

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

421.22b Transferring trade or business with intent to reduce contribution rate or reimbursement payments.

Sec. 22b.

(1) A person shall not do either of the following:

(a) Transfer the person's trade or business or a portion of the trade or business to another employer for the sole or primary purpose of reducing the contribution rate or reimbursement payments in lieu of contributions required under this act.

(b) Acquire a trade or business or a part of a trade or business for the sole or primary purpose of obtaining a lower contribution rate than would otherwise apply under this act.

(2) The following provisions apply to assignment of rates and transfer of the unemployment experience of a trade or business to prevent or remedy transfers of trade or business in violation of subsection (1):

(a) If an employer transfers its trade or business or a portion of its trade or business to another employer and there is substantially common ownership, management, or control of the 2 employers at the time of the transfer, the unemployment experience attributable to the transferred trade or business shall be transferred to the transferee employer. The agency shall recalculate the contribution rates of both employers under section 19 and apply the new rates in the same manner as for a transfer of business under section 22(c)(1) and (d)(1). However, if, after a transfer of experience under this subdivision the agency determines that the sole or primary purpose of the transfer of trade or business was to obtain reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to the account.

(b) If the unemployment insurance agency determines that a person who is not an employer under this act at the time of a transfer acquires a trade or business, or a portion of a trade or business, solely or primarily for the purpose of obtaining a lower contribution rate, the unemployment insurance agency shall assign that employer the applicable new employer rate under section 19.

(c) In addition to any sanction available under section 54(b) or 54b, if a person knowingly violates or attempts to violate subsection (1), or if a person knowingly advises another person so as to cause a violation of subsection (1), the person is subject to the following:

(i) If the person is a transferring or acquiring employer, the employer shall be assigned the higher of the following contribution rates:

(A) The highest contribution rate assignable under this act for the rate year during which the violation or attempted violation occurs and for the 3 rate years immediately following that rate year.

(B) If the employer's business is already at the highest rate assignable for a year in which the violation occurs or if the highest rate assignable would result in an increase of less than 2% of taxable wages, an additional penalty rate of 2% of taxable wages for that year.

(ii) If the person is not an employer, the person is subject to a civil fine of not more than \$5,000.00.

(d) Notwithstanding the restrictions in section 26(a), the money recovered under this section as contributions, reimbursements in lieu of contributions, civil fines, civil penalties, or interest shall be credited to the unemployment compensation fund.

(e) The unemployment insurance agency shall establish procedures to identify the transfer or acquisition of a trade or business, or part of a trade or business, for purposes of this section. This subdivision does not grant authority to promulgate rules to define SUTA dumping.

(f) Beginning January 1, 2006, the unemployment insurance agency shall provide an annual written report to the chairpersons of the standing committees and the appropriations subcommittees of the house and senate having jurisdiction over legislation pertaining to unemployment compensation. The report shall include all of the following information in a form that does not identify individual employers:

(i) The procedures the agency has adopted to prevent SUTA dumping.

(ii) The number of SUTA dumping investigations opened during the year.

(iii) The average length of time to resolve a SUTA dumping investigation and the number of investigations pending for more than 6 months and for more than 1 year.

(iv) The number of cases brought before an administrative law judge or the board of review and the agency's success rate in those cases.

(v) The amount of money recovered as a result of implementing the provisions of this section.

(vi) The amount of the balance or deficit in the unemployment compensation fund.

(vii) The estimated fiscal impact of SUTA dumping on the unemployment compensation fund balance and the factual basis for the estimate.

(viii) The number of full-time employees assigned to, and the number of employee hours devoted to, SUTA dumping prevention, investigation, and remediation.

(ix) The number of SUTA dumping investigations that involved the transfer of employees to or from an employee leasing company.

(x) The number of investigations in which an employee leasing company was found to have participated in SUTA dumping.

(xi) The number of employee leasing companies operating in Michigan.

(3) For purposes of this section, the unemployment insurance agency shall determine whether a transfer is made for the sole or primary purpose of obtaining a lower contribution rate using objective factors, such as the cost of acquiring the business, continuity in operating the business enterprise of the acquired business, the length of time the business enterprise continues to operate, and the number of new employees hired to perform duties unrelated to the business activity or trade conducted before the acquisition.

(4) Notwithstanding any other provision of this act, the following provisions apply to changes in status between reimbursing employer and contributing employer:

(a) If a contributing employer, including an employer described in section 131 that elected to be a contributing employer, elects to become a reimbursing employer, any negative balance the employer incurred while a contributing employer must be paid to the agency before the employer may become a reimbursing employer.

(b) Any benefit charges incurred as a result of services performed for a contributing employer that are charged to the employer's account after it has become a reimbursing employer shall be transferred to the employer's reimbursing account and paid by means of reimbursement to the agency.

(c) If a reimbursing employer or an employer described in section 131 of this act applies to become a contributing employer and the agency permits the reimbursing employer to become a contributing employer, or if the agency converts a reimbursing employer to a contributing employer, then the employer shall continue to pay the agency as reimbursement payments those benefit charges that were incurred based on wages paid while the employer was a reimbursing employer, and benefit charges incurred based on wages paid after the reimbursing employer became a contributing employer shall be used to calculate the employer's contribution rate.

(5) As used in this section:

(a) "Knowingly" means having actual knowledge of, or acting with deliberate ignorance or reckless disregard for, the prohibition involved.

(b) "Person" means that term as defined in section 7701 of the internal revenue code of 1986, 26 USC 7701.

(c) "SUTA" means state unemployment tax act.

(d) "SUTA dumping" means transferring a trade or business, or a part of a trade or business, solely or primarily for the purpose of reducing the contribution rate or reimbursement payments in lieu of contributions required under this act.

(e) "Trade or business" includes the employer's employees, but the transfer of some or all of an employer's employees to another employer shall be considered a transfer of trade or business for purposes of this section if, as a result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred employees and that trade or business is performed by the transferee employer.

(6) This section is intended to be interpreted and applied in a manner so as to meet the minimum requirements of the SUTA dumping prevention act of 2004, Public Law 108-295, and implementing federal regulations.

History: Add. 2005, Act 18, Eff. July 1, 2005