

1 **UNEMPLOYMENT INSURANCE RATES AMENDMENTS**

2 2020 FIFTH SPECIAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill modifies provisions related to the Employment Security Act.

8 **Highlighted Provisions:**

9 This bill:

- 10 ▶ modifies provisions related to the Unemployment Compensation Fund, including the
- 11 Unemployment Insurance Division's calculation of employer contribution rates to the
- 12 Unemployment Compensation Fund for the 2021 calendar year; and
- 13 ▶ makes technical changes.

14 **Money Appropriated in this Bill:**

15 This bill appropriates in fiscal year 2021:

- 16 ▶ to the Department of Workforce Services -- Unemployment Compensation Fund as a
- 17 one-time appropriation:
- 18 • from Federal Funds -- CARES Act, \$50,000,000.

19 **Other Special Clauses:**

20 This bill provides a special effective date.

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **35A-4-303**, as last amended by Laws of Utah 2013, Chapter 26

24

25 *Be it enacted by the Legislature of the state of Utah:*

26 Section 1. Section **35A-4-303** is amended to read:

27 **35A-4-303. Determination of contribution rates.**

28 (1) (a) An employer's basic contribution rate is the same as the employer's benefit ratio
29 and is determined by dividing the total benefit costs charged back to an employer during the
30 immediately preceding four fiscal years by the total taxable wages of the employer for the same
31 time period, calculated to four decimal places, disregarding any remaining fraction.

32 (b) In calculating the basic contribution rate under Subsection (1)(a), if four fiscal years
33 of data are not available:

34 (i) the data of the number of complete fiscal years that is available shall be divided by the
35 total taxable wages for the same time period; or

36 (ii) if the employer is a new employer, the basic contribution rate shall be determined as
37 described in Subsection (5).

38 (2) (a) Subject to Subsection (2)(b), the division shall determine the social contribution
39 rate by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding
40 four fiscal years by the total taxable wages of all employers subject to contributions for the same
41 period, calculated to four decimal places, disregarding any remaining fraction, and rounding the
42 result to three decimal places as follows:

43 (i) if the fourth decimal place is four or less, the third decimal place does not change; or

44 (ii) if the fourth decimal place is five or more, rounding the third decimal place up.

45 (b) For calendar years 2012 and 2013 only, if the calculation of the social contribution rate
46 under Subsection (2)(a) is greater than 0.004, the social contribution rate for that calendar year is
47 0.004.

48 (c) For calendar year 2021 only, if the calculation of the social contribution rate under
49 Subsection (2)(a) is greater than 0.002, the social contribution rate for that calendar year is 0.002.

50 (3) (a) The division shall set the reserve factor at a rate that sustains an adequate
51 reserve.

52 (b) For the purpose of setting the reserve factor:

53 (i) the adequate reserve is defined as between 18 and 24 months of benefits at the
54 average of the five highest benefit cost rates in the last 25 years;

55 (ii) the division shall set the reserve factor at 1.0000 if the actual reserve fund balance as
56 of June 30 preceding the computation date is determined to be an adequate reserve;

57 (iii) the division shall set the reserve factor between 0.5000 and 1.0000 if the actual
58 reserve fund balance as of June 30 preceding the computation date is greater than the adequate
59 reserve;

60 (iv) the division shall set the reserve factor between 1.0000 and 1.5000 if the actual
61 reserve fund balance as of June 30 prior to the computation date is less than the adequate
62 reserve;

63 (v) if the actual reserve fund balance as of June 30 preceding the computation date is
64 insolvent or negative or if there is an outstanding loan from the Federal Unemployment Account
65 or other lending institution, the division shall set the reserve factor at 2.0000 until the actual
66 reserve fund balance as of June 30 preceding the computation date is determined by the division
67 to be solvent or positive and there is no outstanding loan;

68 (vi) the division shall set the reserve factor on or before January 1 of each year; [~~and~~]

69 (vii) money made available to the state under Section 903 of the Social Security Act, 42
70 U.S.C. 1103, as amended, which is received on or after January 1, 2004, may not be considered in
71 establishing the reserve factor under this section for the rate year 2005 or any following rate
72 year[-]; and

73 (viii) for calendar year 2021 only, the division may not set the reserve factor to be more
74 than 1.0500.

75 (4) (a) Beginning January 1, 2009, an employer's overall contribution rate is:

76 (i) except as provided in Subsection (4)(a)(ii) or (iii), the employer's basic contribution
77 rate multiplied by the reserve factor established under Subsection (3)(b), calculated to four
78 decimal places, disregarding any remaining fraction, plus the social contribution rate established
79 under Subsection (2), and the result calculated to three decimal places, disregarding any remaining
80 fraction;

81 (ii) if under Subsection (4)(a)(i), the overall contribution rate calculation for an employer
82 is greater than 9% plus the applicable social contribution rate, the overall contribution rate for the
83 employer shall be reduced to 9% plus the applicable social contribution rate; or

84 (iii) if under Subsection (4)(a)(i), the overall contribution rate calculation for a new
85 employer is less than 1.1%, the overall contribution rate for the new employer shall be increased
86 to 1.1%.

87 (b) Beginning January 1, 2012, an employer's overall contribution rate is:

88 (i) except as provided in Subsection (4)(b)(ii) or (iii), the employer's basic contribution
89 rate multiplied by the reserve factor established under Subsection (3)(b), calculated to four
90 decimal places, disregarding any remaining fraction, plus the social contribution rate established
91 under Subsection (2), and the result calculated to three decimal places, disregarding any remaining
92 fraction;

93 (ii) if under Subsection (4)(b)(i), the overall contribution rate calculation for an employer
94 is greater than 7% plus the applicable social contribution rate, the overall contribution rate for the
95 employer shall be reduced to 7% plus the applicable social contribution rate; or

96 (iii) if under Subsection (4)(b)(i), the overall contribution rate calculation for a new
97 employer is less than 1.1%, the overall contribution rate for the new employer shall be increased
98 to 1.1%.

99 (c) The overall contribution rate described under this Subsection (4) does not include the
100 addition of any penalty applicable to an employer:

101 (i) as a result of delinquency in the payment of contributions as provided in Subsection
102 (9); or

103 (ii) that is assessed a penalty rate under Subsection 35A-4-304(5)(a).

104 (5) (a) Except as otherwise provided in this section, the basic contribution rate for a new
105 employer is based on the average benefit cost rate experienced by employers of the major
106 industry, as defined by department rule, to which the new employer belongs.

107 (b) Except as provided in Subsection (5)(c), by January 1 of each year, the basic
108 contribution rate to be used in computing a new employer's overall contribution rate under
109 Subsection (4) is the benefit cost rate that is the greater of:

110 (i) the amount calculated by dividing the total benefit costs charged back to both active
111 and inactive employers of the same major industry for the last two fiscal years by the total taxable
112 wages paid by those employers that were paid during the same time period, computed to four
113 decimal places, disregarding any remaining fraction; or

114 (ii) 1%.

115 (c) If the major industrial classification assigned to a new employer is an industry for
116 which a benefit cost rate does not exist because the industry has not operated in the state or has
117 not been covered under this chapter, the employer's basic contribution rate is 5.4%. This basic
118 contribution rate is used in computing the employer's overall contribution rate under Subsection
119 (4).

120 (6) Notwithstanding any other provision of this chapter, and except as provided in
121 Subsection (7), if an employing unit that moves into this state is declared to be a qualified
122 employer because it has sufficient payroll and benefit cost experience under another state, a rate
123 shall be computed on the same basis as a rate is computed for all other employers subject to this

124 chapter if that unit furnishes adequate records on which to compute the rate.

125 (7) An employer who begins to operate in this state after having operated in another state
126 shall be assigned the maximum overall contribution rate until the employer acquires sufficient
127 experience in this state to be considered a "qualified employer" if the employer is:

128 (a) regularly engaged as a contractor in the construction, improvement, or repair of
129 buildings, roads, or other structures on lands;

130 (b) generally regarded as being a construction contractor or a subcontractor specialized in
131 some aspect of construction; or

132 (c) required to have a contractor's license or similar qualification under Title 58, Chapter
133 55, Utah Construction Trades Licensing Act, or the equivalent in laws of another state.

134 (8) (a) If an employer acquires the business or all or substantially all the assets of another
135 employer and the other employer had discontinued operations upon the acquisition or transfers its
136 trade or business, or a portion of its trade or business, under Subsection 35A-4-304(3)(a):

137 (i) for purposes of determining and establishing the acquiring party's qualifications for an
138 experience rating classification, the payrolls of both employers during the qualifying period shall be
139 jointly considered in determining the period of liability with respect to:

140 (A) the filing of contribution reports;

141 (B) the payment of contributions; and

142 (C) the benefit costs of both employers;

143 (ii) the transferring employer shall be divested of the transferring employer's
144 unemployment experience provided the transferring employer had discontinued operations, but
145 only to the extent as defined under Subsection 35A-4-304(3)(c); and

146 (iii) if an employer transfers its trade or business, or a portion of its trade or business, as
147 defined under Subsection 35A-4-304(3), the transferring employer may not be divested of its
148 employer's unemployment experience.

149 (b) An employing unit or prospective employing unit that acquires the unemployment
150 experience of an employer shall, for all purposes of this chapter, be an employer as of the date of
151 acquisition.

152 (c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in
153 Subsection (8)(a), is divested of the employer's unemployment experience by transferring all of

154 the employer's business to another and by ceasing operations as of the date of the transfer, the
155 transferring employer shall cease to be an employer, as defined by this chapter, as of the date of
156 transfer.

157 (9) (a) A rate of less than the maximum overall contribution rate is effective only for new
158 employers and to those qualified employers who, except for amounts due under division
159 determinations that have not become final, paid all contributions prescribed by the division for the
160 four consecutive calendar quarters in the fiscal year immediately preceding the computation date.

161 (b) Notwithstanding Subsections (1), (5), (6), and (8), an employer who fails to pay all
162 contributions prescribed by the division for the four consecutive calendar quarters in the fiscal
163 year immediately preceding the computation date, except for amounts due under determinations
164 that have not become final, shall pay a contribution rate equal to the overall contribution rate
165 determined under the experience rating provisions of this chapter, plus a surcharge of 1% of
166 wages.

167 (c) An employer who pays all required contributions shall, for the current contribution
168 year, be assigned a rate based upon the employer's own experience as provided under the
169 experience rating provisions of this chapter effective the first day of the calendar quarter in which
170 the payment was made.

171 (d) Delinquency in filing contribution reports may not be the basis for denial of a rate less
172 than the maximum contribution rate.

173 (10) If an employer makes a contribution payment based on the overall contribution rate
174 in effect at the time the payment was made and a provision of this section retroactively reduces
175 the overall contribution rate for that payment, the division:

176 (a) may not directly refund the difference between what the employer paid and what the
177 employer would have paid under the new rate; and

178 (b) shall allow the employer to make an adjustment to a future contribution payment to
179 offset the difference between what the employer paid and what the employer would have paid
180 under the new rate.

181 **Section 2. Appropriation.**

182 The following sums of money are appropriated for the fiscal year beginning July 1, 2020,
183 and ending June 30, 2021. These are additions to amounts previously appropriated for fiscal year
184 2021. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the

185 Legislature appropriates the following sums of money from the funds or accounts indicated for the
186 use and support of the government of the state of Utah.

187 ITEM 1

188 To Department of Workforce Services -- Unemployment Compensation Fund

189 From Federal Funds -- CARES Act, One-time \$50,000,000

190 Schedule of Programs:

191 Unemployment Compensation Fund \$50,000,000

192 The Legislature intends that:

193 (1) this appropriation be used to maintain the fiscal health of the Unemployment
194 Compensation Fund in response to the unprecedented increase in unemployment claims resulting
195 from the COVID-19 pandemic; and

196 (2) the Department of Workforce Services and the Unemployment Insurance Division
197 provide information to the Economic Development and Workforce Services Interim Committee
198 before the end of the first quarter of the 2021 fiscal year regarding the fiscal health of the
199 Unemployment Compensation Fund and any recommendations regarding adjustments to the
200 employer contribution rates for the 2021 calendar year.

201 **Section 3. Effective date.**

202 If approved by two-thirds of all the members elected to each house, this bill takes effect
203 upon approval by the governor, or the day following the constitutional time limit of Utah
204 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the
205 date of veto override.