

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

***** 421.42.amended THIS AMENDED SECTION IS EFFECTIVE AUGUST 26, 2014 *****

421.42.amended "Employment" defined.

Sec. 42. (1) "Employment" means service, including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, express or implied.

(2) "Employment" includes an individual's entire service, performed within or both within and without this state if any of the following apply:

(a) The service is localized in this state. Service shall be deemed to be localized within a state if the service is performed entirely within the state; or the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state, such as service which is temporary or transitory in nature or consists of isolated transactions.

(b) The service is not localized in a state but some of the service performed in this state and the base of operations, or, if there is not a base of operations, then the place from which the service is directed or controlled, is in this state; or the base of operations or place from which the service is directed or controlled is not in a state in which some part of the service is performed, but the individual's residence is in this state.

(c) After December 31, 1964, the service is not localized in any state but is performed by an employee on or in connection with an American aircraft, if either the contract of service is entered into within this state or if the contract of service is not entered into within this state or within any other state and during the performance of the contract of service and while the employee is employed on the aircraft, it touches at an airfield in this state, and the employee is employed on and in connection with the aircraft when outside the United States. The unemployment agency may enter into reciprocal agreements with other states with respect to aircraft which touch airfields in more than 1 state.

(3) Service performed within this state but not covered under subsection (2) and not excluded under section 43 shall be deemed to be employment subject to this act if contributions are not required and paid with respect to those services under an unemployment compensation law of any other state or of the federal government.

(4) Services, not covered under subsection (2), performed entirely without this state, for which contributions are not required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act if the unemployment agency approves the election of the employer for whom the services are performed that the entire service of the individual shall be deemed to be employment subject to this act. Such an election may be canceled by the employer by filing a written notice with the unemployment agency before January 30 of any year stating the employer's desire to cancel the election or at any time by submitting to the unemployment agency satisfactory proof that the services designated in the election are covered by an unemployment compensation law of another state or of the federal government, or if the services are covered by an arrangement pursuant to section 11 between the unemployment agency and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within the state, shall be deemed to be employment if the unemployment agency has approved an election of the employing unit for which the services are performed, pursuant to which the entire service of the individual during the period covered by the election is deemed to be employment.

(5) Before January 1, 2013, services performed by an individual for remuneration are not employment subject to this act, unless the individual is under the employer's control or direction as to the performance of the services both under a contract for hire and in fact. Service performed by an individual for remuneration under an exclusive contract that provides for the individual's control and direction by a person, firm, or corporation possessing a public service permit or by a certificated motor carrier transporting goods or property for hire are employment subject to this act. Service is employment under this act if it is performed by an individual who by lease, contract, or arrangement places at the disposal of a person, firm, or corporation a piece of motor vehicle equipment and under a contract of hire that provides for the individual's control and direction, is engaged by the person, firm, or corporation to operate the motor vehicle equipment. On and after January 1, 2013, services are employment if the services are performed by an individual who the agency determines to be in an employer-employee relationship using the 20-factor test announced by the internal revenue service of the United States department of treasury in revenue ruling 87-41, 1987-1 C.B. 296. An individual from whom an employer is required to withhold federal income tax is prima facie considered to perform services in employment under this act.

(6) Notwithstanding section 43, services performed for an employing unit, for which the employing unit is

liable for federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund, except service performed by an individual holding a visa described in section 101(a)(15)(H)(ii)(b) of the immigration and nationality act, 8 USC 1101, shall be deemed to constitute employment for the purposes of this act, but only to the extent that the services constitute employment with respect to which federal tax is payable. Notwithstanding any other provision of this act or any amendatory act, services performed for an employing unit which are required to be covered under this act, as a condition for its certification by the United States secretary of labor, shall constitute employment for the purposes of this act. The unemployment agency may waive the provisions of this subsection with respect to services performed within this state if the employing unit is an employer solely by reason of section 41(7) and establishes that the services are covered by the election of the employing unit under any other state unemployment compensation law. This subsection does not apply to the exceptions provided in section 43(q).

(7) Notwithstanding subsection (2) all service performed after December 31, 1964, by an officer or member of the crew of an American vessel on or in connection with the vessel is deemed to be employment subject to this act if the operating office, from which the operations of the vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled, is within this state.

(8)(a) Service performed before January 1, 1978, by an individual in the classified civil service of this state and service performed by an individual for a school district, a community college district, a school or educational facility owned or operated by the state other than an institution of higher education, or a political subdivision of the state is employment subject to this act.

(b) Service performed after December 31, 1977, in the employ of a governmental entity as defined in section 50a is employment subject to this act.

(9) "Employment" includes service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities for a state hospital or state institution of higher education, or in the employ of this state and 1 or more other states or their instrumentalities for a hospital or institution of higher education located in this state. Coverage of services performed for these hospitals and institutions of higher education after December 31, 1977, shall be determined pursuant to subsection (8)(b).

(10) "Employment" includes service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization which is excluded from the term "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c)(8) of the unemployment tax act.

(11) "Employment" includes service performed after December 31, 1971, by an individual for his principal as an agent driver or commission driver engaged in distributing beverages, meat, vegetable, fruit, bakery, dairy, or other food products, or laundry or dry cleaning services; or as a traveling or city salesman, other than as an agent driver or commission driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations. For purposes of this subsection, "employment" includes services performed after December 31, 1971, only if all of the following apply:

(a) The contract of service contemplates that substantially all of the services are to be performed personally by the individual.

(b) The individual does not have a substantial investment in facilities used in connection with the performance of the services other than in facilities for transportation.

(c) The services are not in the nature of a single transaction which is not part of a continuing relationship with the person for whom the services are performed.

(12) "Employment" includes service performed by a United States citizen outside the United States after December 31, 1971, except in Canada, and in the Virgin Islands after December 31, 1971, and before January 1 of the year following the year in which the United States secretary of labor approves the unemployment compensation law of the Virgin Islands under section 3304(a) of the internal revenue code, while in the employ of an American employer and is other than service which is employment pursuant to subsection (2) or a parallel provision of another state's law, if the requirements of subdivision (a), (b), or (c) are met:

(a) The employer's principal place of business in the United States is located in this state.

(b) The employer does not have a place of business in the United States, but the employer is any of the following:

(i) An individual who is a resident of this state.

(ii) A corporation which is organized under the laws of this state.

(iii) A partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state.

(c) None of the criteria of subdivisions (a) and (b) is met but the employer elected coverage of the service under this act, or the employer failed to elect coverage in any state and the individual filed a claim for benefits based on the service under the law of this state.

(d) An "American employer", for purposes of this subsection, means a person who is one of the following:

(i) An individual who is a resident of the United States.

(ii) A partnership if 2/3 or more of the partners are residents of the United States.

(iii) A trust, if all of the trustees are residents of the United States.

(iv) A corporation organized under the laws of the United States or of any state.

(e) As used in this subsection, "United States" includes the states, the District of Columbia, and the Commonwealth of Puerto Rico.

(13) Notwithstanding any other provision of this act, the term "employment" includes an individual's service, wherever performed within the United States, the Virgin Islands, or Canada, if the service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada, and the place from which the service is directed or controlled is in this state.

History: 1936, Ex. Sess., Act 1, Imd. Eff. Dec. 24, 1936;—Am. 1937, Act 347, Imd. Eff. Aug. 5, 1937;—Am. 1939, Act 324, Imd. Eff. June 22, 1939;—Am. 1941, Act 364, Imd. Eff. July 1, 1941;—Am. 1942, 2nd Ex. Sess., Act 18, Imd. Eff. Feb. 27, 1942;—Am. 1943, Act 246, Imd. Eff. June 1, 1943;—Am. 1947, Act 360, Imd. Eff. July 8, 1947;—CL 1948, 421.42;—Am. 1949, Act 282, Imd. Eff. June 11, 1949;—Am. 1951, Act 251, Imd. Eff. June 17, 1951;—Am. 1955, Act 281, Eff. July 15, 1955;—Am. 1957, Act 311, Imd. Eff. June 21, 1957;—Am. 1965, Act 281, Eff. Sept. 5, 1965;—Am. 1966, Act 226, Imd. Eff. July 11, 1966;—Am. 1967, Act 192, Imd. Eff. June 30, 1967;—Am. 1968, Act 338, Imd. Eff. July 19, 1968;—Am. 1971, Act 231, Imd. Eff. Jan. 3, 1972;—Am. 1974, Act 104, Eff. June 9, 1974;—Am. 1975, Act 303, Eff. Dec. 22, 1975;—Am. 1977, Act 277, Eff. Jan. 1, 1978;—Am. 2011, Act 269, Imd. Eff. Dec. 19, 2011;—Am. 2014, Act 241, Eff. Aug. 26, 2014.

Compiler's note: For effective date of subsection (8), see MCL 421.66(3).