

CONTROLLING UC COSTS FOR CONTRIBUTORY EMPLOYERS



pennsylvania

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF UNEMPLOYMENT COMPENSATION TAX SERVICES

www.uc.pa.gov

The statements in this document are a paraphrase of the applicable law and are not legally binding. The reader is cautioned to obtain the advice and guidance of a professional familiar with the Pennsylvania Unemployment Compensation Law.

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INITIAL ACTIONS THAT IMPACT UC TAX LIABILITY

ENTITY TYPE

The entity type of the business will affect whether certain employee wages are taxable. There are four basic types of business entities, each of which has different reporting obligations under the Pennsylvania UC Law. For reporting obligations on entity types not discussed, please contact the UC Employer Contact Center at 1-866-403-6163.

Sole Proprietorship: Wages paid to a sole proprietor, his or her spouse, parent(s), stepparent(s), children and stepchildren under the age of 18 are not subject to UC taxes. Anyone else who receives wages is an employee and their wages are taxable for UC purposes.

Partnership: Wages paid to general partners are not subject to UC taxes. Anyone else who receives wages is an employee and their wages are taxable unless an exempt employee's relationship applies to all partners. For example, if two brothers form a partnership, any wages paid to their father would be not taxable. A child's wages would be taxable unless they are the child of both partners.

Corporation: There are no exceptions or excluded wages in a corporation. Anyone who receives wages is an employee and their wages are taxable.

LIMITED LIABILITY COMPANIES

For Pennsylvania unemployment compensation (UC) tax purposes, a limited liability company (LLC) may be an employing entity like any other form of business entity. An LLC must pay UC contributions on wages paid to its employees.

UC Taxation of Members

Whether an LLC must pay UC tax on a member's remuneration is determined by an analysis under the Pennsylvania Unemployment Compensation Law (UC Law), as well as the Federal Unemployment Tax Act (FUTA). Each case must be reviewed on its own facts and merits.

Single-Member LLCs

The sole member of a single-member LLC is generally exempt from UC taxation under Section 4(l)(2)(B) of the UC Law because

that member is free from direction and control and is customarily engaged in an independent business (i.e., the LLC).

However, the sole member of a single-member LLC may be subject to UC taxation depending on the LLC's status for federal tax purposes. If the LLC accepts "disregarded entity" status for federal tax purposes, the sole member is self-employed for purposes of FUTA, and he/she remains exempt from UC taxation under Section 4(l)(2)(B) of the UC Law. However, if the LLC has elected corporate status for federal tax purposes, its sole member is an employee under FUTA. In that circumstance, the LLC must pay UC taxes on the sole member's remuneration under the "catch-all clause" in Section 4(l)(6) of the UC Law. Pursuant to the "catch-all clause", if services constitute "employment" for FUTA, they also constitute "employment" under the UC Law

Multi-Member LLCs

If a multi-member LLC is managed by its members and each member has equal rights in the management and conduct of the LLC's affairs, the members may be exempt from UC taxation under Section 4(l)(2)(B) of the UC Law. However, the members may be subject to UC taxation under certain circumstances, including, but not limited to the following:

(1) Nominal Membership - Members of an LLC are employees when they participate in management of the LLC in name only, for example, when they have small percentages of ownership, with no or very limited management rights.

(2) Employee for FUTA - Members of an LLC are employees under FUTA if the LLC has elected corporate status for federal tax purposes and the members performs services for remuneration. In that circumstance, the LLC must pay UC taxes for its members under the "catch-all clause" in Section 4(l)(6) of the UC Law.

Family Exemption

The family exemption in Section 4(l)(4)(5) does NOT apply to LLCs. An LLC, like a corporation, is an artificial entity that does not have family relationships with any individuals.

If you have questions regarding LLC member coverage, please contact the UC Employer Contact Center at 1-866-403-6163.

EXEMPT EMPLOYMENT

The UC Law does not cover certain types of employment. The wages paid for these services are exempt from UC taxes. Employers do not need to report the payment of wages for services that are not covered by the UC Law, and do not need to pay taxes on these wages.

Domestic Employment: Services in private homes, local college clubs, fraternities or sororities are not covered employment, unless \$1,000 or more in wages are paid in any quarter of the current year or preceding calendar year.

Example: If quarterly wages are paid to a domestic as follows:

| | | | |
|------|---------|------|-------|
| 1/18 | \$250 | 1/19 | \$750 |
| 2/18 | \$800 | 2/19 | \$750 |
| 3/18 | \$1,200 | 3/19 | \$750 |
| 4/18 | \$800 | 4/19 | \$750 |

UC liability would be created in the 3rd quarter of 2018, because \$1,000 or more in wages were paid in that quarter. However, UC liability would be retroactive to the beginning of the 2018 calendar year and the employer will be liable for UC taxes in the 1st and 2nd quarters of 2018 because wages were paid in those quarters. Liability for UC taxes continues into calendar year 2019, even though the wages paid are less than \$1,000 in each quarter.

Liability in calendar year 2020 will depend on whether \$1,000 or more in wages were paid to domestic employees in any calendar quarter in 2019.

Agricultural Labor: Services performed by agricultural employees are not covered employment, unless the business entity:

- employs at least 10 full or part-time employees in 20 or more calendar weeks, whether or not the weeks are consecutive in the current or preceding calendar year; or
- pays \$20,000 in wages in any calendar quarter of the current or preceding calendar year.

Church Employees: Services for a church, an association of churches, or an organization operated primarily for religious purposes, including the services of a duly ordained, commissioned or licensed minister, are not covered employment for UC tax purposes.

Casual Labor: Services performed outside the course of an enterprise's trade or business are not covered employment unless cash wages of \$50 or more are paid, and the services are performed by individuals who are regularly employed by the enterprise to perform these services.

Miscellaneous: Services performed by insurance agents, real estate salesmen, investment agents and direct sellers that are compensated solely by commission are not covered employment for UC tax purposes. A direct seller is a person engaged in the sale of consumer products in the buyer's home and does not otherwise have a permanent retail establishment.

TRANSFER REQUESTS

Any employer who receives the organization, trade or business of its predecessor and continues essentially the same business activity, may apply for the predecessor's employment experience and reserve account balance at any time prior to December 31 of the year following the transfer, but only if the preceding employer joins in the application. A transfer of employment experience may be beneficial if the predecessor has a low UC Tax Rate and it is unlikely that future benefit charges will be allocated to the predecessor's account. If the predecessor receives additional benefit charges after the transfer is processed, those benefit charges will be passed to the successor, and may cause the successor's tax rate to increase in future years. A voluntary application for transfer of employment experience is final and binding once approved by the Office of UC Tax Services (OUCTS).

BULK SALES

When a buyer purchases 51% or more of an employer's assets, including but not limited to any stock of goods, fixtures, machinery, equipment, realty or contract rights, the buyer may demand from the seller a bulk-sale certificate that all UC reports and all UC tax liabilities due have been paid by the seller to the date of the proposed transfer. The failure of the buyer to require such UC tax certificate will make the buyer liable for any unpaid UC tax liabilities owed by the seller. The continued nonpayment of these liabilities by the buyer will result in a delinquency rate imposed on the buyer in subsequent calendar years.

FILE AND PAY TIMELY AND ACCURATELY TO REDUCE COSTS

TAX LIABILITIES PAYMENTS

Employers self-assess their own UC taxes and withhold from wages any employee contributions payable. Employee contributions, when applicable, are calculated by multiplying the employee withholding rate by the gross wages paid to each employee during that quarter. Employer contributions are calculated by multiplying the assigned UC Tax Rate by the amount of taxable wages paid to each employee during that quarter.

Taxable Wage Base: The following chart lists the taxable wage base and state adjustment factor amounts beginning in 2013:

| Calendar Year | Taxable Wage Base for Employer Contributions (per employee per year) | Maximum State Adjustment Factor |
|----------------------|---|--|
| 2013 | \$8,500 | 1.0% |
| 2014 | \$8,750 | 1.0% |
| 2015 | \$9,000 | 1.0% |
| 2016 | \$9,500 | 1.0% |
| 2017 | \$9,750 | 0.85% |
| 2018 and thereafter | \$10,000 | 0.75% |

Wages include salary, commissions, bonuses, tips, sick or accident disability payments (except workers' compensation payments) made by an employer or third party (insurance company) and certain fringe benefits.

Tax Rate: UC Tax Rate Notices are mailed during the fourth quarter of the year preceding the year to which the rate applies. It is important that the notice be promptly forwarded to the staff responsible for completing the UC Quarterly Tax Reports. An underpayment of UC taxes will result in a delinquency that accrues interest and could increase the next year's tax rate. An overpayment will result in a tax credit or refund that will deprive the employer the current use of cash assets until the overpayment has been discovered and corrected.

PENALTIES AND INTEREST

Late Filing Interest and Penalty: The easiest way to control costs is to file UC Tax Reports and to pay UC Taxes when they are due.

Interest charges on delinquent contributions and penalty charges on delinquent reports are separate and distinct. If you are unable to pay a quarterly report in full on the due date, you can avoid penalty charges if the report is filed on time. An employer who fails to file its UC Quarterly Tax Report when due must pay a penalty of 15 percent of the total amount of contributions due, with a minimum of \$125 and a maximum of \$450.

Interest charges will continue to accrue on any unpaid contributions balance until it is paid in full. The interest rate is set annually by the Secretary of Revenue, unless it is less than the 9 percent minimum for 2006–2017 or the 12 percent minimum established beginning with calendar year 2018.

Non-Compliance Filing Penalty: Employers are required to electronically file quarterly UC tax and wage reports through the Unemployment Compensation Management System (UCMS). Employers who are unable to comply with the electronic filing requirement must file a waiver request form. Employers without a department-approved waiver whose reports are not filed electronically will be charged a penalty equal to 15 percent of the total contributions payable, with a minimum of \$125 and a maximum of \$450. To access UCMS type www.uctax.pa.gov into your browser.

Non-Compliance Payment Penalty: Payments of contributions, reimbursement of benefit charges, interest and/or penalties are required to be remitted electronically through the Unemployment Compensation Management System (UCMS) if the total liability for a payment period is, or at any point was, \$5,000 or more, and the employer does not have a department-approved waiver on file. Failure to make payment electronically will result in a penalty equal to the greater of \$25 or 10 percent of the remittance amount, up to a maximum of \$500.

Dishonored Remittance Penalty: A penalty is charged to anyone who provides a check or payment by electronic transfer to the Department of Labor & Industry that is subsequently dishonored by the financial institution upon which it is drawn. The dishonored remittance penalty is 10 percent of the remittance amount, up to a maximum of \$1,000, with a minimum of \$25 per occurrence.

FUTA TAX CREDIT

Payment of state UC taxes when due will maximize the employer's Federal Unemployment Tax (FUTA) credit on its federal tax returns. If an employer pays its state UC taxes for prior years on or before January, it is entitled to a credit of 5.4 percent against the FUTA tax, which is usually 6.0 percent of the first \$7,000 of each employee's annual wages. Any questions about FUTA should be addressed to the Internal Revenue Service.

MEASURES TO REDUCE A HIGH UC TAX RATE

TIMELY RATE APPEALS

Appeal of an Assigned Rate: Every employer providing employment subject to UC tax is issued a UC Tax Rate Notice that assigns a tax rate for the calendar year. An employer who wishes to appeal a contribution rate may do so by accessing the UCMS employer self-service portal at www.uctax.pa.gov or by filing a written appeal within 90 days of the mailing date of the rate notice. Written appeals should be sent to the Department of Labor & Industry, Office of UC Tax Services, Employer Account Services, 651 Boas Street, Harrisburg, PA 17121. The appeal must be received electronically or postmarked within 90 days from the date of the notice and must specify the reason or reasons why the rate assigned is incorrect.

Appeal of a Delinquent Rate: Any employer who has not filed all registration reports required by the department, has not filed all the quarterly tax reports due or has not paid all taxes due by a specific date will be assigned a delinquency rate for the next calendar year that is 3 percent higher than the rate they would otherwise be assigned.

An employer may have their rate recalculated to the otherwise assignable non-delinquency rate by filing an appeal of the assigned rate within 90 days from the mailing date of the rate notice and:

- filing any outstanding registration documents
- filing outstanding quarterly tax reports and paying the balance due in full or entering into a payment plan that is approved by the department.

NOTE: If an employer defaults on an approved payment plan, the delinquency rate will be retroactively reinstated. Clearing a delinquency or entering into a payment plan can save an employer approximately \$300 per year per employee depending on the solvency measures in effect.

VOLUNTARY CONTRIBUTION

An employer, at any time, may voluntarily contribute to the UC Fund an amount in excess of the tax due. The Voluntary Contribution will be credited to the employer's reserve account balance and will be included in the computation of the UC Tax Rate for subsequent years. However, if the Voluntary Contribution is filed within 30 days from the date of the rate notice, but in no case later than 120 calendar days from the beginning of the calendar year, whichever is sooner, the employer may request a recalculation of its UC Tax Rate. A Voluntary Contribution may be made by accessing the UCMS employer self-service portal at www.uctax.pa.gov or by submitting a remittance accompanied by a letter of explanation and mailed to the department. A Voluntary Contribution is not revocable, will not be refunded and cannot be used as a credit for subsequent tax due in the event the employer changes its mind.

A Voluntary Contribution may reduce the Reserve Ratio Factor, one of the six components of an employer's UC Tax Rate. A Voluntary Contribution may not be cost effective when the amount needed to increase the Reserve Account Balance is more than the savings realized on the annual UC contributions due at the current UC Tax Rate.

DEBIT RESERVE BALANCE ADJUSTMENT

A higher UC Tax Rate is assigned when an employer's reserve account has a negative balance. If the benefits charged to an employer's reserve account exceed the amount of contribution credits to the employer's reserve account by an amount which is more than 20 percent of the employer's annual payroll, the employer may elect to have its reserve account downwardly adjusted to a negative balance equal to 20 percent of its average

annual payroll. Upon election, an employer's Debit Reserve Account Balance will be adjusted to a negative 20 percent of the annual taxable payroll and the maximum experience rate will be assigned for the current and the following two calendar years. This could result in a lower rate in subsequent years if benefit charges are negligible during the three years that the election is in effect.

The request for adjustment can be made by accessing the UCMS employer self-service portal at www.uctax.pa.gov or made in writing after January 1 but not later than April 30 of the tax year in question. The request is not revocable after 10 days from the postmark date.

CONTROL BENEFIT COSTS TO REDUCE FUTURE UC TAX RATES

FINANCIAL DETERMINATION AND APPEAL

Form UC-44F(3), Notice of Financial Determination, establishes the financial eligibility of a claimant for UC benefits based on the employee's highest quarterly wages, total base-year wages, and credit weeks reported by all employers during the base-year period.

Either a base-year employer or the claimant may file an appeal from a financial determination. A Notice of Financial Determination must be appealed within 15 days of the mailing date shown on the determination. The manner in which an appeal may be filed is stated on the Form UC-44F(3).

If an appeal is timely filed, a UC referee will issue a decision. The referee's decision may be appealed further to the UC Board of Review. Complete instructions for filing appeals are sent with each determination or decision. Contact the bureau office listed on the determination for further information.

RELIEF FROM CHARGES

All benefits paid to UC claimants are charged to the reserve account balance of employers who paid wages to the claimant during the base year that establishes eligibility for the UC claim. An employer's reserve account balance is only debited for its allocated share of the benefits paid to the claimant. Under certain

circumstances, an employer is granted relief from the benefit charges. An employer should request relief from benefit charges whenever the employee was terminated for willful misconduct or when the employee voluntarily quit for reasons not attributable to the work.

When the UC Service Center (UCSC) requests separation information for a claimant in order to issue a determination of eligibility, employers should provide detailed pertinent information, specific to the final incident causing the separation regardless of if the employer is a current base year employer or a separating employer. In many instances, employer relief from charges will be determined by the UC determination.

A separating employer is a potential future base-year employer and could be denied relief from charges on subsequent claim when the discharge is determined not to be for willful misconduct connected to the work. The same applies if the individual left that work with good cause attributable to that employment.

Because a former employee may file more than one application for benefits and may qualify for benefits based on post-separation events, an employer should request relief from charges each time the employer gets notice that the former employee reapplies for UC benefits, even if the employer is not the most recent separating employer. A part-time employer may request relief from charges for benefits paid to a claimant who has been laid off by another employer, if the claimant's part-time work for that employer continues without material change.

Relief from UC benefit charges may also be available if the claimant is unemployed due to a disaster, as defined by the UC Law.

An employer will receive Form UC-44FR, Request for Relief from Charges, when a claimant files an application for UC benefits. The claimant's base-year employers must file a timely request for relief from charges within 15 days from the date of determination of the claimant's eligibility. A subsequent separation from a base-year employer for whom the claimant worked during the base-year, may request relief from charges within 15 days after the employee was separated from that subsequent separation. If these deadlines are missed, a late request for relief from charges may still be filed, but will be effective 15 days after the postmark/FAX date of the relief from charge request.

An approval for relief from charges will not stop the payment of benefits to the claimant, but the benefits will not be charged against the employer's reserve account.

A request for relief from charges must be made in writing to the Employer Services Section, PO Box 67504, Harrisburg PA 17106-7504.

CHARGE NOTICE

Timely notice of discrepancies on form UC-640 will prevent inappropriate charges in the employer's reserve account. Each employer is notified of benefit payments to former employees on Form UC-640, Monthly Notice of Compensation Charged. Form UC-640 indicates the amount of the weekly benefits paid to the claimant, the percentage charged to the employer, and the amount charged to the employer's reserve account. Form UC-640 is also used to notify employers of credits or debits issued to its reserve accounts when relief from charges is granted, or when an adjustment is made to its reserve account (e.g., overpayment of benefits, supplemental payment, etc.).

The employer should review Form UC-640 to ensure that the listed claimants are former employees. Any discrepancies should be reported to the Wage Record Section at 717-783-3829. In addition, the employer should review the Form UC-640 for proper payment of benefits when wages are involved as outlined on the form. Any discrepancies regarding proper payment of benefits should be reported to the UC Employer Services at 833-728-2367.

GENERAL

Respond to all documents and inquiries and raise disputes in a timely manner. Keep the department informed when addresses and phone numbers change so no interruption in communications. Missed communications may result in an adverse impact on the account.

CONTACT INFORMATION

UC Tax Questions:

A wide variety of information regarding the UC program is available to you on our website at www.uc.pa.gov. For answers to general employer-related UC Tax questions, or if you have questions not covered by the information available in this pamphlet, you may call our UC Employer Contact Center at 866-403-6163 from 8 a.m. to 4:30 p.m., Monday through Friday. You may also email us at **uc-news@pa.gov**.

To ensure proper handling of your inquiry, please be prepared to provide the name of your business and your PA UC account number.

Paper inquiries may be addressed to:

Office of UC Tax Services
Employer Account Services
651 Boas Street
Harrisburg, PA 17121

UC Benefit Charges Questions:

You may email the UC Employer Resource Center at UCEmployerHelp@pa.gov and include your employer account number, the claimant's full name and the last four digits of the social security number and the nature of your question. Or, you may call us at 833-728-2367 Option 1 from 8 a.m. to 4 p.m., Monday through Friday, or address correspondence to:

UC Employer Resource Center
Room 525, Labor & Industry Building
651 Boas Street
Harrisburg, PA 17121

*Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program*