



Special Payments

(Vacation Pay, Holiday Pay, Severance Pay, Separation Pay, Wage Continuation Payment, Payment in Lieu of Notice, Bonus)

What the law says: This issue is covered by Sections 48(2), 27(c), and 50(c)(4) of the *Michigan Employment Security Act*, and the Unemployment Insurance Agency (UIA) Administrative Rule 302. The law says that if the unemployed worker is entitled to vacation pay, holiday pay, severance pay, or any of the other payments mentioned in the title of this Fact Sheet, these kinds of payments may be used to reduce a worker's unemployment benefits. However, to reduce an unemployed worker's unemployment benefits, the employer must "allocate" (assign) the vacation pay, holiday pay, severance pay, or any other payments mentioned, to a specific period, or the employment contract must do so. See the Fact Sheet "The Effect of Severance Pay on Unemployment Benefits" for more information about severance pay.

If an employer gives no notice to a worker before layoff, but gives the worker payment instead ("in lieu" of the notice), then that payment would reduce the worker's unemployment benefits.

A Supplemental Unemployment Benefit (SUB) payment by the employer will not be used to reduce unemployment benefits. However, a bonus, and a severance, separation, or wage continuation payment will be used to reduce unemployment benefits in the week paid, or over a series of weeks if so allocated by the employer. Severance, separation, and wage continuation payments, as well as holiday pay, vacation pay, bonuses and payments in lieu of notice, will also be used as qualifying wages in determining monetary eligibility for benefits.

What the Attorney General and the Courts have said: The Attorney General has said that if a worker receives a vacation payment but has the choice and does not choose to take a vacation, then the vacation pay will be considered a bonus. If the employee did not take vacation, but did not have the choice of receiving the vacation payment, then the vacation pay would reduce unemployment benefits if the employer allocates the pay to a week or weeks.

Courts have said that if a worker has the right to receive vacation pay, and the worker actually takes vacation time off of work, then unless otherwise specified by the contract the employer can assign the vacation pay to any future period of time. However, the employer must notify the worker in writing, and the worker's union representative, if any, of the designation.

Examples: If a worker becomes entitled to three weeks of vacation pay on his or her anniversary date on March 1, the worker does not have the option of receiving the payment without taking vacation, and the employer has a plant shutdown scheduled for three weeks in July, the employer can designate the vacation pay to the period in July (unless the contract specifies otherwise), regardless of when the vacation payment is actually paid to the worker (unless the contract specifies otherwise). However, the written notice required under Administrative Rule 302 must be given in advance of the plant shutdown.

The designation in this way will likely prevent unemployment benefits from being payable to the worker for the period of the plant shutdown.

Proof at the Hearing: The employer has the burden to prove that a particular kind of special payment was made, and that the payment meets the requirements of the law and the Administrative Rule, in order to reduce unemployment benefits.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.