poster, go to www.michigan.gov/documents/uia_UC1710_76109_7.pdf.)

Benefit caps

The law entitles employees who are eligible for UI payments to approximately 50 percent of their average weekly wage. The maximum benefit fluctuates depending on how many dependents a worker has. Employees with no dependents may receive a maximum weekly benefit of \$362. The fund pays unemployed workers \$6 per week per additional dependent, up to a maximum of five dependents. Claimants can collect payments for as few as 14 weeks, up to a maximum of 26 weeks. Total benefits are capped at 43 percent of the employee's base quarter earnings.

Employees who find part-time work while on unemployment may still be eligible for benefits. If a worker earns more than his or her weekly UI benefit but less than 150 percent of it, the state will subtract his or her earnings from 150 percent of his or her weekly benefit to determine the amount of the worker's unemployment check. The rules are different for weeks in which a worker earns less than his or her UI benefit: The state subtracts one-half of the worker's earnings from his or her weekly benefit to calculate the amount of the unemployment check.

As a general rule, former employees are eligible for unemployment compensation when they're not responsible for their dismissal. In other words, unless you fired someone for cause, he or she is probably eligible for unemployment benefits. When you terminate an employee, the burden of proof is on you. That may sound simple, but it isn't. You must state the reason for a discharge or termination if you intend to claim that an employee was guilty of misconduct. Be prepared to prove that you fired the former employee for a solid reason (for cause), such as stealing, cheating, a safety infraction, harassment or discrimination.

Employees who quit may still be eligible for benefits, but the burden of proof is on them to show that they left "for good cause."

It's a good idea to run any discharge for cause by your attorney. *Reason:* When you state a reason for unemployment compensation purposes, that may tie your hands later if the employee sues you for discrimination. You may be stuck with the justification you gave when he or she left.

You will receive notice when the Department of Labor & Economic Growth determines that a former employee is eligible for benefits. You then have the right to file a written appeal, but watch the deadline: You must reply within 30 days of the date the state mailed you the notice.

SUTA dumping

Michigan is cracking down on employers that attempt to dodge some of their unemployment insurance taxes. In a practice known as "SUTA dumping," employers transfer employees to other branches of their companies to "lose" their employment histories and thus reduce losses from their unemployment funds.

That's why you should always keep records of employee transfers, especially to companies with common ownership. Don't get caught without documentation. Having clear records and showing that an employee's history followed him or her can keep you from incurring fines for SUTA dumping. For more information, go to www.michigan.gov/uia/0,1607,7-118--100400--,00.html.

Tricky scenarios for eligibility

Here are some common tricky situations in which employees who quit or are fired may sometimes collect unemployment compensation payments.

Misconduct. Employees who are fired for gross misconduct, such as a crime under Michigan law, can't collect unemployment. *Exception:* Fired employees who take another job will again become eligible if their new employer discharged them through no fault of their own. To qualify, they must earn at least 17 times their weekly benefit in their subsequent jobs.

Employees who leave work voluntarily but committed no misconduct must earn 12 times their weekly benefit to requalify.

Retirement pay. An employee who's eligible for retirement payments can still collect unemployment benefits. But if his or her employer pays all of his or her retirement benefit, the state will prorate it to a weekly figure and deduct that amount from the employee's weekly UI benefit. If the employee contributed less than half to his or her retirement benefit, the state will deduct one-half of his or her benefit from the weekly unemployment check. If the employee contributed more than half of his or her retirement benefit, he or she will receive the full UI payments.

Visa holders and aliens. Foreigners working in the United States on H-1B visas aren't eligible for UI benefits if their employers permanently terminate them. That's because H-1B visa holders are authorized to work for only one employer and thus aren't ready, willing and able to seek other employment. But if the same workers are only temporarily laid off and have a specific return date, they can receive UI benefits. (Illegal aliens may not collect unemployment in Michigan.)

Ready and able to work. To be eligible for UI benefits, claimants must be physically and mentally capable of working. So, if a person on unemployment is hurt in a car accident, for example, she or he won't be eligible for benefits until having been cleared to return to work.

Active job search. To receive UI payments, claimants must actively seek work: i.e., contact at least three employers per week about job openings. Some claimants may be asked to keep records of their attempts to find

a job.

Refusing a job offer. While claimants must search for jobs, they needn't accept just any position. But they're required to accept work deemed suitable to them. Determining a job's suitability involves several factors under state law, including "the degree of risk to the claimant's health, safety and morals; physical fitness for the work; prior training and experience; the length of unemployment; the distance of the available work from the claimant's residence and the prospects for obtaining local work."

Claimants must never accept some jobs:

- Vacant positions due to strike, lockout or labor strife.
- Work involving wages, hours and conditions that are substantially less favorable than those prevailing for similar work in the locality.
- Work offered a distance away from the claimant's residence with travel expenses not offset by the compensation.
- Work that would force the claimant either to join or resign from a union.

Representing your organization at a hearing

Employers should carefully consider whether they want to contest an unemployment claim and, ideally, consult an employment law expert about the best course of action. That's true especially if you suspect the employee might file a discrimination lawsuit against your company. What you say about your organization's actions can come back to haunt you, especially if the former employee's attorney is using the relatively low-stakes unemployment setting to fish for information for a lawsuit against you. Your stated reason for firing an employee may bind you in a later, high-stakes lawsuit.

For example, if you testify that you fired someone because of frequent absences, the records you produce can be used later to show you violated the FMLA when you counted a sick-child call-off as an unexcused absence.

That's why it's best to run your expected testimony and documentary evidence by an attorney before representing your employer at a hearing. You don't want to say something that could turn into ammunition against you later, or be silent about something that would prevent you from putting on evidence later.

Sometimes, it may be best to have an attorney handle the entire UI case. Other times, if you and your attorney think a former employee will likely file a state or federal discrimination lawsuit, it may be better to forgo a hearing to avoid showing your cards too early. Not contesting an unemployment claim won't prevent you later from showing you fired the employee for a legitimate reason.

*Excerpted from Michigan's 10 Most Critical Employment Laws, a special bonus report available to subscribers of HR Specialist: **Michigan Employment Law**.*