

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.

Senate Bills 332 & 333 – Mandatory Paid Leave Benefit (MI FLOC)

Senate Bills 332 and 333, known as the Michigan Family Leave Optimal Coverage Act (MI FLOC), would establish a new mandatory paid leave benefit through an insurance program co-funded by employers and employees. All employers employing 1 or more employees would be required to pay into this program, and all employees, including part-time employees, would be covered under benefits.

This bill would allow employees to take up to 15 weeks of paid leave per benefit year for various reasons, mostly coinciding with those covered under the federal Family Medical Leave Act. Employees taking advantage of this leave time can do so without exhausting their own PTO, sick leave, or vacation time. This bill would not apply to employers who offer equivalent or superior paid leave programs to their employees.

In addition to eligible medical needs, an employee can qualify for up to 15 weeks of paid leave in the event that their place of business is closed due to a public health emergency. Had this been law in 2020, any worker who was unable to work due to COVID-19 shutdowns would have been eligible for this paid leave benefit.

While many small business owners choose to offer paid leave benefits to their employees, forcing a one-size-fits-all policy on every business will harm small businesses. MI-FLOC would represent yet another costly benefit program where business owners are expected to foot the bill without any input or oversight over the management of the benefit levels or costs. This program makes it more costly to hire part-time employees and will reduce take-home wages for all employees.

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.

House Bills 4759-4761 – Carbon Free by 2035

House Bills 4759, 4760, and 4761 would establish new energy regulations and would

require Michigan to source 100% of its energy from carbon-free sources by the year 2035.

For business to flourish, energy must be affordable and reliable. These hopeful but impractical deadlines rely on yet to be invented technologies and will almost certainly lead to higher costs and lower reliability. Sustainable energy and a clean environment are important to the future of business in Michigan, but timelines and regulations must be realistic and affordable if Michigan small businesses are to be competitive. Michigan's major utility companies have already committed to achieving carbon-neutral status in the upcoming years as an achievable goal based on current capabilities. Mandating that Michigan's energy be sourced entirely from renewable sources by the year 2035 is not possible with existing technologies, unless there are significant compromises in cost and reliability.

A diverse mix of energy sources is required for an optimal combination of affordability and reliability, and a major part of that diverse mix is the presence of natural gas, which would be phased out by 2035 under this legislation. Natural gas is a clean and locally sourced form of energy compared to other fossil fuels, and it allows utilities to increase their renewable portfolio while utilizing natural gas as a reliable backup the sun isn't shining, or the wind isn't blowing. Relying solely on these renewable sources would not provide the reliability that entrepreneurs count on to keep their businesses operating smoothly.

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.

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

This act would require any employer with one or 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.

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 4237 – Employment Uncertainty Act

House Bill 4237 would repeal the Local Government Labor Regulatory Limitation Act and would allow Michigan's 1800+ local units of government to enact their own regulations governing employers' relationships with their employees. Current law sets employment policy at the state level and provides a consistent regulatory environment across Michigan for minimum wage, sick leave, safety, and other labor requirements. This law would open the door for local governments to set their own laws in these spaces and would put small business owners into a complex web of different regulations depending on what municipalities they fall under.

Small businesses benefit greatly from regulatory certainty and consistency, and this bill would introduce a substantial hurdle to those seeking to do business in the state of Michigan.

1. For small business owners, who seldom have the time or resources to closely track the ever-changing whims of local officials, this bill would destabilize and complicate the environment in which they do business.
2. For owners operating multiple locations in different municipalities, this bill would require them to remain compliant with a patchwork of different regulations depending on location.
3. It is unclear how this proposed legislation would apply to those who work remotely or split time between locations in different municipalities.

Moreover, passage of this bill would make some areas in our state “high-cost islands” where it is harder for small businesses to flourish. Small businesses operating on tight margins are those most impacted by mandatory increases in wage and benefit requirements. SBAM believes that conversations regarding acceptable wage and benefit options are conversations most appropriately held between employer and employee and this bill adds another voice into that conversation. Additionally, many small businesses owners do not have the opportunity to compare and shop different locations when choosing where to do business – they operate where they and their families live. Allowing municipalities to set laws in these areas would make small

businesses less competitive in their own communities.

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, which have the potential to severely hamper temporary labor service agencies. Temporary labor service agencies are regularly utilized by many small businesses to fill temporary roles or to occupy a position they are having trouble filling. In a time when businesses are struggling to fill vacancies, further restricting the staffing options available to small businesses is not good policy. This bill would also require businesses that utilize temporary laborers to provide “work verification forms” at the end of every day under threat of fine.

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 labor dispute exists.”

House Bill 4537 - A Ban on Noncompete Agreements

This proposed legislation amends the “Michigan Antitrust Reform Act” to prohibit an employer from entering a noncompete agreement with an employee. Noncompete agreements are vital tools used by some small businesses to protect intellectual property, customer relationships, and trade secrets. Passage of this bill would make small businesses more vulnerable to larger companies with more resources taking intellectual property and customer relationships from small businesses.