CONSUMER AND INDUSTRY SERVICES

UNEMPLOYMENT AGENCY DIRECTOR'S OFFICE

EMPLOYMENT SECURITY

(By authority conferred on the director of the department of consumer and industry services by section 4 of 1936 extra session PA 1, MCL 421.4 and Executive Orders Nos. 1995-8 and 1997-12, MCL 421.93 and 421.94)

## PART 1. ADMINISTRATION

### R 421.1 Definitions.

Rule 1. As used in these rules:

(1) "Act" means the Michigan employment security act, Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being §§421.1 to 421.75 of the Michigan Compiled Laws.

(2) "Agency" means the state of Michigan, unemployment agency.

History: 1999-2000 AACS.

### R 421.10 Disclosure of information.

Rule 10. (1) All information, files, and records of the Michigan employment security commission reflecting information obtained from an employing unit or individual pursuant to administration of the act by the commission or its agents or representatives shall be held confidential and shall not be disclosed nor open to public or private inspection by anyone, except as hereinafter provided.

(2) Such information in possession of the commission as may affect a claim for benefits, affect a charge to an employer's account, or be necessary for proper presentation of a case in any hearing before the commission, a referee, or the board of review, upon request by an interested party, shall be made available to such interested party for examination at an office of the commission by him or his duly authorized representative who has supplied the commission with satisfactory proof of authorization and identity. Copies of such information shall be furnished to the interested party upon request, pursuant to Act No. 442 of the Public Acts of 1976, as amended, being S15.231 et seq. of the Michigan Compiled Laws, and known as the freedom of information act. A duly licensed attorney-at-law who states that he represents a claimant or an employing unit that is an interested party is not required to furnish proof of authorization.

(3) No information shall be released to any of the agencies, bureaus, or departments specified in section 11(b) of the act, unless a written request has been first submitted to the commission stating the specific information desired, the specific purpose for which the information is to be used, and the name of any person authorized by the principal to receive the information from the commission.

(4) Information shall be released to a college, university, and public agency of this state only as specified in section 11(b) of the act for use in connection with research projects of a public service nature and only after a written request, signed by the administrative head, or his delegated representative, of the college, university, or public agency, as required by the commission, is submitted to the commission and the commission is assured the information shall not be made public in any way identifying any individual or employing unit from or concerning which the information was obtained by the commission. The request shall contain a complete statement as to the nature of the information requested, the public service objective for which the request has been made, the prospective use of the information, and the manner in which it will be made public.

(5) The individual signing the request for confidential information shall certify to all of the following:

(a) That the requested information is for and to be used by the college, university, or public agency pursuant to the relevant provisions in the act.

(b) That he is empowered by the college, university, or public agency he represents to commit his principal for expenses which may be incurred by the commission in fulfilling the request.

(c) If reports based on the information are to be published, the college, university, or public agency shall submit the reports to the commission for review so that the commission may ascertain and assure that the confidentiality provisions of the act or applicable federal statutes or standards are not violated.

(d) That he is aware of the penalties provided in the act for the unauthorized or improper use of the information.

(6) The commission shall decide the feasibility of supplying such information based on the staff time available and the current workload of the commission and shall require reimbursement on a cost basis for supplying or preparing the information.

(7) Nothing in this rule shall be construed to prohibit publication by the commission of statistical data or other information in the interest of the public, not disclosing the identity of any individual or employing unit, or under the same limitation, to prohibit the commission, pursuant to section 4 of the act, from making available to the public upon request, statements of any and all informal rules or criteria of decisions, administrative policies, or interpretations and the like which are or may be utilized by the commission, its agents, or employees in any manner in the performance of their administrative duties. With regard to the disclosure of aggregated information obtained from employing units, information shall be deemed confidential if there are fewer than 3 establishments in the aggregation or if any 1 establishment represents 80% or more of the total employment in the aggregation.

History: 1979 AC; 1980 AACS.

R 421.15 Determination of normal seasonal work period of seasonal employer.

Rule 15. (1) The normal seasonal work period of a seasonal employer shall be determined by the agency to be the period selected by the employer if the period is not more than 26 weeks and falls within the earliest beginning and latest ending dates of the employer's work seasons in the previous 5 years or in as many years as the employer has operated the business in Michigan if less than 5 years or is within the expected seasonal work period if the employer has not operated the business in Michigan.

(2) If the employer does not request designation of a period as the normal seasonal work period, then the agency shall determine the normal seasonal work period to be the entire period falling within the earliest beginning and latest ending dates of the employer's work seasons in the previous 5 years or in as many years as the employer has operated the business in Michigan if less than 5 years or to be the employer's expected seasonal work period if the employer has not operated the business in Michigan. If, however, the period is more than 26 weeks, then the normal seasonal work period shall be the most recent seasonal period of the employer that is not more than 26 weeks.

(3) The determination shall be based on all of the following information:

(a) A statement from the employer indicating the beginning and ending dates of the employer's seasonal work periods in Michigan for each of the previous 5 calendar years or for as many years as the employer has operated the business if less than 5 years. If an employer has not previously operated the business in Michigan, then the agency shall obtain, from the employer, a statement of the employer's expected seasonal work period.

(b) A statement from the employer indicating the period the employer requests to designate as the normal seasonal work period, if any.

(c) General employment information about the employer that is in the possession of the agency and, if necessary, further clarifying information requested from the employer.

(4) After a work period has been determined by the agency, the employer's normal seasonal work period will not be redetermined by the agency unless the agency discovers relevant new information, or unless not less than 20 days before the start of the previously determined normal seasonal work period at least 1 of the following provisions is satisfied:

(a)The agency receives a request from an employer for a change that gives reasons for making the request, and the request is granted by the agency. The agency shall grant the request if the employer's reason for making the request is that there has been a substantial change in the operation of the business that necessitates changing the normal seasonal work period.

(b) The employer provides the agency with information about the employer's most recent seasonal work period, when the prior determination or redetermination was based on a history of less than 5 years of operating the business in Michigan or was based on the employer's expected seasonal work period.

(5) If the normal seasonal work period is redetermined, then the new normal seasonal work period will be used to establish denial periods beginning after the end of the newly redetermined normal seasonal work period.

History: 1996 AACS; 2002 AACS.

## PART 2. EMPLOYERS

R 421.101 Report to determine liability.

Rule 101. Every individual or legal entity that becomes an "employing unit" as defined in section 40 of the act shall, on or before the last day of the month next following the month during which it became an employing unit, file with this commission a "Report to Determine Liability" and such additional reports as the commission may require for the purpose of determining whether it is an "employer" as defined in section 41 of the act. Every "employing unit" that is determined to be an "employer" shall be notified of such determination.

History: 1979 AC; 1980 AACS.

R 421.105 Posting of notice of coverage.

Rule 105. (1) Every "employing unit" determined to be an "employer" shall post and maintain notices furnished by the commission indicating that the employer is registered with the commission and that the employees are covered for unemployment compensation purposes.

(2) The notices shall be conspicuously posted in easily accessible places frequented by employees. However, posting is not required in a private residence in which the only service performed is domestic; instead, the employer shall inform the domestic employee of the fact that
the employer is registered with the commission.

(3) An employing unit not determined liable under the act shall not display the notice.

History: 1979 AC; 1980 AACS.

R 421.112 Determination of cash value of room and board.

Rule 112. (1) If board, rent, housing, lodging, meals, or similar advantage is extended in any medium other than cash as partial or entire remuneration for service constituting "employment" as defined in section 42 of 1936 PA 1, MCL 421.42, then the reasonable cash value of the board, rent, housing, lodging, meals, or similar advantage is wages unless the board, rent, housing, lodging, meals, or similar advantage is furnished solely for the convenience of the employer. However, for purposes of this rule, payments in any medium other than cash shall not apply to agricultural or domestic service, except for purposes of subrule (7) of this rule.

(2) If the cash value for the board, rent, housing, lodging, meals, or similar advantage is agreed upon in any contract of hire, then the amount agreed upon is the value of the board, rent, housing, lodging, meals, or similar advantage. Check stubs, pay envelopes, and other documents which are furnished to employees and which set forth cash value are acceptable as evidence as to the amount of the cash value agreed upon in any contract of hire, except as provided in subrules (4) and (6) of this rule.

(3) If the cash value for board, rent, housing, lodging, meals, or similar advantage is not agreed upon in a contract of hire, then the rate for board, rent, housing, lodging, meals, or similar advantage furnished in addition to money wages or wholly comprising the wages of an employed individual shall have the following cash value, except as provided in subrules (4) and (6) of this rule:Full board and room, per week.....$64.96 Meals without lodging, per week..... 44.66 Meals without lodging, per day..... 7.45 Meals without lodging, per meal..... 2.29 Lodging without meals, per week.....20.87 Lodging without meals, per day..... 3.22 However, if lodging is furnished, for example, to superintendents of properties, caretakers, and janitors, then the value of the lodging shall be the amount that would be paid by an employee for similar or equivalent accommodations furnished by an individual other than his or her employer.

(4) At the request of any employer or employee or on its own motion, the agency or its authorized agent, may after the expiration of a 1-year period from the effective date of this rule and after affording reasonable opportunity at a hearing for the submission of relevant information in writing or in person, determine the reasonable cash value of board, rent, housing, lodging, meals, or similar advantage in a particular instance or in a

group of instances if it is determined that the values fixed in, or arrived at, under subrule (3) of this rule or in the contract of hire do not properly reflect the reasonable cash value of the remuneration.

(5) The agency shall adjust the cash values in subrule (3) of this rule annually on March 1, based on a comparison of the United States department of labor, bureau of labor statistics, consumer price index for urban wage earners and clerical workers for Detroit-Ann Arbor, Michigan, for the preceding December with the corresponding United States department of labor, bureau of labor statistics, consumer price index for urban wage earners and clerical workers for Detroit-Ann Arbor, Michigan, for the December preceding that December.

(6) Except as provided in subrule (4) of this rule, if the agency determines that the reasonable cash value of board, rent, housing, lodging, meals, or similar advantage is other than as prescribed in a contract of hire or in subrule (3) of this rule, then the employer's payroll and contribution reports to the agency shall show the value of the remuneration as determined by the agency.

(7) For the purpose of determining whether an individual is "unemployed" as defined in section 48 1936 PA 1, MCL 421.48, the reasonable cash value of board, rent, housing, lodging, meals, or similar advantage as compensation for personal services shall also be established pursuant to this rule.

History: 1979 AC; 1980 AACS; 1986 AACS; 1998-2000 AACS; 2001 AACS.

R 421.113 Rescinded.

History: 1979 AC; 1980 AACS; 1998-2000 AACS.

R 421.115 Records required of employing unit.

Rule 115. (1) Each employing unit having employment performed for it shall establish, maintain, and preserve such records for a period of not less than 6 years after the calendar year in which the remuneration to which they relate was paid or, if not paid, was due. Such records shall show all of the following for each worker:

(a) Name.

(b) Social security account number.

(c) Beginning and ending dates of each pay period.

(d) With respect to pay periods in which he performs services:

(i) Hours spent performing covered services.

(ii) Hours spent performing excluded services.

(e) Total amount of remuneration for employment paid in any quarter.

(f) Total amount of wages, as defined in section 44(2) of the act, paid in any quarter.

(g) Dates on which he was hired, rehired, or returned to work after a temporary layoff, and dates separated from work and reason therefor.

(h) Remuneration paid for services and dates of payment, showing separately:

(i) Cash remuneration, including special payments, such as bonuses and gifts.

(ii) Reasonable cash value of remuneration in any medium other than cash, determined pursuant to the applicable rules of the commission, including special payments, such as bonuses and gifts.

(i) Amounts paid him as allowances or reimbursement for traveling or other business expenses and dates of payment.

(j) The place of his employment. For the purpose of this record, the place of employment shall be recorded as the city or township and county in which he performs his work. The place of employment of a worker who does not perform the majority of his work in any 1 city or township shall be recorded as the city or township and county of Michigan in which he has his base of operations; or, if he has no base of operation in Michigan, as the city or township and county in Michigan from which his service is directed or controlled; or, if the place from which his service is directed or controlled is also outside Michigan, as the city or township and county within Michigan in which he has his residence.

(2) Records shall be maintained by employing units in such form as to make it possible to determine all of the following from an inspection thereof with respect to any worker:

(a) Earnings by calendar weeks.

(b) Weeks of less than full-time work.

(c) Time lost due to reasons other than lack of work.

(d) Calendar days worked.

(3) Multicounty employers and, as defined by the commission, multi-industry employers within a county shall, upon request from the commission, maintain wage and employment information for each location.

History: 1979 AC; 1980 AACS.

R 421.121 Employer contribution reports and payments.

Rule 121. (1) Except as provided in subrule (4) of this rule, contributions shall become due and payable quarterly with respect to wages paid in each calendar quarter, except that the agency may require contributions to become due and payable on a monthly basis in any instance in which an employer has a history of delinquency or in any instance in which the agency has reason to believe that the collection of contributions may otherwise be jeopardized.

(2) Each employer shall submit a contribution report on forms provided by the agency, or on facsimiles of forms approved by the agency, or by an electronic method approved by the agency. Except as provided in subrule (4) of this rule, an employer shall submit a quarterly report and pay the contributions due on wages paid during the calendar quarter on or before the twenty-fifth day of the month next following the last day of the calendar quarter or, if required by the agency, shall submit a monthly report and pay the contributions due on wages paid during the calendar month on or before the twenty-fifth day of the month next following the last day of the month for which the report is submitted. If the contribution report is submitted by an electronic method approved by the agency, it must be received by the agency within the same time period that applies to a report submitted by any other method. Contributions paid after the due date specified in this subrule but before the first business day of the calendar month beginning after the due date specified in this subrule shall not accrue interest. Contributions paid after the last day of the calendar month containing the due date specified in this subrule shall accrue interest beginning the day after the due date specified in this subrule. Payment of contributions may be made by any means approved by the agency.

(3) An employer who is notified by the agency to report and pay contributions on a calendar month basis shall file the report and pay the contributions due with respect to wages paid in the month that the notice is mailed by the agency. Further, the employer shall, within 25 calendar days after mailing the notice, file separate monthly contribution reports and pay contributions due with respect to wages paid in each previously completed calendar month in the particular quarter in which the notice is mailed.

(4) Each school district and community college district that elects to be a contributing employer and that is liable for contributions for a calendar year shall pay the contributions within 30 calendar days after the start of its next fiscal year after the calendar year. Within the time period in subrule (2) of this rule, a school district or community college district that becomes a contributing employer shall submit a contribution report on forms provided by the agency or on facsimiles of forms approved by the agency. However, the district shall make payment under this subrule.

(5) Any remuneration payable to an individual that has not been actually paid to the individual within 21 calendar days after the end of the pay period in which the remuneration was earned is deemed to have been paid on the twenty-first day after the end of the pay period. Remuneration, the exact amount of which or the persons to whom payable, or both, have not been determinable during any pay period, is considered to have been earned in the pay period in which both the amount and the persons to whom payable are first determinable.

(6) The following person, as appropriate, shall sign the certification on each contribution report:

(a) The individual, if the employer is an individual.

(b) The president, vice president, or other officer, if the employer is a corporation.

(c) A responsible or duly authorized member having knowledge of its affairs, if the employer is a partnership or other unincorporated organization.

(d) An individual who possesses the necessary authority, if the employer is a governmental entity.

(7) An employing unit that at any time becomes a contributing employer under the provisions of the act during the course of any calendar year shall, immediately after becoming a contributing employer, prepare and file a contribution report for each then completed calendar quarter or each then completed calendar month if required by the agency within the calendar year. After filing the initial contribution report, the contributing employer shall file the reports as required by this rule.

(8) An employing unit that elects, under the provisions of section 25 of the act, to become a contributing employer shall, upon written approval of the election by the agency, file the required reports, including a contribution report for all completed calendar quarters, or calendar months if required by the agency, beginning with the effective date of liability as approved by the agency.

(9) Upon the discontinuance, sale, assignment, or transfer, whether voluntary or by operation of law, of the trade, organization, or business in Michigan of a contributing employer, other than a school district or community college district, contributions shall become immediately due and payable as of the date of the discontinuance, sale, assignment, or transfer. Within 15 calendar days of the date of discontinuance, sale, assignment, or transfer, the employer shall file with the agency all reports required by this rule for the part of the calendar month or calendar quarter that has elapsed since the last day of the preceding required reporting period. In the case of a school district or a community college district, the reporting requirements specified in this subrule shall apply, but a district shall pay contributions due under subrule (4) of this rule.

(10) The last return of a contribution report for any employer shall be marked "Final Return" by the employer or other person filing the return. An employer shall plainly write the period covered by the return on the return, indicating the date of the final payment of wages subject to contributions. Except for a contributing employer who elects to become a reimbursing employer, in addition to the other requirements of this subrule, an employer shall execute and file a "discontinuance or disposition of business or assets."

(11) An employer shall execute and file each return, together with any supporting data, including wage and employment information, pursuant to instructions and the applicable rules. Further, upon notification from the agency, a multicounty employer and, as defined by the agency, a multiindustry employer within a county shall report wage and employment information for each location. An employer shall apply to the agency for the forms needed in time to have the employer's returns prepared, certified, and filed with the agency on or before the due date. An employer shall carefully prepare the return so as to set forth fully and clearly the data called for in the return. The agency shall not accept, as meeting the requirements of the act, a return that does not set forth the data fully and clearly. Each employer is required to file his or her own report with respect to wages for employment performed for the employer. Employers shall not file consolidated reports of parent and subsidiary corporations, except as permitted by R 421.190 with regard to a common paymaster arrangement.

History: 1979 AC; 1980 AACS; 1999-2000 AACS; 2002 AACS.

R 421.122 Reimbursing employer reports and payments.

Rule 122. (1) Each reimbursing employer shall submit a quarterly report of total wages and monthly employment on a form provided by the agency, or by an electronic method approved by the agency. The quarterly report shall be submitted on or before the twenty-fifth day of the month next following the last day of each calendar quarter.

(2) Upon notification from the agency, multicounty employers and, as defined by the agency, multiindustry employers within a county shall be required to report wage and employment information for each location.

(3) Each nonprofit employer that elects to be a reimbursing employer and that is liable for quarterly reimbursement payments shall submit such payments within 30 days after the mailing date of the quarterly billing of benefit charges. Payment of reimbursements may be made by any means approved by the agency.

(4) Each reimbursing governmental entity that is liable for reimbursement payments for a calendar year shall submit such payment within 30 days after the start of its next fiscal year after such calendar year. Each employer shall receive a quarterly summary statement of daily charges and credits.

History: 1979 AC; 1980 AACS; 2002 AACS.

R 421.123 Good cause for untimely filing of employer's quarterly contribution report.

Rule 123. Good cause under section 18(d) of Act No. 1 of the Extra Session of 1936, as amended, being S421.18(d) of the Michigan Compiled Laws, for an employer's failure to file a quarterly contribution report within 30 days after the date that the contribution rate is mailed by the agency to the employer includes, but is not limited to:

(a) A deliberate and intentional failure by an employee or other agent of the employer to file the contribution report or reports. (b) The death or incapacity of the employer, the employer's employee, or other agent of the employer that prevents the timely filing of the contribution report or reports.

(c) An unavoidable absence from the workplace of the employer, the employee of the employer, or other agent of the employer that prevents the timely filing of the contribution report. Reasons for unavoidable absence include service on jury duty or service in the military of the United States or in the Michigan national guard.

(d) The unavailability, due to extraordinary reasons, of information needed to complete the contribution report. Extraordinary reasons for the unavailability include fire, flood, natural disaster, or an act of God.

(e) An employer's, employer's employee's, or employer's agent's inadvertent filing, in a timely manner, of the contribution report with a state or federal taxing authority other than the employment security agency.

(f) The failure of a business or governmental agency entrusted with the delivery of mail to deliver the determination of the contribution rate to the employer within a reasonable period or to deliver the employer's completed quarterly contribution report to the employment security agency within a reasonable period.

(g) The failure of a predecessor employer to file 1 or more quarterly contribution reports in a timely manner which results in a higher contribution rate or a penalty, or both, for the successor employer and, within 1 year from the date of mailing the determination of the contribution rate to the successor, either the successor employer files, with the employment security agency, a copy of the missing report or reports signed by the predecessor employer or the authorized agent of the predecessor employer or else an auditor of the employment security agency prepares and files the report or reports based on the records of the predecessor employer.

History: 1995 AACS.

R 421.162 Charges and credits to employer accounts.

Rule 162. (1) If benefits are chargeable to an employer, then the agency shall notify the employer with respect to the employer's account as follows:

(a) When a benefit check is issued to an individual, the agency shall mail, to the employer whose account is charged with such benefits, a listing or facsimile of weekly charges and credits to the employer's account resulting from the issuance of the check. The listing shall show all of the following information:

(i) The name and social security account number of the payee.

(ii) The amount paid.

(iii) The date of issuance.

(iv) The calendar week or period for which benefits have been paid.

(v) The designation of the employer.

(b) Each listing or facsimile of weekly charges and credits to an employer's account issued to an employer pursuant to the provisions of subdivision (a) of this subrule shall, in the absence of a pending protest by the employer affecting the validity of benefit payments included in the statement, constitute a determination of the charge to the employer's account. The determination is final unless further proceedings are taken pursuant to section 32a of the act.

(c) The agency shall mail a quarterly statement consisting of a summary listing of charges and credits to each reimbursing employer for billing and reconciliation purposes. The agency shall mail a quarterly statement consisting of a summary listing of charges and credits to each contributing employer for reconciliation purposes. Quarterly statements shall be subject to review and redetermination by the agency as to the accuracy of the statement only if the employer requests the review and redetermination within 30 days after the date of mailing of the quarterly statement.

(2) If benefits are simultaneously chargeable to more than 1 employer, then the agency shall charge each employer the pro rata share of benefits based on wages paid to the claimant during the base period by that employer as compared to total base period wages paid to the claimant by all base period employers. Training benefits paid pursuant to a determination that benefits are chargeable to more than 1 reimbursing employer, or to 1 or more reimbursing employers and the nonchargeable benefits account, shall be allocated to each reimbursing employer involved and charged as of the quarter in which payments are made. Extended benefits paid, and not reimbursed by the federal government, pursuant to a determination that benefits are chargeable to more than 1 employer shall be allocated to each employer involved and charged as of the quarter in which payments are made. Training benefits shall be allocated to each reimbursing employer involved in the individual's base period of the claim to which benefits are related on the basis of the ratio that the total wages paid during the base period by a reimbursing employer bears to the total amount of wages paid during the base period by all employers. Extended benefits, to the extent not reimbursed by the federal government, shall be allocated to each employer involved in the individual's base period of the claim to which benefits are related on the basis of the ratio that the wages paid during the base period by an employer bears to the total amount of wages paid during the base period by all employers. Benefits paid under a combined wage plan, where a claimant has earned wages in 2 or more states, shall be allocated and charged to each employer involved in the quarter in which the paying state requires reimbursement. Charges to each employer involved shall bear the same ratio for benefits paid

to a claimant as the amount of each employer's wages in the base period bears to the total amount of claimant's base period wages. Benefits paid under a federal-state combined wage plan, where a claimant earns wages with the federal government and a Michigan employer, shall be allocated and charged to each employer involved and charged as of the quarter in which payments are made. Charges to each employer involved shall bear the same ratio for benefits paid to a claimant as the amount of each employer's wages in the base period bears to the total amount of claimant's base period wages.

(3) The deductions from charges as provided in sections 20(a) and 20a of the act shall be in the form of credits to the employer's account. The agency shall mail listings of weekly charges and credits to the employer's account to the employer.

(4) If the agency finds that benefits paid and charged to an employer's account were improperly paid or charged, then the agency shall credit an amount equal to the charge based on such benefits to the employer's account as of the current period, except that the agency may consider the employer's request that the credit be made as of the quarter in which the charges were originally made, if the request is filed within 30 days after the mailing of the credit or within 30 days after the mailing of the contribution rate for the first calendar year which can be affected by the requested retroactive credit. However, if the employer files a request within 30 days of the mailing of a credit which, in combination with 1 or more preceding similar credits, is sufficient to change a contribution rate if the credits are given retroactive effect, then the request is considered as filed in a timely manner with respect to all such credits.If the allowance of retroactive credit affects contributions previously paid within the meaning of the provisions of section 16 of the act, then the agency shall make application for the credits not later than 3 years after the date of payment of the affected contributions. In the absence of an intentional false statement, misrepresentation, or concealment of a material fact by a claimant, the agency shall not issue credit to an employer where improper payment was made because of the employer's failure to furnish information in a timely manner in connection with a new or additional claim as provided in section 32(b) of the act.

(5) Charges and credits to the federal government as a reimbursing employer shall be issued pursuant to methods prescribed by the federal government.

History: 1979 AC; 1980 AACS; 1986 AACS; 2001 AACS.

R 421.184 Employer elections to cover multistate workers.

Rule 184. (1) The following rules shall govern the Michigan employment security commission in its administrative cooperation with other states subscribing to the interstate reciprocal coverage arrangement, hereinafter referred to as "the arrangement."

(2) As used in this rule, unless the context clearly indicates otherwise:

(a) "Agency" means any officer, board, commission, or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

(b) "Interested jurisdiction" means any participating jurisdiction to which an election submitted under this rule is sent for its approval; and "interested agency" means the agency of such jurisdiction.

(c) "Jurisdiction" means any state of the United States or, with respect to the federal government, the coverage of any federal unemployment compensation law.

(d) "Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated.

(e) "Services customarily performed by an individual in more than 1 jurisdiction" means services performed in more than 1 jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than 1 jurisdiction, or if such services are required or expected to be performed in more than 1 jurisdiction under the election.

(3) The submission and approval of coverage elections under the interstate reciprocal coverage arrangement shall comply with all of the following:

(a) Any employing unit may file an election to cover, under the law of a single participating jurisdiction, all of the services performed for it by any individual who customarily works for it in more than 1 participating jurisdiction. Such an election may be filed, with respect to an individual, with any participating jurisdiction in which:

(i) Any part of the individual's services are performed.

(ii) The individual has his residence.

(iii) The employing unit maintains a place of business to which the individual's services bear a reasonable relation.

(b) The agency of the elected jurisdiction, thus selected and determined, shall initially approve or disapprove the election. If such agency approves the election, then it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election as promptly as practicable and shall notify the agency of the elected jurisdiction accordingly. If its law so requires, any such interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

(c) If the agency of the elected jurisdiction or the agency of any interested jurisdiction disapproves the election, then the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons therefor.

(d) Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by 1 or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

(e) In case any such election is approved only in part or is disapproved by some of such agencies, the electing employing unit may withdraw its election within 10 days after being notified of such action.

(4) The effective period of elections is as follows:

(a) An election duly approved under this rule shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer has no liability to pay contributions for the earlier period in question.

(b) The application of an election to any individual under this rule shall terminate if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed so that they are no longer customarily performed in more than 1 participating jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such finding is mailed to all parties affected. Except as provided in this subdivision, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies. Whenever an election under this rule ceases to apply to any individual under this subdivision, the electing unit shall notify the affected individual accordingly.

(5) The electing unit shall file reports and notices as follows:

(a) The electing unit shall promptly notify each individual affected by its approved election on the form supplied by the elected jurisdiction and shall furnish the elected agency a copy of such notice.

(b) Whenever an individual covered by an election under this rule is separated from his employment, the electing unit shall again notify him forthwith as to the jurisdiction under whose unemployment compensation law his services have been covered. If at the time of the termination the individual is not located in the elected jurisdiction, then the electing unit shall notify him as to the procedure for filing interstate benefit claims.

(c) The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than 1 participating jurisdiction, or where a change in the work assigned to an individual requires him to perform services in a new participating jurisdiction.

(6) The Michigan employment security commission hereby delegates to its director authority to approve or disapprove reciprocal coverage elections pursuant to this rule.

History: 1979 AC; 1980 AACS.

R 421.190 Common paymaster; employee leasing companies; payrolling; temporary help firms.

Rule 190. (1) As used in this rule:

(a) "Captive provider" means an employee leasing company which limits itself to providing services and employees to only 1 client entity and the entity's subsidiaries and affiliates and which does not hold itself out as available to provide leasing services to other client entities that do not share an ownership relationship with the employee leasing company.

(b) "Client entity," also known as a "work-site employer," means the business entity that contracts with an employee leasing company for the purpose of providing employees and related services to the client entity.

(c) "Common paymaster" is the arrangement by which different services performed by 1 individual are divided among 2 or more employers that are related through commonality of ownership, and the individual is compensated by 1 of those employers that acts as the common paymaster. Under such an arrangement, different employers benefit from the services of the same individual, but these services are reflected in the experience rating of, and the payment of unemployment taxes by, only 1 of the employers. If 2 or more related corporations concurrently employ the same individual and compensate that individual through a common paymaster that is 1 of the corporations, the corporations may elect to report wages and pay unemployment taxes of all shared employees of the related corporations through a common paymaster and the related corporations will be considered to be a single employing unit. The common paymaster for purposes of reporting wages and paying Michigan unemployment taxes of all shared employees shall be the corporation that has the highest Michigan unemployment tax rate. Corporations are considered to be related if they satisfy any 1 of the following tests at any time during the calendar quarter:

(i) The corporations are members of a controlled group of corporations as defined in section 1563 of the internal revenue code, 26 U.S.C. §1563, or would be members if certain stock ownership percentage requirements between corporations were relaxed and certain exclusions made inapplicable.

(ii) In the case of a corporation that does not issue stock, either 50% or more of the members of 1 corporation's board of directors or other governing body are members of the other corporation's board of directors or other governing body, or the holders of 50% or more of the voting power to select such members are concurrently the holders of 50% or more of that power with respect to the other corporation.

(iii) Fifty percent or more of 1 corporation's officers are concurrently officers of the other corporation.

(iv) Thirty percent or more of 1 corporation's employees are concurrently employees of the other corporation. Corporations are considered related for an entire calendar quarter if 1 of the requirements listed in paragraphs (i) to (iv) of this subdivision is satisfied. Concurrent employment means the contemporaneous existence of an employment relationship between an individual and 2 or more corporations.

(d) "Employee leasing company (ELC)," also known as a "professional employer organization," means an independently established business entity that does all of the following:

(i) Provides employees to a client entity.

(ii) Pays the wages of the employees.

(iii) Reports and withholds applicable taxes from the wages of the employees.

(iv) Administers the benefits for the employees.

(v) Provides other payroll, human resources, and other management assistance services that are agreed upon with its client entity. The employees provided to the client entity may have previously been employed directly by the client entity. The relationship between the client entity and ELC is intended to be long-term or continuing, rather than temporary or intermittent, and the employees are, generally, not subject to reassignment. The majority of the workers at a client entity's worksite, or a majority of workers in a specialized group within that workforce, consists of employees assigned by the leasing company.

(e) "Payrolling" is the practice of establishing a related or associated company for the purposes of reassigning the employee payroll functions from 1 business entity to the related business entity, usually to take advantage of the lower unemployment tax rate of the related business entity. Direction and control of the involved employees are not transferred along with the payroll to the related business entity, and the related entity is not an employee leasing company. The related business entity to which the payroll is assigned is not the employer for unemployment insurance tax purposes. The entity for which services are performed and which exercises direction and control over the employee is the employer.

(f) "Temporary help firm" means an employer whose primary business is to provide a client entity with the temporary services of 1 or more individuals under contract with the employer. Employment with a temporary help firm is characterized by a series of limited-term assignments of an individual to a client entity based on a written or oral contract between the temporary help firm and the client entity. The assignment is usually for a specified period. A separate written or oral employment contract exists between the temporary help firm and each individual it hires as an employee. The employee of the temporary help firm is subject to reassignment by the temporary help firm. Completion of an assignment for the client entity by an employee employed by the temporary help firm does not, in itself, terminate the employment contract between the temporary help firm and the individual. A temporary help firm that meets the requirements of section 41 of the act is a liable employer and shall pay unemployment taxes on its employees.

(2) An ELC that meets the requirements of section 41 of the act is a liable employer and responsible to pay unemployment taxes on the employees leased to the client entity. For unemployment tax purposes in Michigan,

the ELC, and not the client entity, is the employer of the leased employees if all of the following conditions are met:

(a) An employing entity representing itself to be an ELC shall comply with the requirements of this rule to be considered by the agency to be an ELC for purposes of the act and this rule. If the agency determines the entity is not an ELC within the meaning of this rule, then the payroll of workers at the client entity will be assigned or reassigned to the client entity and the client entity's prior experience rating will be reinstated.

(b) The ELC shall administer all payroll and all benefit services for the client entity, pay the wages of the workers, and have the right, both in contract and in fact, to hire, promote, reassign, discipline, and terminate the leased workers. The ELC cannot delegate the rights to the client entity. The client entity's officers may be considered employees of the leasing company when they are acting as operational managers, or performing services, for the client entity.

(c) The ELC retains the right to exercise direction and control over the daily activities of the workers or can delegate the right to the client entity.

(d) Neither the ELC nor any individual owner of the ELC, nor owners of the ELC in the aggregate, has an ownership interest of more than 20% in the client entity, including the client entity's subsidiaries and affiliates, and the client entity does not have more than 20% ownership interest in the ELC.

(e) Neither the ELC nor any individual owner or other employee of the ELC has direct or indirect control over the client entity.

(f) The ELC does not limit itself to providing services and employees to any 1 client entity, including that entity's subsidiaries and affiliates, but holds itself out to the public in general as available to provide leasing services. The ELC shall not be a captive provider of employee services.

(3) To be considered the employer of the leased employees, the employee leasing company shall comply with all of the following operational requirements:

(a) The ELC shall maintain records pertaining to the employees of the ELC who perform services for the client entity. In addition, the ELC shall make the records available to the agency, on request.

(b) Upon request, the ELC shall promptly provide the agency with a copy of the employee lease agreement with any of its client entities and with a list of the ELC's client entities.

(c) The ELC shall comply with federal, state, and local employment and business registration laws, regulations, and ordinances. If the ELC does not so comply, then the agency may decline or cease to recognize an employing entity as an ELC.

History: 1999-2000 AACS; 2002 AACS.

## PART 3. CLAIMS

R 421.201 "Interested party" defined.

Rule 201. (1) The term "interested party," as used in the act or these rules, means anyone whose statutory rights or obligations might be affected by the outcome or disposition of the determination, redetermination, or decision. A claimant for unemployment benefits is not an interested party to a redetermination of charges or to an appeal relating to a redetermination of charges. An interested party has all of the following rights:

(a) The right to receive a copy of the notice of determination or redetermination.

(b) The right to request a reconsideration of the determination or redetermination.

(c) The right to appeal to a referee or the board of review in the manner provided in the act.

(2) The agency is an interested party in any appeal before a referee, the board of review, or in any judicial action involving an order or decision of the board of review or a referee.

(3) An employer or employing entity in this or another state is an interested party in connection with a claim for benefits if the employer's or employing entity's account has been charged, the employer or employing entity is presently or potentially chargeable with some portion of benefits paid or payable on such claim, or the employer or employing entity is directly involved in a possible ineligibility or disqualification of a claimant. A base period employer is not an interested party with respect to a nonmonetary adjudication or appeal relating to another base period employer or the last separating employer concerning either benefit payments or charges, unless the issue on appeal is whether the base period employer is chargeable for benefits on the claim under section 29(5) of the act.

History: 1979 AC; 1980 AACS; 1986 AACS; 1998-2000 AACS; 2002 AACS.

R 421.204 Unemployment compensation notice to employee.

Rule 204. (1) An employer, other than an employer filing claims on behalf of workers in accordance with Rule r 421.210, shall provide each worker at the time of the worker's separation from employment a copy of form UA 1711, unemployment compensation notice to employee. However, this requirement is satisfied if the employer previously delivered a copy of the form to the worker, or if the employer has by any other method provided the worker an equivalent written statement notifying the worker of both of the following:

(a) If the worker loses form UA 1711 or the equivalent written notice from the employer, the worker may obtain a duplicate from a designated office in the establishment.

(b) The worker should have form UA 1711 or the equivalent written notice from the employer available for reference when filing a claim.

(2) If the agency finds that an employer fails to deliver form UA 1711 or the equivalent written notice before separation or fails to post adequate notices concerning replacement of a lost form UA 1711 or an equivalent written notice, then the employer, at the direction of the agency, shall be required to deliver form UA 1711 or the equivalent written notice to a worker when the worker is separated from employment. Form UA 1711 or the equivalent written notice shall be considered a report within the meaning of section 54(c)(1) of the act, and the agency may impose the penalty of $10.00 against an employer that fails to provide the form or the equivalent written notice to the worker by the date of the worker's separation from employment and will only be imposed if an employer fails to comply with this requirement after being notified by the agency. Imposition of the penalty provided under this rule is an appealable issue under the act.

(3) The form or equivalent written notice shall contain all of the following information:

(a) The employer's name and number of the employer's account with the agency.

(b) The address of the employer to which any request for wage or separation information, or both, shall be directed.

(c) Such other information as is required by the agency.

History: 1979 AC; 2002 AACS.

R 421.205 Notification to employing unit of filing of claim; request for wage and separation information from employing unit; notification of commission of possible disqualification or ineligibility of claimant; "respond" defined.

Rule 205. (1) If an individual files a new claim for benefits, then the agency shall notify all of the individual's base period employers and employing units, the separating employer, and the individual's employers and employing units during the calendar quarter containing the Sunday of the week in which the new claim is effective, of all of the following:

(a) The filing of the claim.

(b) The wages on record, as to the claimant, in the agency's wage database, or the wages reported by the claimant if there are no wages on record in the wage database.

(c) The reason for separation reported by the claimant.

(d) The claimant's weekly benefit amount.

(e) The maximum benefit amount that may be charged to each employer's account.

(2) Any response by the employer or employing unit to the information provided by the agency shall be received by the agency within 10 calendar days from the date of mailing or personal service of the information on the form approved by the agency. The response shall contain all of the following information:

(a) A summary statement of pertinent facts if the employer or employing unit questions whether the individual should receive benefits or whether the employer's account should be charged for benefits.

(b) New, additional, or corrected information concerning the individual's wages or the reason for the individual's separation from employment as may be pertinent to increase benefits or benefit charges, decrease benefits or benefit charges, or render the individual disqualified or ineligible to receive benefits.

(3) If an individual files an additional or reopened claim, then the agency shall notify the separating employer or employing unit and the base period employers unless the agency receives a written request from the separating employing unit or from a base period employer that the notice not be provided. If the employer or employing unit has new, additional, or corrected information to provide the agency, or seeks to challenge the individual's eligibility or qualification for benefits or charges to the employer's account, then the information

shall be received by the agency in writing or by any other means approved by the agency within 10 calendar days from the date of mailing or personal service of the notice.

(4) An employer or employing unit shall notify the agency, in writing or by any other means approved by the agency, in the time period provided in subrules (2) or (3) of this rule, of the possible disqualification or ineligibility of a claimant, or of possible improper charges to the employer's account. The notice shall contain all of the following information:

(a) The individual's full name and social security number.

(b) The employer's or employing unit's name, registration number, if one has been assigned by the agency, and the address to which any monetary determination or nonmonetary determination shall be directed.

(c) The last day worked by the individual.

(d) A statement of the circumstances on which the employer or employing unit relies in questioning whether the individual is entitled to benefits.

(5) If an employer or employing unit fails to comply with the requirements of subrule (2) or (3) of this rule within the 10-day period provided, then the agency shall pay benefits in accordance with the monetary determination.

(6) If an employer or employing unit provides new, additional, or corrected separation information beyond the time period specified in subrule (2) or (3) of this rule, then the response shall not form the basis of a determination or redetermination of disqualification or ineligibility for any claim period for which benefits have been paid before the receipt by the agency of the response, except in any of the following circumstances:

(a) A showing that the employing unit could not reasonably comply with the due dates of subrule (2) or (3) of this rule.

(b) A showing of a false statement, misrepresentation, or nondisclosure of a material fact on the part of the claimant.

(c) A showing of an agency administrative clerical error. Separation information received by the agency from the employer more than 1 year after the mail date of the monetary determination shall not be considered by the agency. If new, additional, or corrected wage information is received by the agency from the employer after the 10-day period specified in subrule (2) or (3) of this rule, then the information shall not result in a decrease in benefit amount or benefit charge for any claim period for which benefits have been paid before the receipt by the agency of the response. Information received after the 10-day period shall, however, be used to increase a benefit amount or benefit charge for any claim period for which benefits have been paid before the receipt by the agency of the response.

(7) If the individual disagrees with the wage information contained in the agency's wage database, then the individual's statement shall be taken on a form designed for a statement or in any other manner approved by the agency and shall be provided to the employer by means of the monetary determination.

(8) If a notice is submitted by an employing unit indicating the sole reason for ineligibility to be leave of absence or vacation with pay and with respect to which period of time no claim was filed, then the agency shall, upon receipt and recording of appropriate evidence of reemployment by the employing unit granting the leave or vacation with pay, disregard the form without notification to the interested parties and without the necessity of making a determination with respect to the period of time during which the claimant was on a leave of absence.

(9) To provide new, additional, or corrected information to the agency within the time period specified, the employer may deliver the information to the agency at a location approved by the agency by computerized data exchange or other electronic or non-electronic means approved by the agency.

History: 1979 AC; 1980 AAACS; 1986 AACS; 1998-2000 ACS; 2001 AACS.

R 421.208 Registering for work.

Rule 208. (1) To comply with the registration requirements of section 28(1)(a) of 1936 PA 1, MCL 421.28(1)(a), a claimant shall register for work as instructed by the agency and fully and accurately supply information as to the claimant's past work experience and training and other personal data as may be necessary to assure that the claimant is considered for referral to any available suitable work.

(2) If a claimant indicates on the application for benefits that he or she expects to return to his or her separating or previous employer within 120 days, and if the agency finds the claimant to be job-attached or finds that the claimant is not an appropriate candidate for full employment services, then the claimant's application for benefits shall be used as the claimant's registration for work.

(3) If, in registering for work under subrule (1) of this rule, a claimant indicates that he or she is unwilling to be referred to or notified of work that the claimant is qualified to perform because of past experience or training and that is generally similar to work for which the claimant has received wages, then the agency shall make a determination as to the claimant's availability for suitable work.

(4) A laid off individual is not required to register for work if registering is waived by the agency upon receipt of written notification by the individual's employer that the layoff is temporary and that work is expected to be available within 45 calendar days following the last day the individual worked. A waiver is effective if the notification from the employer has been received by the agency before the individual has certified for his or her first compensable week following the layoff.

(5) An individual who is required to register for work to be eligible for unemployment benefits and who, with good cause, fails to do so, shall not be ineligible for benefits for the weeks for which the individual failed to register. "Good cause" for failure to register shall include, but not be limited to, either of the following:

(a) Misinformation provided by the agency or failure to provide access to the means of registration by the agency or designated entity.

(b) A reason described in rule R 421.210(2) of the Michigan Administrative Code.

History: 1979 AC; 1980 AACS; 1998-2000 AACS; 2001 AACS.

R 421.209 Effect of religious convictions on Sabbath day work.

Rule 209. An individual shall not be deemed unavailable for work solely because, due to the precepts of his or her religion, the individual limits himself or herself to jobs not requiring work on his or her Sabbath. An individual who refuses to work on the Sabbath designated by his or her religion, or who is discharged from work or voluntarily leaves work, solely because of conscientious observance of the Sabbath as a matter of religious conviction shall not, for that reason, be disqualified from receiving unemployment benefits.

History: 1979 AC; 1986 AACS.

R 421.210 Unemployment insurance benefit filing requirements; definitions.

Rule 210. (1) An individual shall receive benefits for any week of unemployment for which the individual filed a claim and reported in accordance with this rule and with the direction of the agency and for which the individual is otherwise eligible and qualified for benefits. In the case of an employer whose workers have filed either 1,000 or more new claims or additional claims, or both, in each of the previous 3 calendar years, the employer shall file claims on behalf of the workers, in a manner prescribed by the agency.

(2) As used in this rule:

(a) "Additional claim" means a claim filed by an individual to reestablish eligibility for benefits after an interruption in the claim series during an existing benefit year caused by a period of employment.

(b) "Claim series" means an uninterrupted period of weeks for which an individual claims benefits.

(c) "Continued claim" means a report filed by an individual who has filed a new, additional, or reopened claim and who is certifying as to eligibility for benefits for 1 or more weeks of unemployment.

(d) "Day of work" means a calendar day or portion of a calendar day on which an individual performed services for an employing unit under a contract of hire, including a calendar day or portion of a calendar day for which an individual received, or is entitled to receive, call-in pay. If an individual reports for work on a day on which the individual has been scheduled to work, but does not work because work is not available, then that day is considered a "day of work".

(e) "Good cause for late filing of a new, additional, or reopened claim" and "good cause for late reporting to file a continued claim" means that there is a justifiable reason, determined in accordance with a standard of conduct expected of an individual acting as a reasonable person in the light of all the circumstances, that prevented a timely filing or reporting to file as required by this rule. Examples of justifiable reasons that the agency may consider as constituting good cause include any of the following:

(i) Acts of God.

(ii) Working or reliance on a promise of work that did not materialize.

(iii) Closing of agency offices, or the failure of the agency's telephonic or electronic equipment, during scheduled hours of operation.

(iv) Delay or interruption in the delivery of mail or the delay or interruption of information by telephonic or other means by a business or governmental agency entrusted with the delivery of mail or of messages by telephonic or other means.

(v) Personal physical incapacity or the physical incapacity or death of a relative or ward of either the individual or the individual's spouse or of any person living in the same household as the individual claiming benefits.

(vi) Attendance at a funeral.

(vii) Incarceration.

(viii) Jury duty.

(f) "New claim" means a claim filed by an individual to establish eligibility for a new benefit year.

(g) "Reopened claim" means a claim filed by an individual to reestablish eligibility for benefits after an interruption in the claim series during an existing benefit year for a reason other than employment that is caused by a period of nonreporting.

(h) "Week of unemployment" means a week during which an individual is unemployed within the meaning of section 48 of 1936 PA 1, MCL 421.48.

(3) An individual shall file a new, additional, or reopened claim or shall report to file a continued claim as directed by the agency.

(4) To be filed on time and effective as of the beginning of the individual's first week of unemployment, a new or additional claim shall be received by the agency, in a manner prescribed by the agency, not later than the Friday after the end of the week containing the individual's last day of work. A reopened claim is effective as of the beginning of the week in which it is received by the agency.

(5) To be filed on time and effective for each week for which the individual is reporting to file, a continued claim shall be received by the agency, in a manner prescribed by the agency, not later than the Friday after the end of the last week of the period for which the claimant is instructed to report and has continued to report in a claim series. If an individual does not file a continued claim in a timely manner in accordance with this subrule, and if the filing is untimely without good cause, then the claim filed by the individual is a reopened claim.

(6) If an individual does not file a new, additional, or reopened claim as prescribed in subrules (4) and (5) of this rule, but files the new, additional, or reopened claim not later than the fourteenth calendar day after the time limits prescribed in subrules (4) and (5) of this rule, then the new, additional, or reopened claim is considered filed on time if the claimant has good cause for the lateness of the filing. If the claimant does not have good cause for the lateness of the filing, then the new, additional, or reopened claim is effective beginning with the week in which it is filed.

(7) If an individual does not report to file a continued claim within the time limits prescribed in subrules (4) and (5) of this rule, but reports to file the continued claim not later than the fourteenth calendar day after the time limits prescribed in subrules (4) and (5) of this rule, then the individual is considered to have reported on time to file the continued claim if the individual has good cause for the lateness of the reporting to file the continued claim. If the individual does not have good cause for the lateness of the reporting to file the continued claim, then the reporting to file the continued claim is a reopened claim.

(8) If an individual files a new, additional, or reopened claim or reports to file a continued claim by mail, then the claim or report is considered received by the agency as of the date the mail is received by the agency.

(9) If an individual files a new, additional, or reopened claim or reports to file a continued claim by deposit in a designated agency drop box, then it is presumed that the claim was received by the agency on the previous business day if gathered in the first retrieval of the day if this presumption is required for the new, additional, or reopened claim to be considered filed on time or the continued claim to be considered a timely report.

(10) If the claimant is unable to file a claim in a timely manner because the agency's services are unavailable, then the claim is considered filed on time if it is received by the agency on the next workday.

History: 1979 AC; 1980 AACS; 1996 AACS; 1998-2000 AACS; 2001 AACS; 2002 AACS.

R 421.211 Benefit year beginning date.

Rule 211. (1) The benefit year for an individual who does not have a benefit year established and who meets the requirements of section 46 of the act shall begin with the beginning of the week containing the effective date of the new claim as determined pursuant to the provisions of R 421.210.

(2) An individual who has established a benefit year, but has not received a benefit check for a compensable period during such benefit year, may request a redetermination of benefit rights and cancellation of the

established benefit year and may file a new claim to establish a new benefit year, the beginning date of which shall be determined pursuant to subrule (1) of this rule.

History: 1979 AC; 1980 AACS.

R 421.212 Leaving an employer in response to a recall by a former employer or to accept full-time work with another employer.

Rule 212. (1) If an individual who is currently employed at the time of accepting a recall to work for a former employer or accepting permanent full-time work with another employer continues to work concurrently with both employers for a reasonable length of time, not to exceed 10 working days, then wages earned with the employer for whom the individual was working at the time of recall or acceptance of other work are subject to transfer to the recalling or new employer under section 29(5) of the act.

(2) Wages transferred to a recalling employer or an employer with whom an individual has accepted work and performed services under section 29(5) of the act are subject to reduction under section 29(4) of the act in the event of a subsequent disqualifying act with the recalling employer or employer with whom an individual has accepted work.

(3) Section 29(5) of the act shall be applicable in situations where it is necessary for an individual to leave his current work as a condition of referral through a union hiring hall, if the individual has received an assurance from an authorized official of the union hiring hall that there is permanent full-time work available for that individual with a specific employer and the individual performs services for the new employer within 5 calendar days of the day of separation from the former employer.

History: 1979 AC; 1980 AACS.

R 421.215 Rescinded.

History: 1979 AC; 1980 AACS.

R 421.216 Waiver of seeking work.

Rule 216. (1) A laid off individual need not seek work if, under section 28(1)(a) of the act, this requirement is waived by the agency upon written notification by the individual's employer that the layoff is temporary and that work is expected to be available within 45 calendar days following the last day the individual worked. A waiver is effective if the agency receives notification from the employer before the individual is certified for his or her first compensable week following the layoff.

(2) The agency is authorized, under section 28(1)(a) of the act, to waive the seeking work requirement where the agency finds that suitable work is not available. Unless the agency determines that suitable work is available for an individual, suitable work will be presumed unavailable if the total unemployment rate for the state equals or exceeds 8.5%. In instances where the seeking work requirement is waived under section 28(1)(a) of the act, the individual shall be registered for work and shall not be in a period of disqualification.

(3) The agency may, under section 28(1)(a) of the act, waive the seeking work requirement if an individual is on a short-term layoff, as used in this rule, with a definite return-to-work date which is not later than 15 consecutive calendar days beginning with the first day of scheduled unemployment resulting from the layoff, and if the seeking work requirement is not waived for the individual under section 28(1)(a) of the act. The waiver under this subrule shall be based on the presumption that suitable work is not available for that individual. The presumption is based on the recognition that an individual on such a short-term layoff, as that term is used in this rule, is job-attached and is not likely to be hired by another employer for a short period. The agency shall verify, by telephone or written communication with the employer, that the layoff meets the criteria of this rule. The agency shall record the verification to include the return to work date and the name and title of the employer's representative verifying the date submitted. If the agency is unable to obtain confirmation from the employer at the time the claim is filed, then the determination as to whether the seeking work requirement is subject to waiver under this subrule shall be based on the evidence presented by the claimant. The application of a waiver in accordance with this subrule shall not extend beyond the above 15 consecutive calendar day period or the date the individual returns to work, whichever occurs first.

(4) The agency's authorization of the waiver of seeking work under subrules (1), (2), and (3) of this rule shall not relieve the unemployed individual claiming benefits of continuing to file claims pursuant to R 421.210 and being able and available to perform suitable full-time work.

History: 1979 AC; 1980 AACS; 1986 AACS; 2001 AACS; 2002 AACS.

R 421.243 Payment of benefits to interstate claimants.

Rule 243. (1) This rule shall govern the Michigan employment security commission in its administrative cooperation with other states and the Dominion of Canada for the payment of benefits to interstate claimants.

(2) As used in this rule, unless the context clearly requires otherwise:

(a) "Agent state" means any state in which an individual files a claim for benefits against another state or states.

(b) "Benefits" means the compensation payable to an individual with respect to his unemployment under the unemployment insurance law of any state.

(c) "Interstate benefit payment plan" means the plan under which benefits are payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

(d) "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of 1 or more liable states through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state, unless the Michigan employment security commission finds that this exclusion would create undue hardship on such claimants in specified areas.

(e) "Liable state" means any state or states against which an individual files a claim for benefits through another state.

(f) "State" includes any state as defined in the Michigan employment security act.

(g) "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

(3) With respect to the benefit rights of interstate claimants, all of the following shall apply:

(a) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(b) For the purposes of this rule, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable or whenever benefits are affected by the application of a seasonal restriction.

(c) The benefit rights of interstate claimants established by this rule shall apply only with respect to new claims (notices of unemployment) filed on or after the effective date of this rule.

(4) Michigan, as agent state, shall do all of the following:

(a) Shall not refuse to take an interstate claim.

(b) Shall take claims for interstate claimants on uniform interstate forms and in accordance with uniform procedures developed pursuant to the interstate benefit payment plan.

(c) Shall take claims for interstate claimants in conformity with the requirements of subrule (3) of this rule.

(d) Shall take claims for interstate claimants pursuant to the reporting requirements and type of week in use in Michigan.

(e) Shall register for work an interstate claimant pursuant to Michigan registration requirements and shall report such registration to the liable state.

(f) Shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts related to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the state of Michigan.

(g) Shall limit its responsibility and authority in connection with the determination of interstate claims to investigation and reporting of relevant facts.

(h) Shall afford all reasonable cooperation in the filing of appeals, taking of evidence, and the holding of hearings in connection with appealed interstate claims.

(5) Michigan, as liable state, shall do all of the following:

(a) Shall accept interstate claims when filed on uniform interstate claim forms and in accordance with uniform procedures adopted pursuant to the interstate benefit payment plan.

(b) Shall accept interstate claims as meeting Michigan's reporting requirements when filed pursuant to the reporting requirements of an agent state.

(c) Shall accept interstate claims when filed in conformity with the requirements of subrule (3) of this rule.

(d) Shall deem the registration for work of any interstate claimant as meeting Michigan registration requirements when such registration has been made through a public employment office in an agent state when and as required by the law, rules, and the procedures of the agent state.

(e) Shall accept interstate claims filed in accordance with the type of week in use in the agent state and shall make required adjustments to fit such claims to the type of week used in Michigan on the basis of consecutive claims filed.

(f) Shall determine whether an interstate claimant filing against Michigan is eligible and qualified under the provisions of the Michigan act.

(g) Shall accept an appeal of an interstate claimant. However, with respect to the time limits imposed by the Michigan act upon the filing of an appeal in connection with a disputed claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to Michigan on the date it is received by a qualified officer of an agent state. Further, when an appeal is filed by means of a written communication from a claimant directly to Michigan, the date such communication is received at any office of the commission shall be deemed to be the filing date.

(6) All of the provisions of this rule shall apply to the taking of claims in and for Canada pursuant to the provisions of the agreement, as amended, between Canada and the United States of America respecting unemployment insurance.

History: 1979 AC; 1980 AACS.

R 421.251 Labor dispute.

Rule 251. (1) When an employer believes that the unemployment of any of its workers in Michigan is due to a labor dispute in any establishment operated by such employer within the United States, or is due to shutdown operations caused by such labor dispute, the employer shall file, within five business days from the time the unemployment begins, a written statement with the Michigan Employment Security Commission, 7310 Woodward Avenue, Detroit, Michigan 48202, or with any branch office of the commission, setting forth all of the following information:

(a) That there is unemployment in Michigan due to a labor dispute or to shutdown operations caused by such labor dispute.

(b) The location of the plant or plants and division or divisions operated by the employing unit within the United States in which the labor dispute or shutdown operations occurred which caused such unemployment.

(c) The location of any other plant or plants and division or divisions operated by the employing unit in the state of Michigan in which there is no labor dispute, but in which there is unemployment due to the labor dispute or to shutdown operations caused by such labor dispute.

(d) A statement of the principal issues involved. If any of the information specified in subdivisions (a) to (d) of this subrule is not available for inclusion in the written statement required within five business days, a supplemental statement incorporating such information shall be filed as soon as the information is available.

(2) To disqualify an individual for benefits because of being directly interested and consequently being directly involved in a labor dispute, the commission must find that the resolution of such labor dispute may reasonably be expected to affect the individual's wages, hours, or other conditions of employment. In the absence of substantial and preponderating evidence to the contrary, a "reasonable expectation" of an effect shall be deemed to exist if any 1 of the following 3 circumstances is found to be applicable:

(a) If it is established that there is, in the particular establishment or employing unit, a practice or custom or contractual obligation to extend, within a reasonable period, to members of the individual's grade or class of workers, in the establishment in which the individual is or was last employed, changes in terms and conditions of employment which are substantially similar or related to some or all of the changes in terms and conditions of employment which are made for the workers among whom the labor dispute exists which has caused the individual's total or partial unemployment. For the purpose of determining the "practice or custom" of an establishment or employing unit, as this phrase is used in this subdivision, the collective bargaining history of the employing unit shall be examined for the period of existence of the employing unit, but for not more than 5 years preceding the inception of the current labor dispute. A "practice or custom" shall be deemed to exist if, and only if, the employing unit has always, during the period examined, extended changes in terms and

conditions of employment to members of the individual's grade or class of workers which were substantially similar or related to some or all of the changes in terms and conditions of employment which were made for the workers among whom the current labor dispute exists or existed. The phrase "extend within a reasonable period," as used in this subdivision, means that the establishment or employing unit has, by past practice, custom, or contract, actually effectuated substantially similar or related changes for members of the individual's grade or class of workers within 90 days after changes were made for the workers among whom there exists or existed the labor dispute which caused the unemployment in question. The requirement in this subdivision that the changes in terms and conditions shall have been substantially similar or related does not mean that the changes extended each time, during the period examined, to members of the individual's grade or class of workers shall have been identical.

(b) If it is established that 1 of the issues in or purposes of such labor dispute is to obtain a change in the terms and conditions of employment for members of the individual's grade or class of workers in the establishment in which the individual is or was last employed.

(c) If such labor dispute exists at a time when the collective bargaining agreement, which covers the individual's grade or class of workers in the establishment in which the individual is or was last employed and the workers in another establishment of the same employing unit who are actively participating in such labor dispute, has expired, has been opened by mutual consent, or may, by its terms, be modified, supplemented, or replaced. Notwithstanding the applicability of subdivision (a), (b), or (c) of this subrule, an individual shall not be deemed to be directly interested in a labor dispute if there is substantial and preponderating evidence which indicates that there is no reasonable expectation that the individual's wages, hours, or other conditions of employment may be affected by the resolution of the current labor dispute.

(3) The term "establishment," as applied to an employing unit engaged in construction activities at different locations, shall be construed, for the purpose of adjudicating building trade labor disputes, as follows:

(a) Each separate project of such employing unit, whether a general contractor or subcontractor, shall be considered a separate "establishment," within the meaning of this term as used in section 29(8) of the act, if the project is a separate activity insofar as the employees are concerned for the purpose of employment. In determining which construction activities of an employing unit shall constitute a separate project and consequently a separate establishment, the following factors, among others, shall be considered:

(i) Whether the employees for each project were hired for that job and are to be terminated upon its completion.

(ii) Whether the employees of an employing unit operating different projects worked primarily on 1 project rather than interchangeably on other projects.

(iii) Whether separate building schedules were followed.

(iv) Whether construction accounting procedures were such that contracts were bid on for each project on the basis, for example, of separate cost accounting, separate tax computations, or separate payrolls.

(b) Each employing unit engaged on a project, such as general contractor or subcontractor, is considered to be a separate establishment.

(4) For the purpose of determining whether the payment of union dues shall be deemed financing under section 29(8)(a)(ii) of the act, all of the following provisions shall be applicable:

(a) The payment of regular union dues in amounts and for purposes established before any unemployment due to a labor dispute shall not be construed as financing, even if such dues are used for a strike fund or other financing of the labor dispute.

(b) The payment of regular union dues which are established or increased after there is unemployment due to such labor dispute and which are used for the purpose of financing the current labor dispute shall be construed as financing the labor dispute.

(c) The payment of a special assessment into a fund established at any time and used for the purpose of financing the current labor dispute shall be construed as financing a labor dispute.

(d) The term "special assessment," for the purpose of this rule, means a payment made by a union member to his or her union to establish a fund for a specific purpose other than the payment of the ordinary administrative expenses of the union.

(e) The term "regular union dues," for the purpose of this rule and section 29(8)(a)(ii) of the act, means any payment, other than a special assessment, made by a union member on a continuing basis to his or her union.

History: 1979 AC; 1980 AACS; 1986 AACS.

R 421.254 Value of lost remuneration.

Rule 254. If the value of lost remuneration is unknown, it shall be computed in the following manner:

(a) The total earnings of the worker with the employer (or employing unit) during the calendar week covered by the claim, exclusive of earnings for overtime work, shall be divided by the total number of hours, exclusive of overtime hours, worked during the calendar week. The value of the lost remuneration shall be the result obtained by multiplying the hourly rate so arrived at by the number of hours lost during such calendar week for any reason other than the failure of the employer to furnish full-time employment.

(b) In the absence of any circumstances to the contrary, a work week of 40 hours shall be deemed to be a normal week for the purposes of this rule.

History: 1979 AC.

R 421.269 Method of requesting reconsideration or redetermination.

Rule 269. A request for reconsideration or redetermination of a determination shall be either in writing or in another form approved by the agency. The request is considered filed upon receipt by the agency, using a delivery method approved by the agency and detailed in the document being protested or appealed.

History: 2001 AACS.

R 421.270 Good cause for reconsideration and reopening.

Rule 270. (1) In determining if good cause exists under sections 32a, 33, and 34 of the act, after the 30-day protest or appeal period has expired, for reconsideration of any prior determination or redetermination or for reopening and review, good cause shall include, but not limited to, any of the following situations:

(a) If an interested party has newly discovered material facts which, through no fault of the party, were not available to the party at the time of the determination, redetermination, order, or decision. However, a request for reconsideration of a determination or redetermination or for reopening a decision or order made after the expiration of the statutory 30-day period solely for the purpose of evading or avoiding such statutory period is not for good cause.

(b) If the agency has additional or corrected information.

(c) If an administrative clerical error is discovered in connection with a determination, redetermination, order, or decision.

(d) If an interested party has a legitimate inability to act sooner.

(e) If an interested party fails to receive a reasonable and timely notice, order, or decision.

(f) If an interested party is prevented from acting sooner due to an untimely delivery of a protest, appeal, or agency document by a business or governmental agency entrusted with delivery of mail.

(g) If an interested party has been misled by incorrect information from the agency, the office of appeals, or the board of review.

(2) If, before the start of an initial hearing before the office of appeals, the agency receives new, additional, or corrected information or discovers an administrative clerical error in the claim, the matter may be returned to the agency for reconsideration and redetermination.

History: 1979 AC; 1980 AACS; 1986 AACS; 2001 AACS.

R 421.301 Rescinded.

History: 1979 AC; 1980 AACS.

R 421.302 Vacation pay.

Rule 302. When an employer is entitled to designate, pursuant to section 48 of the Michigan employment security act, vacation pay to a period of layoff, forced vacation, or other separation, the employer shall either deliver to the affected employee and to the employee's bargaining representative, if any, on or before the employee's last day of work, written notice of such designation stating that such designation may render the employee ineligible for unemployment benefits during the designated period or shall post such notice

conspicuously in easily accessible places frequented by employees and deliver a copy thereof to the employee's bargaining representative, if any. However, as to an individual laid off prior to the time of designation, posting of the notice shall not substitute for the requirement of delivery of the notice to such individual by mail.

History: 1980 AACS.

R 421.601 Newly liable nonprofit employer electing reimbursement payments; security.

Rule 1. (1) A newly liable nonprofit employer that elects, on and after December 21, 1989, to make reimbursement payments pursuant to the provisions of section 13a of Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being S421.13a of the Michigan Compiled Laws, shall provide the required security for the first-year security that is required pursuant to the provisions of section 13a(4) of Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being S421.13a(4) of the Michigan Compiled Laws, and for the 2 consecutive succeeding calendar years. Thereafter, the security shall be renewed for 2-year periods for as long as the nonprofit organization retains reimbursement status. A nonprofit employer that seeks to renew a security and thereby retain reimbursement status shall do so by November 30 of the year before the year for which the security is required.

(2) The security shall be in the form of a surety bond, irrevocable letter of credit, or other banking device which is acceptable to the employment security commission and which provides for payment to the commission, on demand, of an amount equal to the security required to be posted. The required security may be posted by a third-party guarantor.

(3) This rule shall not apply to a newly liable nonprofit employer that is expected to pay less than $100,000.00 or less in total wages per calendar year. However, a nonprofit employer that elects reimbursement status on or after December 21, 1989, shall be required to provide security when payment of gross wages in a calendar year reaches exceeds $100,000.00. It is the employer's duty to notify the commission, within 60 days, that its payroll has reached exceeds $100,000.00 per year. The security shall be posted within 30 days of notice of such requirement by the commission.

(4) For newly liable employers, the amount of security that is required shall be 4.0% of the employer's estimated total annual wage payments, as determined by the commission. Employers that have a previous payroll history shall be required to file a security that is equal to 4.0% of the total annual wage payments for the 12-month period ended June 30 of the year before the year the security is required or 4.0% of the estimated total annual wage payments, whichever is greater.

History: 1992 AACS.

R 421.602 Nonprofit employer liable before December 21, 1989, electing reimbursement payments; security.

Rule 2. (1) A nonprofit employer that was liable before December 21, 1989, and that elects the reimbursement method of financing on or after December 21, 1989, shall be required to post a security for the year of election and the succeeding year. Thereafter, the security shall be renewed for 2-year periods. A nonprofit employer that seeks to renew a security and thereby retain reimbursement status by posting a security shall do so by November 30 of the year before the year for which the security is renewed.

(2) The security shall be in the form of a surety bond, irrevocable letter of credit, or other banking device which is acceptable to the commission and which provides for payment to the commission, on demand, of an amount equal to the security that is required to be posted. The required security may be posted by a third-party guarantor.

(3) This rule shall not apply to a nonprofit employer that is expected to have less than $100,000.00 or less per calendar year in total wage payments, as determined by the commission. However, a nonprofit employer that elects reimbursement status on or after December 21, 1989, shall be required to provide security when the payment of gross wages in a calendar year reaches exceeds $100,000.00. It is the employer's duty to notify the commission, within 60 days, that its payroll has reached exceeds $100,000.00 per year. The security shall be posted within 30 days of notice of such requirement by the commission.

(4) The amount of security that is required shall be 4.0% of the employer's estimated total annual wage payments, as determined by the commission. Employers that have a previous wage payment history shall be

required to file a security that is equal to 4.0% of the gross wages paid for the 12-month period ended June 30 of the year before the year the security is required or 4.0% of the estimated total annual wages, whichever is greater.

History: 1992 AACS.

R 421.603 Effect of delinquent payment of reimbursement charges.

Rule 3. (1) If a nonprofit employer, regardless of the size of payroll or the date of election to become reimbursing, that was exempted from a security requirement becomes delinquent in paying its reimbursement charges for any 2 consecutive calendar quarters, the commission shall, pursuant to the provisions of section 13d of Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being S421.13d of the Michigan Compiled Laws, require the employer to execute and file a surety bond, irrevocable letter of credit, or other banking device which is acceptable to the commission and which provides for payment to the commission, on demand, of an amount equal to the security that is required to be posted. This rule shall apply even if the reimbursement charges have been protested by the employer. The security requirement may be posted by a third-party guarantor.

(2) For the purpose of this rule, an employer shall be considered delinquent if a billed amount is not paid within 30 days of the due date of billing for benefit charges. If the billed amount due is for benefit charges that have been protested by an employer and are under appeal, the employer shall pay the benefit charges in a timely manner, under protest, to avoid the security requirement. If the employer has a delinquency that is more than the amount of the security required, the employer shall be required to pay the delinquency in full and post the security, even if the benefit charges have been protested and are under appeal, or the employer's status as a reimbursing employer shall be terminated for the next calendar year. The security shall be filed within 30 days of notice to the employer of the requirement to file a security and shall be posted for the remainder of any calendar year plus the 2 subsequent calendar years.

(3) The amount of security that is required shall be equal to 4.0% of the employer's total gross wage payments for the 12-month period ending on the most recent June 30 or 4.0% of the employer's anticipated gross wage payments for the current year, whichever is greater. If wage information is not available, the commission shall estimate the payroll based on the information available. The security, once filed, shall remain in effect for the remainder of the first year it is required plus the 2 consecutive succeeding calendar years, at which time it will be subject to renewal for additional 2-year periods at the commission's discretion. If the required renewal security is not provided by November 30 of the year before the year for which it is required, the employer's reimbursement status shall be terminated.

History: 1992 AACS.

R 421.604 Effect of failure to comply with rules.

Rule 4. Failure to comply with the security requirements of R 421.601 to R 421.603 shall result in the denial of election of reimbursement status or shall result in termination, by the commission, of the employer's existing reimbursement status.

History: 1992 AACS.

R 421.605 Effect of reimbursement payment delinquency.

Rule 5. If a reimbursing employer complies with the security requirement of R 421.601 to R 421.603, but is delinquent in making reimbursement payments for 2 consecutive quarters after the imposition of the security requirement, or if the delinquency is at any time more than the amount of security required, the commission shall terminate the employer's reimbursement status as of the beginning of the next calendar year. For the purpose of termination of reimbursing status, an employer shall be considered delinquent if a billed amount is not paid within 30 days of the due date of a charge or billing. If the billed amount due is for benefit charges that have been protested by an employer and are under appeal, the employer shall pay the benefit charges, under protest, to avoid termination as a reimbursing employer.

History: 1992 AACS.

R 421.606 Implementation of rules.

Rule 6. The director of the bureau of unemployment insurance of the employment security commission, or an individual designated by the director of the bureau of unemployment insurance, shall be responsible for implementing these rules.

History: 1992 AACS.