

**HOT ISSUES AND
STRATEGIES TO MANAGE
UIA TAX LIABILITY**

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Determining the Tax Rate for New Employers

- The tax rate for all new employers, except certain construction companies involved in large projects, is 2.7%. In 2013, it can reach as high as 15.46% percent.
- That rate is paid on the first \$9,500.00 of wages during the calendar year for each employee.

Determining the Tax Rate for Existing Employers

- There are three separate components that determine a fully experienced employer's tax rate. (A fully experienced employer is an employer who is in its fifth year or more of business.)
 - The Chargeable Benefit Component (“CBC”) is made up of the total unemployment charges against the employer for the most recent 36 months divided by 36 months of taxable payroll.
 - The Account Building Component (“ABC”) is a reserve account for possible payment of future benefits. The amount required in this component is based on the payroll for the most recent year.
 - The Non-Chargeable Benefits Component (“NBC”) is used to pay benefits that cannot be charged to a specific employer's account.

Determining the Tax Rate for Existing Employers

- All of these components are taken into consideration when determining an employer's tax rate. The maximum computed tax rate for 2013 for a fully experienced employer is 10.3%. The lowest computed tax rate is .06%. This does not include the obligation assessment and/or any penalties for missing reports which could add up to another 3%.

Potential Liability

1. Starting in January 2012, Michigan was first State in the country to cut unemployment benefits from 26 weeks to 20 weeks.
2. This change benefits Michigan employers by lowering the unemployment taxes they could be required to pay from a reserve account by over \$2,000.00 per employee.
3. As a basic rule for calculating unemployment benefits: (1) the Unemployment Insurance Agency (“UIA”) multiplies the highest amount of wages paid in any base period quarter by 4.1 percent; (2) For each dependent claimed, the UIA adds \$6.00 per dependent up to five dependents; (3) The weekly benefit amount is capped at \$362.00 per week. **Therefore, up to \$7,240 may be charged from an employer’s reserve account. \$362.00 * 20 weeks.**

Potential Liability

4. To determine how many weeks are available, the UIA multiplies the total base period wages by 43% and then divides by the weekly benefit amount.
5. The weekly benefit amount is cannot be less than 14 weeks or more than 20 weeks.

Potential Liability

– Maximum Charges to UIA Reserve Account.

- The maximum computed tax rate is 10.3% per \$9,500.00 of wages earned by each employee.
- Plus the obligation assessment that is up to 2.16% for the year 2013. In 2011, the State of Michigan issued bonds to repay federal loans for unemployment benefits and restore solvency to the Unemployment Trust Fund. These bonds will be paid through the obligation assessment. The bonds are scheduled to take 7 years to repay.
- In addition, the rate could be increased another 3% for missing reports/penalties

Potential Liability

- New employers pay \$256.50 per employee per year compared to a potential maximum of approximately \$1,468.70 per employee per year.
- EXAMPLE: If you have 1,000 employees, an employer with a high tax rate could be contributing over \$1,000,000 more than an employee with a low tax rate.
- $\$256.50 * 1000 = \$256,500$
- $\$1,468.70 * 1000 = \$1,468,700$

Charging an Employer's Account

1. If the separating employer paid wages of at least \$2,072.00, the separating employer is charged 100% of the first two weeks of benefit payments.
2. After the first two weeks of benefit payments, each employer that falls within the base period is responsible for its pro rata share of benefits.
3. If an employee left an employer to accept permanent full time work for another employer, that should be reported to the UIA because benefits charges can be transferred to the new employer.

Becoming a Successor Employer

1. Pursuant to MCL 421.41(2) an “Employer” is defined as:

- a. **Any individual, legal entity, or employing unit that acquires the organization, trade, or business, or 75% or more of the assets of another organization, trade, or business, which at the time of the acquisition was an employer subject to this act.**

Practice Tip 1: The Successorship Questionnaire and the Discontinuance or Transfer of Payroll or Assets in Whole or Part should be consistent.

Practice Tip 2: You can extend the 30 day Tax Rate Assessment Deadline by 30 days by making a written request to the UIA.

Becoming a Successor Employer

2. Pursuant to MCL 421.22, there will be a mandatory transfer of the transferor-employer's experience account to the transferee-employer if the commission deems a "transfer of business" has occurred. A transfer of business requires **both**:
 - a. **That the transferee is an employer subject to this act on the transfer date, has become subject to this act as of the transfer date under section 41(2)(a) or elects to become subject to this act as of the transfer date under section 25.**
 - b. **That the transferee has acquired and used the transferor's trade name or good will, or that the transferee has continued or within 12 months after the transfer resumed all or part of the business of the transferor either in the same establishment or elsewhere.**

Becoming a Successor Employer

3. When read in conjunction, the laws say that there will be a mandatory transfer of experience accounts and thus a “transfer of business” if:
 - a. The new owner was already an “employer” liable for the payment of unemployment taxes, becomes an “employer” on the date of the transfer, or elects to become liable; **AND**
 - b. The new owner has used the trade name or good will of the former business, **OR** has continue all or part of the business of the former owner; **AND**
 - c. There was a transfer of 75% or more of the assets of the former business to the new owner..

Business Transfer Notice Requirements

Disclosure of Liability Pursuant to MCL 421.15

1. Timing of Disclosure:

(g) **At least 2 calendar days . . . before the acceptance of an offer, the transferor . . . shall disclose to the transferee on a form provided by the unemployment agency, the amounts of the transferor's outstanding liability, and tax payments, tax rate, and cumulative benefit charges for the most recent 5 years**

2. Failure to Disclose:

Failure of the transferor to provide accurate information required by this subsection is a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than \$2,500, or both. In addition, the transferor . . . is liable to the transferee for any consequential damages resulting from the failure to comply with this subsection.

Business Transfer Notice

UIA 1027
(Rev. 5-11)



STATE OF MICHIGAN
LICENSING AND REGULATORY AFFAIRS
UNEMPLOYMENT INSURANCE AGENCY

3024 W. Grand Blvd., Suite 11-500 • Detroit, Michigan 48202
www.michigan.gov/uia

Authorized by MCL 421.1, et seq.
Completion of this form is mandatory.
See statement of penalties below.

Rectangular Slip

BUSINESS TRANSFEROR'S NOTICE TO TRANSFEREE OF UNEMPLOYMENT TAX LIABILITY AND RATE

REGARDLESS OF ANY AGREEMENT BETWEEN THE PARTIES TO THE TRANSFER, THE LAW PROVIDES THAT WHEN A BUSINESS IS SOLD (OR OTHERWISE TRANSFERRED), THE BUYER (OR OTHER TRANSFEREE) OF THE BUSINESS MAY BE LIABLE TO PAY THE UNPAID UNEMPLOYMENT TAXES AND INTEREST, AND MAY RECEIVE THE UNEMPLOYMENT TAX RATE, PENALTY, AND THE BENEFIT CHARGES OF THE SELLER (OR OTHER TRANSFEROR).*

THE LAW REQUIRES THE TRANSFEROR OF A BUSINESS, OR THE TRANSFEROR'S REAL ESTATE BROKER OR OTHER AGENT OR ATTORNEY, TO COMPLETE AND DELIVER THIS FORM TO THE TRANSFEREE OF THE BUSINESS. Section 15(g) of the Michigan Employment Security Act [MCL 421.15 (g); MSA 17.515(g)] requires the seller (or other transferor) of a business to complete this form and give an accurately and fully completed copy of this form to the buyer (or other transferee) of the business at least two calendar days (not including Saturday, Sunday, or legal holiday) before the transferor's acceptance of the transferee's offer to acquire the business. This obligation extends to the transferor's real estate broker, other agent, or attorney.

* In general, a person or business that acquires the organization, trade, business, or 75% or more of the assets of a business will be liable for unemployment taxes and interest due the Unemployment Insurance Agency from the seller (or other transferor) of the business at the time of the transfer, up to the reasonable value of the business minus any secured interest in assets.

1. Using a separate sheet(s) of paper or computer printout, list the names, addresses, and social security numbers of all your employees as of the date you or your agent or attorney signs this form. This will give the transferee an idea of the number of individuals for whom unemployment tax must be paid, and of the potential number

THE INFORMATION SUBMITTED MUST BE CURRENT INFORMATION. The information on this form must be current as of the date it is signed. However, this form may be given to a prospective transferee within 90 days of the date it was signed; the form must be delivered to the prospective transferee not less than two calendar days before the transferor's acceptance of the offer.

STATEMENT OF PENALTIES APPLICABLE FOR NON-COMPLIANCE WITH THE LAW. Failure of the business transferor or transferor's agent to provide correct information is a misdemeanor, punishable by up to 90 days imprisonment and/or fine of up to \$2,500.00. Civil liability for consecutive damages may also apply, as well as other remedies provided by law.

Circumventing Requirements to Make Unemployment Contributions MAY RESULT IN SEVERE LIABILITY

A. State Unemployment Tax Act (“SUTA”) Dumping

1. SUTA Dumping is defined as transferring a trade or business, or a party of a trade or business for the purpose of reducing the contribution rate or reimbursement payments in lieu of contributions required under the Michigan Employment Security Act. It is characterized by the abandonment of an employer’s unemployment insurance history.

Circumventing Requirements to Make Unemployment Contributions MAY RESULT IN SEVERE LIABILITY

2. A person that engages in SUTA Dumping is subject to personal liability.
 - a. A person who knowingly transfers a trade or business or a portion of the trade or business to another employer for the sole or primary purpose of reducing the contribution rate or reimbursement payments in lieu of contributions required under this act is liable. See MCL 421.22b;
 - b. An officer of agent an employing unit that conspires with one or more persons to take the above action in effort to reduce the employer's contribution rate is liable. See MCL 421.54b; or
 - c. A person that knowingly advises another person to transfer a trade or business to reduce the employer's contribution rate is liable. See MCL 421.22b(2)(c)(ii).

Circumventing Requirements to Make Unemployment Contributions MAY RESULT IN SEVERE LIABILITY

SUTA DUMPING LIABILITY IS SIGNIFICANT

- a. Liability will include the amount owed plus damages equal to three times that amount. (MCL 421.53(a)(i));
- b. If the amount obtained or withheld from payment as a result of the intentional failure to comply is \$25,000.00 or more but less than \$100,000.00, then liability may include one of the following:
 - i. If Imprisonment for not more than two years.
 - ii. The performance of community service of not more than two years but not to exceed 4,160 hours.
 - iii. A combination of the above that does not exceed two years (MCL 421.54b(1)(b)(i)).

Circumventing Requirements to Make Unemployment Contributions MAY RESULT IN SEVERE LIABILITY

- c. If the amount obtained or withheld from payment as a result of the intentional failure to comply is more than \$100,000.00, then liability may include one of the following:
 - i. Imprisonment of not more than five years.
 - ii. The performance of community service of not more than five years but not to exceed 10,400 hours.
 - iii. A combination of the above that does not exceed five years (MCL 421.54b(1)(b)(ii)).

- d. In addition to the foregoing, a civil fine up to the amount of \$5,000.00 may be imposed. (MCL 421.22b(2)(c)(ii)).

Circumventing Requirements to Make Unemployment Contributions MAY RESULT IN SEVERE LIABILITY

B. Employee Misclassification

1. Employers that utilize the services of independent contractors may be subject severe penalties if such independent contractors are misclassified employees.
2. The State has determined that Michigan employers are all too often misclassifying the individuals they hire as independent contractors rather than employees.

Circumventing Requirements to Make Unemployment Contributions MAY RESULT IN SEVERE LIABILITY

3. Executive Order 2008-1 created an Interagency Task Force to target employers who may be misclassifying their employees.
4. The Task Force (a) evaluates and examines Michigan businesses for employee misclassification; (b) refers employers who are misclassifying employees to the Michigan Attorney General or local and federal prosecutors; and (c) enforces harsh penalties relating to employee misclassification, including paying quadruple the amount of taxes owed on any misclassified wages.

**TOP '5' TIPS
FOR EMPLOYERS
TO CHALLENGE CLAIMS
FOR UNEMPLOYMENT BENEFITS**



Challenging Claims for Unemployment Benefits

- Be Mindful of the Ten (10) Day Deadline
- Understand what Constitutes Misconduct
- Proving a 'Voluntary Quit'
- Obtaining the Media File
- Appealing a Decision in Favor of Employee

TIP 1 Be Mindful of the Ten Day Deadline

Despite the 30 day deadline, the UIA may start paying benefits to the employee unless a protest is filed within 10 days from the mailing date of the monetary determination.

The employer should also respond to fact-finding questions generated by the UIA.

TIP 2 Misconduct

WHAT IS EMPLOYEE MISCONDUCT?

- Willful or wanton disregard of employer's interests
- Carelessness or negligence
- Intentional and substantial disregard of employee's duties/obligations

Proving Misconduct

- ✓ Identify Job Duties
- ✓ Prepare Employee Handbook
- ✓ Document Oral Warnings
- ✓ Prepare Written Warnings
- ✓ Request Sign-Off on Policies/Warnings
- ✓ Employee Response in Writing
- ✓ Identify Witnesses

TIP 3 Voluntary Quit

WHAT IS VOLUNTARY QUIT?

- Employee leaves involuntarily or for good cause
- When does Good Cause exist?
- Employee has burden of proof

Proving a Voluntary Quit

- Request the Employee Resign in Writing
- Prepare Correspondence Confirming the Voluntary Quit by the Employee
- Request in Writing-Employee Return to Work
- Save Voice Messages – Resignation by Phone
- Identify Witnesses with First-Hand Knowledge of the Voluntary Quit
- Prepare Employee Handbook/Policy for Outlining Voluntary Quit Requirements
- **BE AWARE!!** Resignation in Lieu of Termination

TIP 4

Obtaining the Administrative Record

- Also Known as the 'Media File'
- Request the Media File from the ALJ'S Assistant
- Request May be Made Via Facsimile

TIP 5 The UIA is a Party

The UIA must be named as a party on the appeal to the circuit court.

An employer [that is an entity] may not appear in the circuit court except through an attorney authorized to practice law in Michigan.

NEW STANDARDS FOR EMPLOYERS RESPONDING TO UNEMPLOYMENT INSURANCE CLAIMS

Effective October 21, 2013, the Federal Unemployment Integrity Act (the “Act”) requires all states to adopt a new standard of law that will include, without limitation: (1) obligations of employers (and their agents) to respond to Unemployment Insurance Agency claim notices; and (2) enhanced penalties for fraudulent unemployment insurance agency (“UIA”) claims.

NEW STANDARDS FOR EMPLOYERS RESPONDING TO UNEMPLOYMENT INSURANCE CLAIMS

If Michigan does not adopt this law by the effective date, it will impact an employer's ability to receive full state unemployment insurance credit for taxes under the Federal Unemployment Tax Act ("FUTA").

NEW STANDARDS FOR EMPLOYERS RESPONDING TO UNEMPLOYMENT INSURANCE CLAIMS

Under the Act, and in accordance with state and federal law, an employer that fails to timely/sufficiently respond to a UIA claim may be denied relief from charges if the claimant, upon an appeal, is subsequently disqualified. Such failure may also result in an employer receiving higher UIA tax determinations for subsequent years.

NEW STANDARDS FOR EMPLOYERS RESPONDING TO UNEMPLOYMENT INSURANCE CLAIMS

As of October 1, 2013, Michigan is one of four states yet to adopt laws required by the Act. Legislation is currently pending in Michigan (See House Bills 4949-4954). Unlike some states that deny relief from charges after the first failure to timely/sufficiently respond to a UIA claim, pending legislation in Michigan requires more than 4 failures and takes into account the number of failures in relation to the number of requests (See House Bill 4950).

NEW STANDARDS FOR EMPLOYERS RESPONDING TO UNEMPLOYMENT INSURANCE CLAIMS

In 2012, the Department of Labor allocated approximately \$169 million for projects related to the reduction of improperly paid benefits. The main purpose of the Act is to minimize unemployment benefits improperly paid to employees as a result of an employer's failure to timely or adequately respond to the request of the agency for information. Each year, there are billions of dollars in unemployment overpayments.

NEW STANDARDS FOR EMPLOYERS RESPONDING TO UNEMPLOYMENT INSURANCE CLAIMS

Based on state averages, over 10% of benefits paid are never charged to an employer's account or are charged to inactive employers. The foregoing results in active employers paying for these unemployment costs. This is partially why employers in Michigan have to pay an obligation assessment rate in the year 2013 of up to 2.16% per \$9,500.00 earned by each employee in addition to the UIA tax rate of up to 10.3%.

NEW STANDARDS FOR EMPLOYERS RESPONDING TO UNEMPLOYMENT INSURANCE CLAIMS

In summary, while it has always been good business practice to provide a timely/detailed response to a UIA claim at the initial phase, failure to do so may now result in increased consequences.

**FEDERAL
UPDATE:**

Feds offer “high performance bonus” to states that successfully identify and prosecute employers:

More details have emerged from the US DOL budget, with \$10 million being allocated to boost State enforcement of existing worker classification rules. The program is aimed as an incentive to states to identify companies who fail to pay their fair share of taxes due to misclassifying workers as Independent Contractors (ICs) when they should be employees. States will be able to use these incentive funds to upgrade their misclassification detection and enforcement programs.

Be Prepared

Maintaining personnel files of employees in a manner that accurately identifies job performance and reason(s) for separation, not only gives an employer the ability challenge a UIA claim, it can also be essential to defend any other claim that an employee may bring against an employer.

Prepare an employee handbook and/or policy that requires employees to identify any work problems/issues in writing to minimize the employee's ability to claim that the employer had oral knowledge of the improper working conditions;