



Problematic Legislative Proposals for Small Business

House Bill 4390 – Independent Contractor Limitations

In perhaps to most damaging bill in recent memory to small businesses, this legislation would limit the use of independent contractors (most are small businesses) to the following narrow circumstances:

- The individual is free from control and direction of the payer in connection with the performance of the work, both under a contract and in fact.
- The individual performs work that is outside the usual course of the payer's business.
- The individual is customarily engaged in an independently established trade, occupation, or business of the same work performed by the individual for the payer.

This legislation would harm small businesses in two main, over-arching ways:

First, small businesses operating as independent contractors would be severely restricted in the type of business that they could receive from other businesses under the limitations. Their customers could not use independent contractors unless the work is outside the “usual course” of the payer’s business. Furthermore, it is not feasible that the work of an independent contractor be “free from direction of the payer in connection with the performance of the work.” This broad language would go way beyond current standards that speak to the times when work is completed.

Second, this legislation would severely restrict when a small business could use independent contractors to grow. Smaller enterprises do not often grow in full-time employee increments. Fractional services from independent contractors are an essential part of the small business ecosystem.

Additional troubling aspects of this legislation include the following:

- It is stated explicitly that a person who is accused of violating the restrictions in this legislation would have the burden of proving they are innocent.
- Violations of this act carry a \$10,000 penalty, half of which is awarded to the person who makes the accusation.

House Bill 4034 - “Temporary Laborer Rights Act”

This proposed law creates dozens of new reporting requirements, restrictions and record keeping rules for businesses operating as temporary employment agencies. Additionally, the act limits placements in what temporary employment agencies can fill:

“A temporary labor service agency shall not provide a temporary laborer to a job site where a strike, lockout, or other 18 labor dispute exists.”

House Bill 4035 - “Predictive Scheduling”

Legislation that would require retail, hospitality, and food service establishments with 100 or more employees to provide a schedule 14 days in advance, including on-call shifts. The structure of this bill limits “at-will” employment options with respect to scheduling issues. The businesses impacted are defined as:

"Employer" means a person, including, but not limited to, a chain or integrated enterprise, that employs 100 or more individuals worldwide and is a retail establishment, hospitality establishment, or a food services establishment.

Under this proposal, employers would create a voluntary list of employees willing to work additional hours. For everyone else, if an employer deviates from the schedule without a 14-day notice, employers must provide for the following anytime an “employer initiated” change is made to the work schedule:

- An employee may decline any work shifts not included in the employee's written work schedule and employer may not take any disciplinary or retaliatory action in connection with employee unavailability.
- Time and a half pay requirements for work shifts included in “rest periods” created by the legislation, which dictate pay practices when shifts are too close together, including “on call” shifts.
- Employers must provide 1 hour of pay for every 30 minutes added to a shift (in other words, double the rate of pay), including when a shift is changed – even without a loss or addition to the total number of hours.
- In cases where fewer hours are needed from the employee than what were originally scheduled, employers must pay the employee for the original hours scheduled for any time that hours are subtracted from a shift, a shift is cancelled, the start or end time is changed, and even if an “on call” shift is changed.

Senate Bill 142 - Amendment to the 1978 “Bullard-Plawecki Employee Right to Know Act”

This act requires that any business with more than 5 employees at any time during the calendar year maintain job descriptions for every position in the business including the following:

- Essential duties and responsibilities
- Skills, training, and effort required to do the job
- Salary

This information must be made available to any employee of the business AND to any applicant for employment.

Furthermore, the legislation prohibits an employer from changing a job description without the current employee reviewing and initialing the revised job description.

House Bill 4406 - Amendment to the "Michigan Payment of Wages and Fringe Benefits Act"

This act would require any employer with one more more employees to provide wage information for similarly situated employees covering a period of up to three years. “Similarly situated employees” are “those within the same job classification as the employee requesting the information or whose duties are comparable in skill, effort, responsibility, working conditions, and training to those of the requesting employee.”

Further, the bill would prohibit as a condition of employment that the employee sign any waiver or other document that restricts or denies an employee the right to disclose their wages or prohibits discharge, discipline, or any type of discrimination against those who disclose such information.

SB 40 – Extension of Unemployment Benefits

This legislation extends unemployment benefits to 26 weeks from 20 weeks. The context of this proposal is troubling given that the number of people in Michigan’s workforce is still lagging pre-pandemic levels, the labor force participation rates in our state is among the lowest in the United States, and there are 10 open positions for every 7 people looking for a job.