



## Unemployment Compensation and Severance: Double-Dipping?

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### **PRACTICE AREAS**

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Many employers routinely pay severance in exchange for a release of claims embodied within a separation agreement. The frequent question is whether a former employee can double-dip. In other words, can that former employee collect unemployment compensation while also receiving severance pay? The answer is a firm maybe - a "maybe" that can be influenced by how the separation agreement addresses this issue.

The Michigan Employment Security Act states that severance pay is "remuneration." This means that the receipt of the funds must be used in determining whether the worker is an "unemployed person." If the worker is not "unemployed," insofar as the Unemployment Agency is concerned, the worker is not eligible for unemployment compensation benefits.

The employer can allocate the severance pay to a specific period of time within the separation agreement, regardless of when the severance payment was actually made. So, although the payment may be made in a lump sum, the agreement can allocate it over a period of weeks for purposes of unemployment compensation. Generally, severance pay is equivalent to a certain number of weeks of the worker's pay; so the payment can be allocated over that many weeks. If there is no allocation, the receipt of the severance may affect the former employee's receipt of unemployment compensation in the week in which the severance is received.

The amount by which the unemployment compensation benefits will be reduced by the severance pay is determined as follows:

- The former employee will be determined to be ineligible for receipt of any unemployment compensation benefits during any week in which the severance attributed to that week equals or exceeds 1½ times the former employee's weekly benefit amount (the amount of unemployment compensation that the worker would otherwise be entitled to receive).



- The former employee will be eligible to receive a portion of the weekly benefit amount if the severance attributed to that week is more than the weekly benefit amount, but less than 1½ times that amount. In that case, the amount of the severance is subtracted from 1½ times the weekly benefit amount.
- The former employee also will be eligible to receive unemployment compensation benefits if the severance is equal to, or less than, the weekly benefit amount. In that case, half the severance attributed to that week is subtracted from the weekly benefit amount.

Employers should ensure that the separation agreement allocates, for purposes of unemployment compensation, the severance amount to a specific period of time to avoid double dipping.