

## Changes are Coming to Unemployment and Workers Compensation Acts

---

December 20, 2011

On Monday, December 19, 2011, Governor Snyder signed two bills which make major changes to both the Michigan Employment Security Act (Unemployment) and the Michigan Worker's Disability Compensation Act (Workers Compensation).

Among other provisions, the primary changes to the Unemployment statute for *Employers* are:

- The taxable wage base will be increased from \$9,000 to \$9,500 annually.
- The bill phases in a decrease to the experience rating period from five years to three years, allowing employers to get beyond bad jobless claim years more quickly.
- The bill allows small employers (25 or fewer employees) to spread their unemployment tax payments throughout the year.

The primary changes to the Unemployment statute for *Employees* are as follows:

- Claimants will be required to actively engage in a "systematic and sustained search for work" and will be required to report details of their search in order to qualify for benefits.
- The bill requires that after receiving benefits for 10 weeks, claimants will be required to accept employment, even if outside the claimant's training or experience as long as the position pays at least 120% of the claimant's weekly benefit amount or the area prevailing wage.
- The bill includes theft, absenteeism, and the loss of a job requirement, for example a driver's license where one is required as a condition of employment, as grounds for disqualification of benefits.

In addition, earlier this year, Public Act 14 reduced the number of weeks a claimant could receive benefits from 26 to 20, and created a "Special Fraud Control Fund" to aggressively police and obtain reimbursement for fraud against the Unemployment system.

Significant changes to the Workers Compensation Act include:

- A revision to the qualifications of Workers Compensation Magistrate Judges.
- A specification that a "personal injury" covered by the Act is compensable if it causes, contributes to, or aggravates pathology in a manner that is "medically distinguishable" from an employee's prior condition.
- A revision to the definition of "wage earning capacity" as the wages an employee earns "or is capable of earning, whether or not actually earned," requiring the employee to actively seek work "reasonably available to the employee."

The bill also requires an employee filing an initial claim to:

- Disclose the claimant's qualifications and training, including education, skills, and experience, whether or not they are relevant to the job the employee was performing at the time of the injury;

## Continued

---

- Provide evidence as to the jobs, if any, the claimant is qualified and trained to perform within the same salary range as their maximum wage earning capacity at the time of the injury;
- Demonstrate that the work-related injury prevents the employee from performing jobs identified as within his or her qualifications and training;
- Show that, if the claimant is capable of performing any of the jobs identified above, that the claimant cannot obtain any of those jobs. The evidence would include a showing of a good-faith attempt to obtain post-injury employment that the claimant was able to perform.

Employers would then have the burden of the production of evidence to refute the employee's claim. The bill allows employers the right to engage in discovery if necessary to meet its burden and defend the claim.

Employers should review these amendments before responding to UIA and Workers Comp claims, and carefully assess whether the claim is valid under the new bills. This is a summary of the main provisions of the bills, which contain many additional changes to previously existing law.

For more information, please contact your Miller Canfield Employment + Labor attorney.