HONIGMAN ALERT

Labor and Employment Department January 10, 2012

Changes Signed into Law by Governor Snyder Revises Michigan's Employment Security Act and Worker's Disability Compensation Act

Unemployment Insurance

On December 19, 2011, Governor Rick Snyder signed into law legislation concerning the Michigan Employment Security Act, M.C.L. § 421.1 *et seq.* (MESA). The legislation, which is effective immediately, allowed Michigan to issue revenue bonds to repay its $3.2 billion in federal unemployment debt, which should result in a net decrease in an employer's unemployment insurance premiums.

The legislation also changes some of the eligibility factors for individuals to qualify for unemployment benefits. Workers are no longer eligible for unemployment benefits if they became unemployed as a result of negligently losing a requirement for the job, or are terminated after missing three consecutive days of work without informing their supervisor, **as long as such policies are communicated to the employee at the time of hire**. Because employers must prove employees were aware of the policies at the time of hire, employers should require new employees to sign written statements verifying their understanding of such policies. Honigman's Labor and Employment Law Department can assist by drafting these provisions.

The legislation also requires an unemployed worker take an available job if 50% of his or her benefit weeks have been paid, the job pays at least the area's prevailing wage and is at least 120% greater than the individual's weekly benefit amount, **even if the job is outside the individual's field of training**. The new law requires unemployed workers to file progress reports with the State demonstrating they are conducting a "systematic and sustained search for work." Additionally, the legislation attempts to clarify that a conviction of theft from an employer within two years of discharge disqualifies an individual from receiving unemployment benefits.

Additional changes to the MESA include shortening the experience window from five years to three years, and increasing the wage base that is taxed to employers. While the increase in the wage base may result in increases in payments by employers, such an increase could be offset by other cost-saving measures, such as the decrease in the experience window from five years to three years. Among other things, decreasing the experience window means that a large reduction in workforce will affect employer's experience rating for only three, and not five, years.

Worker's Compensation

On December 19, 2011, Governor Rick Snyder also signed into law a bill substantially revising Michigan's Worker's Disability Compensation Act, M.C.L. § 418.101, *et seq.* (WDCA). The bill takes immediate effect. In its fiscal analysis,

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the bill is described as "limit[ing] worker's compensation liability in certain ways for employers in Michigan," and "to the extent that the bill would result in fewer worker's compensation claims, [employers] could save an indeterminate amount on those costs." The House Bill and its proposed changes were part of an earlier Labor Alert (click here to view alert).

The new law makes the following notable changes to the WDCA:

- To be found to be disabled, an employee has to show a limitation in wage earning capacity (*e.g.*, to be found totally disabled, an employee must be unable to earn in any jobs paying the maximum wages in work suitable to his or her qualifications and training, including work that could be performed using the employee's transferable work skills);
- Pre-existing conditions are compensable only where the alleged workplace injury or disease causes, contributes or aggravates the pre-existing condition "in a manner that is medically distinguishable";
- Employees have an "affirmative duty" to find other work, and a magistrate may consider whether such efforts were done in "good faith";
- To establish a disability and wage loss, an employee must disclose his or her qualifications and training, provide evidence of jobs he or she is qualified and trained to perform in the same salary range as his or her prior job's maximum wage earning capacity, demonstrate the workplace injury or disease either causes him or her to be unable to perform these other jobs, or, if able to perform these other jobs, prove such jobs are unobtainable;
- Employers have the right to conduct discovery to present a defense and rebut any of the employee's showings listed above;
- Other benefits, such as Social Security, offset the amount of disability benefits payable. The law now also offsets for pension and retirement benefits where the employee is **eligible** for such benefits, not only when he or she elects to receive those benefits;
- Employers now have 28 days, instead of the previous 10 days, to require an employee to see a medical physician of the employer's choosing before the employee may choose a different physician;
- Degenerative arthritis is now considered a "condition of the aging process," along with cardiovascular and heart conditions, and only is compensable if tied to a workplace injury or disease that causes, contributes or aggravates this condition; and
- The presumption that a wife is "wholly dependent" on a disabled employee-husband is eliminated.

If you or your company have any questions regarding these changes in the law, or would like assistance drafting job requirements or attendance policies, please contact any of our labor attorneys listed on this alert.