

Part 3 Contributions

35A-4-301 Definitions.

As used in this part:

- (1) "Benefit cost rate" means benefit costs of all individuals paid in a calendar year, as defined in Subsection (2), including the state's share of extended benefit costs, divided by the total wages paid by all employers subject to contributions in the same calendar year, calculated to four decimal places, disregarding the remaining fraction, if any.
- (2) "Benefit costs" means the net money payments made to individuals who were employed by employers subject to contributions, excluding extended benefit costs, as provided in this chapter with respect to unemployment.
- (3) "Computation date" means July 1 of any year, beginning July 1, 1984.
- (4) "Contribution year" means any calendar year beginning on January 1 and ending on December 31.
- (5) "Fiscal year" means the year beginning with July 1 of one year and ending June 30 of the next year. For example, fiscal year 1992 begins July 1, 1991, and ends June 30, 1992.
- (6) "New employer" means any employer who has been an employer as defined in this chapter and whose account has been chargeable with benefits for less than one fiscal year immediately preceding the computation date.
- (7) "Payroll" means total wages.
- (8) "Qualified employer" means any employer who was an employer as defined in this chapter during each quarter of the prior fiscal year immediately preceding the computation date.
- (9) "Qualifying period" means the four fiscal years immediately preceding the contribution year on or after January 1, 1985. If four fiscal years of data are not available, the qualifying period is the lesser number of fiscal years for which data are available, but not less than one fiscal year.
- (10) "Reserve" means that amount of money in the fund which has been appropriated or is subject to appropriation by the Legislature, exclusive of money transferred to the fund under the Federal Employment Security Administrative Financing Act of 1954, 42 U.S.C. 1101 et seq.
- (11) "Taxable wages" means all remuneration paid by an employer to employees for insured work that is subject to unemployment insurance contributions.
- (12) "Total wages" means all remuneration paid by an employer to employees for insured work.
- (13) "Unemployment experience" means all factors, including benefit costs and taxable wages, which bear a direct relation to an employer's unemployment risk.

Amended by Chapter 12, 2005 General Session

35A-4-302 Contributions.

- (1)
 - (a) Contributions accrue and become payable by each employer for each calendar year in which the employer is subject to this chapter with respect to wages for employment. The contributions become due and shall be paid by each employer to the division for the fund in accordance with rules the department may prescribe.
 - (b) Contributions may not be deducted, in whole or in part, from the wages of individuals in the employer's employ.
 - (c) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to 1/2 cent or more, in which case it shall be increased to one cent.

- (2) All contributions paid by an employer under this chapter are deductible in arriving at the taxable income of the employer under Title 59, Chapter 7, Corporate Franchise and Income Taxes, and Chapter 10, Individual Income Tax Act, to the same extent as taxes are deductible during any taxable year by the employer.

Renumbered and Amended by Chapter 240, 1996 General Session

35A-4-303 Determination of contribution rates.

- (1)
- (a) An employer's basic contribution rate is the same as the employer's benefit ratio and is determined by dividing the total benefit costs charged back to an employer during the immediately preceding four fiscal years by the total taxable wages of the employer for the same time period, calculated to four decimal places, disregarding any remaining fraction.
 - (b) In calculating the basic contribution rate under Subsection (1)(a), if four fiscal years of data are not available:
 - (i) the data of the number of complete fiscal years that is available shall be divided by the total taxable wages for the same time period; or
 - (ii) if the employer is a new employer, the basic contribution rate shall be determined as described in Subsection (5).
- (2)
- (a) Subject to Subsection (2)(b), the division shall determine the social contribution rate by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding four fiscal years by the total taxable wages of all employers subject to contributions for the same period, calculated to four decimal places, disregarding any remaining fraction, and rounding the result to three decimal places as follows:
 - (i) if the fourth decimal place is four or less, the third decimal place does not change; or
 - (ii) if the fourth decimal place is five or more, rounding the third decimal place up.
 - (b) For calendar years 2012 and 2013 only, if the calculation of the social contribution rate under Subsection (2)(a) is greater than 0.004, the social contribution rate for that calendar year is 0.004.
- (3)
- (a) The division shall set the reserve factor at a rate that sustains an adequate reserve.
 - (b) For the purpose of setting the reserve factor:
 - (i) the adequate reserve is defined as between 18 and 24 months of benefits at the average of the five highest benefit cost rates in the last 25 years;
 - (ii) the division shall set the reserve factor at 1.0000 if the actual reserve fund balance as of June 30 preceding the computation date is determined to be an adequate reserve;
 - (iii) the division shall set the reserve factor between 0.5000 and 1.0000 if the actual reserve fund balance as of June 30 preceding the computation date is greater than the adequate reserve;
 - (iv) the division shall set the reserve factor between 1.0000 and 1.5000 if the actual reserve fund balance as of June 30 prior to the computation date is less than the adequate reserve;
 - (v) if the actual reserve fund balance as of June 30 preceding the computation date is insolvent or negative or if there is an outstanding loan from the Federal Unemployment Account or other lending institution, the division shall set the reserve factor at 2.0000 until the actual reserve fund balance as of June 30 preceding the computation date is determined by the division to be solvent or positive and there is no outstanding loan;
 - (vi) the division shall set the reserve factor on or before January 1 of each year; and

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

- (4)
- (a) Beginning January 1, 2009, an employer's overall contribution rate is:
 - (i) except as provided in Subsection (4)(a)(ii) or (iii), the employer's basic contribution rate multiplied by the reserve factor established under Subsection (3)(b), calculated to four decimal places, disregarding any remaining fraction, plus the social contribution rate established under Subsection (2), and the result calculated to three decimal places, disregarding any remaining fraction;
 - (ii) if under Subsection (4)(a)(i), the overall contribution rate calculation for an employer is greater than 9% plus the applicable social contribution rate, the overall contribution rate for the employer shall be reduced to 9% plus the applicable social contribution rate; or
 - (iii) if under Subsection (4)(a)(i), the overall contribution rate calculation for a new employer is less than 1.1%, the overall contribution rate for the new employer shall be increased to 1.1%.
 - (b) Beginning January 1, 2012, an employer's overall contribution rate is:
 - (i) except as provided in Subsection (4)(b)(ii) or (iii), the employer's basic contribution rate multiplied by the reserve factor established under Subsection (3)(b), calculated to four decimal places, disregarding any remaining fraction, plus the social contribution rate established under Subsection (2), and the result calculated to three decimal places, disregarding any remaining fraction;
 - (ii) if under Subsection (4)(b)(i), the overall contribution rate calculation for an employer is greater than 7% plus the applicable social contribution rate, the overall contribution rate for the employer shall be reduced to 7% plus the applicable social contribution rate; or
 - (iii) if under Subsection (4)(b)(i), the overall contribution rate calculation for a new employer is less than 1.1%, the overall contribution rate for the new employer shall be increased to 1.1%.
 - (c) The overall contribution rate described under this Subsection (4) does not include the addition of any penalty applicable to an employer:
 - (i) as a result of delinquency in the payment of contributions as provided in Subsection (9); or
 - (ii) that is assessed a penalty rate under Subsection 35A-4-304(5)(a).
- (5)
- (a) Except as otherwise provided in this section, the basic contribution rate for a new employer is based on the average benefit cost rate experienced by employers of the major industry, as defined by department rule, to which the new employer belongs.
 - (b) Except as provided in Subsection (5)(c), by January 1 of each year, the basic contribution rate to be used in computing a new employer's overall contribution rate under Subsection (4) is the benefit cost rate that is the greater of:
 - (i) the amount calculated by dividing the total benefit costs charged back to both active and inactive employers of the same major industry for the last two fiscal years by the total taxable wages paid by those employers that were paid during the same time period, computed to four decimal places, disregarding any remaining fraction; or
 - (ii) 1%.
 - (c) If the major industrial classification assigned to a new employer is an industry for which a benefit cost rate does not exist because the industry has not operated in the state or has not been covered under this chapter, the employer's basic contribution rate is 5.4%. This

basic contribution rate is used in computing the employer's overall contribution rate under Subsection (4).

- (6) Notwithstanding any other provision of this chapter, and except as provided in Subsection (7), if an employing unit that moves into this state is declared to be a qualified employer because it has sufficient payroll and benefit cost experience under another state, a rate shall be computed on the same basis as a rate is computed for all other employers subject to this chapter if that unit furnishes adequate records on which to compute the rate.
- (7) An employer who begins to operate in this state after having operated in another state shall be assigned the maximum overall contribution rate until the employer acquires sufficient experience in this state to be considered a "qualified employer" if the employer is:
- (a) regularly engaged as a contractor in the construction, improvement, or repair of buildings, roads, or other structures on lands;
 - (b) generally regarded as being a construction contractor or a subcontractor specialized in some aspect of construction; or
 - (c) required to have a contractor's license or similar qualification under Title 58, Chapter 55, Utah Construction Trades Licensing Act, or the equivalent in laws of another state.
- (8)
- (a) If an employer acquires the business or all or substantially all the assets of another employer and the other employer had discontinued operations upon the acquisition or transfers its trade or business, or a portion of its trade or business, under Subsection 35A-4-304(3)(a):
 - (i) for purposes of determining and establishing the acquiring party's qualifications for an experience rating classification, the payrolls of both employers during the qualifying period shall be jointly considered in determining the period of liability with respect to:
 - (A) the filing of contribution reports;
 - (B) the payment of contributions; and
 - (C) the benefit costs of both employers;
 - (ii) the transferring employer shall be divested of the transferring employer's unemployment experience provided the transferring employer had discontinued operations, but only to the extent as defined under Subsection 35A-4-304(3)(c); and
 - (iii) if an employer transfers its trade or business, or a portion of its trade or business, as defined under Subsection 35A-4-304(3), the transferring employer may not be divested of its employer's unemployment experience.
 - (b) An employing unit or prospective employing unit that acquires the unemployment experience of an employer shall, for all purposes of this chapter, be an employer as of the date of acquisition.
 - (c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in Subsection (8)(a), is divested of the employer's unemployment experience by transferring all of the employer's business to another and by ceasing operations as of the date of the transfer, the transferring employer shall cease to be an employer, as defined by this chapter, as of the date of transfer.
- (9)
- (a) A rate of less than the maximum overall contribution rate is effective only for new employers and to those qualified employers who, except for amounts due under division determinations that have not become final, paid all contributions prescribed by the division for the four consecutive calendar quarters in the fiscal year immediately preceding the computation date.
 - (b) Notwithstanding Subsections (1), (5), (6), and (8), an employer who fails to pay all contributions prescribed by the division for the four consecutive calendar quarters in the fiscal year immediately preceding the computation date, except for amounts due under

determinations that have not become final, shall pay a contribution rate equal to the overall contribution rate determined under the experience rating provisions of this chapter, plus a surcharge of 1% of wages.

- (c) An employer who pays all required contributions shall, for the current contribution year, be assigned a rate based upon the employer's own experience as provided under the experience rating provisions of this chapter effective the first day of the calendar quarter in which the payment was made.
 - (d) Delinquency in filing contribution reports may not be the basis for denial of a rate less than the maximum contribution rate.
- (10) If an employer makes a contribution payment based on the overall contribution rate in effect at the time the payment was made and a provision of this section retroactively reduces the overall contribution rate for that payment, the division:
- (a) may not directly refund the difference between what the employer paid and what the employer would have paid under the new rate; and
 - (b) shall allow the employer to make an adjustment to a future contribution payment to offset the difference between what the employer paid and what the employer would have paid under the new rate.

Amended by Chapter 26, 2013 General Session

35A-4-304 Special provisions regarding transfers of unemployment experience and assignment rates.

- (1) As used in this section:
- (a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.
 - (b) "Person" has the meaning given that term by Section 7701(a)(1) of the Internal Revenue Code of 1986.
 - (c) "Trade or business" includes the employer's workforce.
 - (d) "Violate or attempt to violate" includes intent to evade, misrepresentation, or willful nondisclosure.
- (2) Notwithstanding any other provision of this chapter, Subsections (3) and (4) shall apply regarding assignment of rates and transfers of unemployment experience.
- (3)
- (a) If an employer transfers its trade or business, or a portion of its trade or business, to another employer and, at the time of the transfer, there is common ownership, management, or control of the employers, then the unemployment experience attributable to each employer shall be combined into a common experience rate calculation.
 - (b) The contribution rates of the employers shall be recalculated and made effective upon the date of the transfer of trade or business as determined by division rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (c)
 - (i) If one or more of the employers is a qualified employer at the time of the transfer, then all employing units that are party to a transfer described in Subsection (3)(a) of this section shall be assigned an overall contribution rate under Subsection 35A-4-303(4), using combined unemployment experience rating factors, for the rate year during which the transfer occurred and for the subsequent three rate years.
 - (ii) If none of the employing units is a qualified employer at the time of the transfer, then all employing units that are party to the transfer described in Subsection (3)(a) shall be

assigned the highest overall contribution rate applicable at the time of the transfer to any employer who is party to the acquisition for the rate year during which the transfer occurred and for subsequent rate years until the time when one or more of the employing units is a qualified employer.

- (iii) Once one or more employing units described in Subsection (3)(c)(ii) is a qualified employer, all the employing units shall be assigned an overall rate under Subsection 35A-4-303(4), using combined unemployment experience rating factors for subsequent rate years, not to exceed three years following the year of the transfer.
 - (d) The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of its trade or business when, as the result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and the trade or business is now performed by the employer to whom the workforce is transferred.
- (4)
- (a) Whenever a person is not an employer under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business may not be transferred to that person if the division finds that the person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.
 - (b) The person shall be assigned the applicable new employer rate under Subsection 35A-4-303(5).
 - (c) In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the division shall use objective factors which may include:
 - (i) the cost of acquiring the business;
 - (ii) whether the person continued the business enterprise of the acquired business;
 - (iii) how long the business enterprise was continued; or
 - (iv) whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.
- (5)
- (a) If a person knowingly violates or attempts to violate Subsection (3) or (4) or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of any of those subsections or provisions, the person is subject to the following penalties:
 - (i)
 - (A) If the person is an employer, then the employer shall be assigned an overall contribution rate of 5.4% for the rate year during which the violation or attempted violation occurred and for the subsequent rate year.
 - (B) If the person's business is already at 5.4% for any year, or if the amount of increase in the person's rate would be less than 2% for that year, then a penalty surcharge of contributions of 2% of taxable wages shall be imposed for the rate year during which the violation or attempted violation occurred and for the subsequent rate year.
 - (ii)
 - (A) If the person is not an employer, the person shall be subject to a civil penalty of not more than \$5,000.
 - (B) The fine shall be deposited in the penalty and interest account established under Section 35A-4-506.
 - (b)

- (i) In addition to the penalty imposed by Subsection (5)(a), a violation of this section may be prosecuted as unemployment insurance fraud.
 - (ii) The determination of the degree of an offense shall be measured by the total value of all contributions avoided or reduced or contributions sought to be avoided or reduced by the unlawful conduct as applied to the degrees listed under Subsection 76-8-1301(2)(a).
- (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules to identify the transfer or acquisition of a business for purposes of this section.
- (7) This section shall be interpreted and applied in a manner that meets the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

Amended by Chapter 15, 2012 General Session

35A-4-305 Collection of contributions -- Unpaid contributions to bear interest -- Offer to compromise.

- (1)
- (a) Contributions unpaid on the date on which they are due and payable, as prescribed by the division, shall bear interest at the rate of 1% per month from and after that date until payment plus accrued interest is received by the division.
 - (b)
 - (i) Contribution reports not made and filed by the date on which they are due as prescribed by the division are subject to a penalty to be assessed and collected in the same manner as contributions due under this section equal to 5% of the contribution due if the failure to file on time was not more than 15 days, with an additional 5% for each additional 15 days or fraction thereof during which the failure continued, but not to exceed 25% in the aggregate and not less than \$25 with respect to each reporting period.
 - (ii) If a report is filed after the required time and it is shown to the satisfaction of the division or its authorized representative that the failure to file was due to a reasonable cause and not to willful neglect, no addition shall be made to the contribution.
 - (c)
 - (i) If contributions are unpaid after 10 days from the date of the mailing or personal delivery by the division or its authorized representative, of a written demand for payment, there shall attach to the contribution, to be assessed and collected in the same manner as contributions due under this section, a penalty equal to 5% of the contribution due.
 - (ii) A penalty may not attach if within 10 days after the mailing or personal delivery, arrangements for payment have been made with the division, or its authorized representative, and payment is made in accordance with those arrangements.
 - (d) The division shall assess as a penalty a service charge, in addition to any other penalties that may apply, in an amount not to exceed the service charge imposed by Section 7-15-1 for dishonored instruments if:
 - (i) any amount due the division for contributions, interest, other penalties or benefit overpayments is paid by check, draft, order, or other instrument; and
 - (ii) the instrument is dishonored or not paid by the institution against which it is drawn.
 - (e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit overpayments, contributions, interest, penalties, and assessed costs, uncollected three years after they become due, may be charged as uncollectible and removed from the records of the division if:
 - (i) no assets belonging to the liable person and subject to attachment can be found; and
 - (ii) in the opinion of the division there is no likelihood of collection at a future date.

- (f) Interest and penalties collected in accordance with this section shall be paid into the Special Administrative Expense Account created by Section 35A-4-506.
 - (g) Action required for the collection of sums due under this chapter is subject to the applicable limitations of actions under Title 78B, Chapter 2, Statutes of Limitations.
- (2)
- (a) If an employer fails to file a report when prescribed by the division for the purpose of determining the amount of the employer's contribution due under this chapter, or if the report when filed is incorrect or insufficient or is not satisfactory to the division, the division may determine the amount of wages paid for employment during the period or periods with respect to which the reports were or should have been made and the amount of contribution due from the employer on the basis of any information it may be able to obtain.
 - (b) The division shall give written notice of the determination to the employer.
 - (c) The determination is considered correct unless:
 - (i) the employer, within 10 days after mailing or personal delivery of notice of the determination, applies to the division for a review of the determination as provided in Section 35A-4-508; or
 - (ii) unless the division or its authorized representative of its own motion reviews the determination.
 - (d) The amount of contribution determined under Subsection (2)(a) is subject to penalties and interest as provided in Subsection (1).
- (3)
- (a) If, after due notice, an employer defaults in the payment of contributions, interest, or penalties on the contributions, or a claimant defaults in a repayment of benefit overpayments and penalties on the overpayments, the amount due shall be collectible by civil action in the name of the division, and the employer adjudged in default shall pay the costs of the action.
 - (b) Civil actions brought under this section to collect contributions, interest, or penalties from an employer, or benefit overpayments and penalties from a claimant shall be:
 - (i) heard by the court at the earliest possible date; and
 - (ii) entitled to preference upon the calendar of the court over all other civil actions except:
 - (A) petitions for judicial review under this chapter; and
 - (B) cases arising under the workers' compensation law of this state.
 - (c)
 - (i)
 - (A) To collect contributions, interest, or penalties, or benefit overpayments and penalties due from employers or claimants located outside Utah, the division may employ private collectors providing debt collection services outside Utah.
 - (B) Accounts may be placed with private collectors only after the employer or claimant has been given a final notice that the division intends to place the account with a private collector for further collection action.
 - (C) The notice shall advise the employer or claimant of the employer's or claimant's rights under this chapter and the applicable rules of the department.
 - (ii)
 - (A) A private collector may receive as compensation up to 25% of the lesser of the amount collected or the amount due, plus the costs and fees of any civil action or postjudgment remedy instituted by the private collector with the approval of the division.
 - (B) The employer or claimant shall be liable to pay the compensation of the collector, costs, and fees in addition to the original amount due.
 - (iii) A private collector is subject to the federal Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692 et seq.

- (iv)
 - (A) A civil action may not be maintained by a private collector without specific prior written approval of the division.
 - (B) When division approval is given for civil action against an employer or claimant, the division may cooperate with the private collector to the extent necessary to effect the civil action.
- (d)
 - (i) Notwithstanding Section 35A-4-312, the division may disclose the contribution, interest, penalties or benefit overpayments and penalties, costs due, the name of the employer or claimant, and the employer's or claimant's address and telephone number when any collection matter is referred to a private collector under Subsection (3)(c).
 - (ii) A private collector is subject to the confidentiality requirements and penalty provisions provided in Section 35A-4-312 and Subsection 76-8-1301(4), except to the extent disclosure is necessary in a civil action to enforce collection of the amounts due.
- (e) An action taken by the division under this section may not be construed to be an election to forego other collection procedures by the division.
- (4)
 - (a) In the event of a distribution of an employer's assets under an order of a court under the laws of Utah, including a receivership, assignment for benefits of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than \$400 to each claimant, earned within five months of the commencement of the proceeding.
 - (b) If an employer commences a proceeding in the Federal Bankruptcy Court under a chapter of 11 U.S.C. 101 et seq., as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, contributions, interest, and penalties then or thereafter due shall be entitled to the priority provided for taxes, interest, and penalties in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
- (5)
 - (a) In addition and as an alternative to any other remedy provided by this chapter and provided that no appeal or other proceeding for review provided by this chapter is then pending and the time for taking it has expired, the division may issue a warrant in duplicate, under its official seal, directed to the sheriff of any county of the state, commanding the sheriff to levy upon and sell the real and personal property of a delinquent employer or claimant found within the sheriff's county for the payment of the contributions due, with the added penalties, interest, or benefit overpayment and penalties, and costs, and to return the warrant to the division and pay into the fund the money collected by virtue of the warrant by a time to be specified in the warrant, not more than 60 days from the date of the warrant.
 - (b)
 - (i) Immediately upon receipt of the warrant in duplicate, the sheriff shall file the duplicate with the clerk of the district court in the sheriff's county.
 - (ii) The clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent employer or claimant mentioned in the warrant, and in appropriate columns the amount of the contribution, penalties, interest, or benefit overpayment and penalties, and costs, for which the warrant is issued and the date when the duplicate is filed.
 - (c) The amount of the docketed warrant shall:
 - (i) have the force and effect of an execution against all personal property of the delinquent employer; and

- (ii) become a lien upon the real property of the delinquent employer or claimant in the same manner and to the same extent as a judgment duly rendered by a district court and docketed in the office of the clerk.
- (d) After docketing, the sheriff shall:
 - (i) proceed in the same manner as is prescribed by law with respect to execution issued against property upon judgments of a court of record; and
 - (ii) be entitled to the same fees for the sheriff's services in executing the warrant, to be collected in the same manner.
- (6)
 - (a) Contributions imposed by this chapter are a lien upon the property of an employer liable for the contribution required to be collected under this section who shall sell out the employer's business or stock of goods or shall quit business, if the employer fails to make a final report and payment on the date subsequent to the date of selling or quitting business on which they are due and payable as prescribed by rule.
 - (b)
 - (i) An employer's successor, successors, or assigns, if any, are required to withhold sufficient of the purchase money to cover the amount of the contributions and interest or penalties due and payable until the former owner produces a receipt from the division showing that they have been paid or a certificate stating that no amount is due.
 - (ii) If the purchaser of a business or stock of goods fails to withhold sufficient purchase money, the purchaser is personally liable for the payment of the amount of the contributions required to be paid by the former owner, interest and penalties accrued and unpaid by the former owner, owners, or assignors.
- (7)
 - (a) If an employer is delinquent in the payment of a contribution, the division may give notice of the amount of the delinquency by registered mail to all persons having in their possession or under their control, any credits or other personal property belonging to the employer, or owing any debts to the employer at the time of the receipt by them of the notice.
 - (b) A person notified under Subsection (7)(a) shall neither transfer nor make any other disposition of the credits, other personal property, or debts until:
 - (i) the division has consented to a transfer or disposition; or
 - (ii) 20 days after the receipt of the notice.
 - (c) All persons notified under Subsection (7)(a) shall, within five days after receipt of the notice, advise the division of credits, other personal property, or other debts in their possession, under their control or owing by them, as the case may be.
- (8)
 - (a)
 - (i) Each employer shall furnish the division necessary information for the proper administration of this chapter and shall include wage information for each employee, for each calendar quarter.
 - (ii) The information shall be furnished at a time, in the form, and to those individuals as the department may by rule require.
 - (b)
 - (i) Each employer shall furnish each individual worker who is separated that information as the department may by rule require, and shall furnish within 48 hours of the receipt of a request from the division a report of the earnings of any individual during the individual's base-period.

- (ii) The report shall be on a form prescribed by the division and contain all information prescribed by the division.
- (c)
 - (i) For each failure by an employer to conform to this Subsection (8) the division shall, unless good cause is shown, assess a \$50 penalty if the filing was not more than 15 days late.
 - (ii) If the filing is more than 15 days late, the division shall assess an additional penalty of \$50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed \$250 per filing.
 - (iii) The penalty is to be collected in the same manner as contributions due under this chapter.
- (d)
 - (i) The division shall prescribe rules providing standards for determining which contribution reports shall be filed on magnetic or electronic media or in other machine-readable form.
 - (ii) In prescribing these rules, the division:
 - (A) may not require an employer to file contribution reports on magnetic or electronic media unless the employer is required to file wage data on at least 250 employees during any calendar quarter or is an authorized employer representative who files quarterly tax reports on behalf of 100 or more employers during any calendar quarter;
 - (B) shall take into account, among other relevant factors, the ability of the employer to comply at reasonable cost with the requirements of the rules; and
 - (C) may require an employer to post a bond for failure to comply with the rules required by this Subsection (8)(d).
- (9)
 - (a)
 - (i) An employer liable for payments in lieu of contributions shall file Reimbursable Employment and Wage Reports.
 - (ii) The reports are due on the last day of the month that follows the end of each calendar quarter unless the division, after giving notice, changes the due date.
 - (iii) A report postmarked on or before the due date is considered timely.
 - (b)
 - (i) Unless the employer can show good cause, the division shall assess a \$50 penalty against an employer who does not file Reimbursable Employment and Wage Reports within the time limits set out in Subsection (9)(a) if the filing was not more than 15 days late.
 - (ii) If the filing is more than 15 days late, the division shall assess an additional penalty of \$50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed \$250 per filing.
 - (iii) The division shall assess and collect the penalties referred to in this Subsection (9)(b) in the same manner as prescribed in Sections 35A-4-309 and 35A-4-311.
- (10) If a person liable to pay a contribution or benefit overpayment imposed by this chapter neglects or refuses to pay it after demand, the amount, including any interest, additional amount, addition to contributions, or assessable penalty, together with any additional accruable costs, shall be a lien in favor of the division upon all property and rights to property, whether real or personal belonging to the person.
- (11)
 - (a) The lien imposed by Subsection (10) arises at the time the assessment, as defined in the department rules, is made and continues until the liability for the amount assessed, or a judgment against the taxpayer arising out of the liability, is satisfied.
 - (b)

- (i) The lien imposed by Subsection (10) is not valid as against a purchaser, holder of a security interest, mechanics' lien holder, or judgment lien creditor until the division files a warrant with the clerk of the district court.
 - (ii) For the purposes of this Subsection (11)(b):
 - (A) "Judgment lien creditor" means a person who obtains a valid judgment of a court of record for recovery of specific property or a sum certain of money, and who in the case of a recovery of money, has a perfected lien under the judgment on the property involved. A judgment lien does not include inchoate liens such as attachment or garnishment liens until they ripen into a judgment. A judgment lien does not include the determination or assessment of a quasi-judicial authority, such as a state or federal taxing authority.
 - (B) "Mechanics' lien holder" means any person who has a lien on real property, or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property. A person has a lien on the earliest date the lien becomes valid against subsequent purchasers without actual notice, but not before the person begins to furnish the services, labor, or materials.
 - (C) "Person" means:
 - (I) an individual;
 - (II) a trust;
 - (III) an estate;
 - (IV) a partnership;
 - (V) an association;
 - (VI) a company;
 - (VII) a limited liability company;
 - (VIII) a limited liability partnership; or
 - (IX) a corporation.
 - (D) "Purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest, other than a lien or security interest, in property which is valid under state law against subsequent purchasers without actual notice.
 - (E) "Security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time:
 - (I) the property is in existence and the interest has become protected under the law against a subsequent judgment lien arising out of an unsecured obligation; and
 - (II) to the extent that, at that time, the holder has parted with money or money's worth.
- (12)
- (a) Except in cases involving a violation of unemployment compensation provisions under Section 76-8-1301, Subsection 35A-4-304(5), or Subsection 35A-4-405(5), and at the discretion of the division, the division may accept an offer in compromise from an employer or claimant to reduce past due debt arising from contributions or benefit overpayments imposed under this chapter.
 - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules for allowing an offer in compromise provided under Subsection (12)(a).

Amended by Chapter 15, 2012 General Session

35A-4-306 Charging benefit costs to employer.

- (1) Benefit costs of former workers of an employer will be charged to the employer in the same proportion as the wages paid by that employer in the base period bear to the total wages of all employers of that worker in the base period, calculated to the nearest five decimal places.
- (2) Notification by the division that a worker has filed an initial claim for unemployment insurance benefits will be sent to all base-period employers and all subsequent employers prior to the payment of benefits. Any employing unit that receives a notice of the filing of a claim may protest payment of benefits to former employees or charges to the employer if the protest is filed within 10 days after the date the notice is issued.
- (3) On or before November 1 of each year beginning November 1, 1984, each employer shall receive notification of all benefit costs of former workers that have been charged to that employer in the immediately preceding fiscal year. Any employing unit that receives a notice of benefit charges may protest the correctness of the charges if the protest is filed within 30 days after the date the notice is issued.
- (4) On written request made by an employer, corrections or modifications of the employer's wages shall be taken into account for the purpose of redetermining the employer's contribution rate. The request shall be made to the division no later than the end of the calendar year following the year for which the contribution rate is assigned. The division may, within a like period upon its own initiative, redetermine an employer's contribution rate.
- (5)
 - (a) If no later than three years after the date on which any contributions or interest or penalty for contributions were due, an employer who has paid the contributions, interest, or penalty may make application for an adjustment in connection with subsequent contribution payments, or for a refund because the adjustment cannot be made, and the division shall determine that the contributions or interest or penalty or any portion thereof was erroneously collected, the division shall allow the employer to make an adjustment, without interest, in connection with subsequent contribution payments by the employer, or if the adjustment cannot be made, the division shall refund that amount, without interest.
 - (b) Refunds of contributions shall be made from the clearing account or the benefit account in the fund, and refunds of interest and penalty shall be made from the Special Administrative Expense Account or from the interest and penalty money in the clearing account of the fund.
 - (c) For like cause and within the same period, an adjustment or refund may be made on the division's own initiative.
 - (d) Decisions with respect to applications for refund are final unless the employing unit, within 10 days after the mailing or personal delivery of notice of the decision, applies to the division for a review of the decision as provided in Section 35A-4-508.

Amended by Chapter 278, 2010 General Session

35A-4-307 Social costs -- Relief of charges.

- (1) Social costs consist of the following benefit costs:
 - (a) Benefit costs of an individual will not be charged to a base-period employer and are considered social costs if the individual's separation from that employer occurred under the following circumstances:
 - (i) the individual was discharged by the employer or voluntarily quit employment with the employer for disqualifying reasons, but subsequently requalified for benefits and actually received benefits;
 - (ii) the individual received benefits following a quit which was not attributable to the employer;

- (iii) the individual received benefits following a discharge for nonperformance due to medical reasons;
 - (iv) the individual received benefits while attending the first week of mandatory apprenticeship training; or
 - (v) the individual received benefits after quitting voluntarily to accompany or follow a spouse who is a member of the United States armed forces as described in Subsection 35A-4-405(1)(e).
- (b) Social costs are benefit costs that are or have been charged to an employer who has terminated coverage and is no longer liable for contributions, less the amount of contributions paid by the employer during the same time period.
 - (c) The difference between the benefit charges of all employers whose benefit ratio exceeds the maximum overall contribution rate and the amount determined by multiplying the taxable payroll of the same employers by the maximum overall contribution rate is a social cost.
 - (d) Benefit costs attributable to a concurrent base-period employer will not be charged to that employer if the individual's customary hours of work for that employer have not been reduced.
 - (e) Benefit costs incurred during the course of division-approved training will not be charged to base-period employers.
 - (f) Benefit costs will not be charged to employers if the costs are attributable to:
 - (i) the state's share of extended benefits;
 - (ii) uncollectible benefit overpayments; or
 - (iii) the proportion of benefit costs of combined wage claims that are chargeable to Utah employers and are insufficient when separately considered for a monetary eligible claim under Utah law and which have been transferred to a paying state.
 - (g) Benefit costs that are not charged to an employer and not described in this Subsection (1) are also social costs.
- (2) Subsection (1) applies only to contributing employers and not to employers that have elected to finance the payment of benefits in accordance with Section 35A-4-309 or 35A-4-311.

Amended by Chapter 289, 2014 General Session

35A-4-308 Bonds to ensure compliance.

- (1)
 - (a) The division, whenever it considers it necessary to ensure compliance with this chapter, may require any employer, subject to the contribution imposed hereunder, to deposit with it any bond or security as the division shall determine.
 - (b) The bond or security may be sold by the division at public sale, if it becomes necessary, in order to recover any tax, interest, or penalty due.
 - (c) Notice of the sale may be served upon the employer who deposited the securities personally or by mail. If by mail, notice sent to the last-known address as the same appears in the records of the division is sufficient for purposes of this requirement.
 - (d) Upon the sale, the surplus, if any, above the amounts due, shall be returned to the employer who deposited the security.
- (2)
 - (a) If an employer fails to comply with Subsection (1), the district court of the county in which the employer resides or in which the employer employs workers shall, upon the commencement of a suit by the division for that purpose, enjoin the employer from further employing workers in this state or continuing in business until the employer has complied with Subsection (1).

- (b) Upon filing of a suit for such purpose by the division, the court shall set a date for hearing and cause notice to be served upon the employer. The hearing shall be not less than five nor more than 15 days from the service of the notice.

Renumbered and Amended by Chapter 240, 1996 General Session

35A-4-309 Nonprofit organizations -- Contributions -- Payments in lieu of contributions.

- (1) Notwithstanding any other provisions of this chapter for payments by employers, benefits paid to employees of nonprofit organizations, as described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), that are exempt from income tax under Section 501(a), shall be financed in accordance with the following provisions:
 - (a) Any nonprofit organization which is, or becomes, subject to this chapter shall pay contributions under Section 35A-4-303, unless it elects in accordance with this Subsection (1) to pay to the division for the unemployment fund an amount equal to the amount of regular benefits and of 1/2 of the extended benefits paid that is attributable to service in the employ of the nonprofit organization, to individuals for weeks of unemployment that begin during the effective period of this election.
 - (b)
 - (i) Any nonprofit organization that is, or becomes, subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than one contribution year beginning with the date on which the organization becomes subject to this chapter.
 - (ii) The nonprofit organization shall file a written notice of its election with the division not later than 30 days immediately following the date that the division gives notice to the organization that it is subject to this chapter.
 - (c) Any nonprofit organization that makes an election in accordance with Subsection (1)(b)(i) shall continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election, not later than 30 days prior to the beginning of the contribution year for which this termination shall first be effective.
 - (d)
 - (i) Any nonprofit organization that has been paying contributions under this chapter may change to a reimbursable basis by filing with the division, no later than 30 days prior to the beginning of any contribution year, a written notice of election to become liable for payments in lieu of contributions.
 - (ii) This election is not terminable by the organization for that year or the next year.
 - (e) The division may, for good cause, extend the period within which a notice of election or a notice of termination shall be filed and may permit an election to be retroactive.
 - (f)
 - (i) The division, in accordance with department rules, shall notify each nonprofit organization of any determination that the division may make of the organization's status as an employer, of the effective date of any election that it makes, and of any termination of this election.
 - (ii) These determinations are subject to reconsideration, appeal, and review in accordance with Section 35A-4-508.
- (2) Payments in lieu of contributions shall be made in accordance with this Subsection (2).
 - (a) At the end of each calendar month, or at the end of any other period as determined by the division, the division shall bill each nonprofit organization or group of nonprofit organizations that has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during

this month or other prescribed period that is attributable to service in the employ of the organization.

- (b) Payment of any bill rendered under Subsection (2)(a) shall be made no later than 30 days after the bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with Subsection (2)(d).
- (c) Payments made by any nonprofit organization under this Subsection (2) may not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.
- (d)
 - (i) The amount due specified in any bill from the division shall be conclusive on the organization unless, not later than 15 days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the division or an appeal to the Division of Adjudication, setting forth the grounds for the application or appeal in accordance with Section 35A-4-508.
 - (ii) The division shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which the application for redetermination has been filed.
 - (iii) Any redetermination is conclusive on the organization unless, no later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the Division of Adjudication in accordance with Section 35A-4-508 and Chapter 1, Part 3, Adjudicative Proceedings, setting forth the grounds for the appeal.
 - (iv) Proceedings on appeal to the Division of Adjudication from the amount of a bill rendered under this Subsection (2) or a redetermination of the amount shall be in accordance with Section 35A-4-508.
- (e) Past due payments of amounts in lieu of contributions are subject to the same interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.
- (3) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under Subsection (2), the division may terminate the organization's election to make payment in lieu of contributions as of the beginning of the next contribution year, and the termination is effective for that and the next contribution year.
- (4)
 - (a) In the discretion of the division, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required, within 30 days after the effective date of its election, to deposit money with the division.
 - (b) The amount of the deposit shall be determined in accordance with this Subsection (4).
 - (c)
 - (i) The amount of the deposit required by this Subsection (4) shall be equal to 1% of the organization's total wages paid for employment as defined in Section 35A-4-204 for the four calendar quarters immediately preceding the effective date of the election, or the biennial anniversary of the effective date of election, whichever date shall be most recent and applicable.
 - (ii) If the nonprofit organization did not pay wages in each of these four calendar quarters, the amount of the deposit is as determined by the division.
 - (d)

- (i) Any deposit of money in accordance with this Subsection (4) shall be retained by the division in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as provided in this Subsection (4).
- (ii) The division may deduct from the money deposited under this Subsection (4) by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in Subsection (2)(e).
- (iii) The division shall require the organization within 30 days following any deduction from a money deposit under this Subsection (4) to deposit sufficient additional money to make whole the organization's deposit at the prior level.
- (iv)
 - (A) The division may, at any time, review the adequacy of the deposit made by any organization.
 - (B) If, as a result of this review, the division determines that an adjustment is necessary, it shall require the organization to make an additional deposit within 30 days of written notice of the division's determination or shall return to it any portion of the deposit the division no longer considers necessary, as considered appropriate.
- (e) If any nonprofit organization fails to make a deposit, or to increase or make whole the amount of a previously made deposit, as provided under this Subsection (4), the division may terminate the organization's election to make payments in lieu of contributions.
- (f)
 - (i) Termination under Subsection (4)(e) shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which the termination becomes effective.
 - (ii) The division may extend for good cause the applicable filing, deposit, or adjustment period by not more than 60 days.
- (5)
 - (a) Each employer liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of the employer.
 - (b) If benefits paid to an individual are based on wages paid by more than one employer and one or more of these employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer liable for the payments shall be determined in accordance with Subsection (5)(c) or (d).
 - (c) If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by that employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.
 - (d) If benefits paid to an individual are based on wages paid by two or more employers who are liable for payments in lieu of contributions, the amount of benefits payable by each of those employers shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by the employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.
- (6)
 - (a)

- (i) Two or more employers who have become liable for payments in lieu of contributions, in accordance with this section and Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of these employers.
 - (ii) Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this Subsection (6).
 - (b)
 - (i) Upon approval of the application, the division shall establish a group account for these employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account.
 - (ii) This account shall remain in effect for not less than two contribution years and thereafter until terminated at the discretion of the division or upon application by the group.
 - (c) Upon establishment of the account, each member of the group is liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by the member in the quarter bear to the total wages paid during the quarter for service performed in the employ of all members of the group.
 - (d) The department shall prescribe rules, with respect to applications for establishment, maintenance, and termination of group accounts authorized by this Subsection (6), for addition of new members to, and withdrawal of active members from, these accounts, for the determination of the amounts that are payable under this Subsection (6) by members of the group, and the time and manner of these payments.
- (7)
- (a) An employing unit that acquires a nonprofit organization or substantially all the assets of a nonprofit organization that has elected reimbursable coverage as defined in Subsection (1), in accordance with rules made by the commission, shall be given the subject date of the transferring nonprofit organization, provided the transferring nonprofit organization ceases to operate as an employing unit at the point of acquisition.
 - (b) The acquiring entity shall reimburse the Unemployment Compensation Fund for the transferring nonprofit organization's share of any unreimbursed benefits paid to former employees of the transferring nonprofit organization.

Amended by Chapter 297, 2011 General Session

35A-4-310 Employing units.

- (1)
- (a) Any employing unit that is or becomes an employer subject to this chapter within any calendar quarter is subject to this chapter during the entire calendar quarter.
 - (b)
 - (i) No employing unit is liable as an employer under Section 35A-4-302 for any period prior to three calendar years immediately preceding the calendar year in which the division determines the employing unit to be an employer as defined in Section 35A-4-203.
 - (ii) This limitation does not apply if the division determines that the employing unit knowingly or willfully failed to report to the division to avoid liability for contributions imposed by this chapter.
- (2) Notwithstanding the other provisions of this section, the division may on its own initiative terminate coverage when it finds that an employing unit had no calendar quarter within the

preceding calendar year during which there were wages paid for employment and the division finds that during the preceding calendar year the employing unit did not meet any of the conditions for subjectivity to this chapter.

- (3)
 - (a)
 - (i) An employing unit not otherwise subject to this chapter that files with the division its written election to become an employer subject to this chapter for not less than two calendar years shall, with the written approval of the election by the division, become an employer subject to this chapter to the same extent as all other employers, as of the date stated in the approval.
 - (ii) The employing unit shall cease to be subject to this chapter as of January 1 of any calendar year subsequent to the two calendar years, referred to in Subsection (3)(a)(i) only if, at least 30 days prior to the first day of January, it has filed with the division a written notice to the effect.
 - (b)
 - (i) Services which do not constitute employment as defined in this chapter shall, upon the filing by the employing unit for whom the services are performed of a written election that services performed by individuals in its employ in one or more distinct establishments or places of work shall be considered to constitute employment for all the purposes of this chapter for not less than two calendar years, and upon the written approval of the election by the division, be considered to constitute employment subject from and after the date stated in the approval.
 - (ii) The services referred to in Subsection (3)(b)(i) shall cease to be considered to be employment subject to this chapter as of January 1 of any calendar year subsequent to the two calendar years only if, at least 30 days prior to the first day of January, the employing unit has filed with the division a written notice to that effect.

Amended by Chapter 7, 2004 General Session

35A-4-311 Coverage and liability of governmental units or Indian tribal units -- Payments in lieu of contributions -- Delinquencies -- Payments to division.

- (1) Notwithstanding any other provisions of this chapter, benefits paid to employees of counties, cities, towns, school districts, political subdivisions, or their instrumentalities or Indian tribes or tribal units shall be financed in accordance with the following provisions:
 - (a) Any county, city, town, school district, political subdivision, or instrumentality thereof or Indian tribes or tribal units that is or becomes subject to this chapter may pay contributions under the provisions of Section 35A-4-302, or may elect to pay to the division for the unemployment fund an amount equal to the amount of regular benefits and, as provided in Subsection (4), the extended benefits attributable to service in the employ of such organization, and paid to individuals for weeks of unemployment that begin during the effective period of such election.
 - (b) Any county, city, town, school district, political subdivision, or instrumentality thereof or Indian tribes or tribal units of the state, or combination of the foregoing, that is or becomes subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than one contribution year beginning with the date on which the organization becomes subject to this chapter by filing a written notice of its election with the division not later than 30 days immediately following the date that the division gives notice to the organization that it is subject to this chapter.

- (c) Any county, city, town, school district, political subdivision, or instrumentality thereof, or Indian tribes or tribal units, or combination of the foregoing, that makes an election in accordance with Subsections (1)(a) and (b) shall continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election. A notice terminating such election shall be filed by January 31 of the year in which the termination is to be effective.
 - (d) Any county, city, town, school district, political subdivision, or instrumentality thereof of the state, or Indian tribes or tribal units, or combination of the foregoing which have been paying contributions under this chapter may change to a reimbursable basis by filing with the division, no later than 30 days prior to the beginning of any contribution year, a written notice of election to become liable for payments in lieu of contributions; the organization may not terminate such election for a period of two contribution years.
 - (e) The division may, for good cause, extend the period within which a notice of election or a notice of termination shall be filed and may permit an election to be retroactive.
 - (f) The division, in accordance with department rules, shall notify each county, city, town, school district, political subdivision, or Indian tribes or tribal units, or their instrumentalities of any determination that it may make of its status as an employer, or the effective date of any election which it makes, and of any termination of such election. The determinations shall be subject to reconsideration, appeal, and review in accordance with the provisions of Section 35A-4-508.
- (2) Payments in lieu of contributions shall be made in accordance with the provisions of this Subsection (2).
- (a) At the end of each calendar month, or at the end of any other period as determined by the division, the division shall bill each county, city, town, school district, political subdivision, or instrumentality thereof, or combination of the foregoing, that has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits and, as provided in Subsection (4), the amount of extended benefits paid during such month or other prescribed period that is attributable to service in the employ of such county, city, town, school district, political subdivision, or instrumentality thereof.
 - (b) Payment of any bill rendered under Subsection (2)(a) shall be made not later than 30 days after such bill was mailed to the governmental unit or tribal unit or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with Subsection (2)(c).
 - (c)
 - (i) The amount due specified in any bill from the division shall be conclusive on the governmental unit or tribal unit unless, no later than 15 days after the bill was mailed or otherwise delivered to it, the governmental unit or tribal unit files an application for redetermination by the division or an appeal, setting forth the grounds for such application or appeal.
 - (ii) Upon an application for redetermination the division shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination.
 - (iii) Any such redetermination shall be conclusive on the governmental unit or tribal unit unless, no later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the governmental unit or tribal unit files an appeal, setting forth the grounds for the appeal.
 - (iv) Proceedings on appeal from the amount of a bill rendered under this Subsection (2) or a redetermination of the amount shall be in accordance with the provisions of Section 35A-4-508.

- (d) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.
- (3)
- (a) If any governmental unit or tribal unit is delinquent in making payments in lieu of contributions as required under Subsection (2), the division may terminate the governmental unit's or tribal unit's election to make payment in lieu of contributions as of the beginning of the next contribution year, and the termination shall be effective for that and the next contribution year.
- (b)
- (i) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within 90 days of receipt of a billing notice will cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in Subsection 35A-4-311(1), for the following tax year unless payment in full is received before contribution rates for the next tax year are computed.
- (ii) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in Subsection (3)(b)(i), shall have the option reinstated if, after a period of one year:
- (A) all contributions have been made timely; and
- (B) no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.
- (iii) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:
- (A) will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act; and
- (B) will cause the Indian tribe to lose the option to make payments in lieu of contributions.
- (4) Each governmental unit or tribal unit liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of extended benefits paid that are attributable to service in the employ of such governmental unit or tribal unit. Provided, that governmental units or tribal units electing payments in lieu of contributions shall, with respect to extended benefit costs for weeks of unemployment beginning prior to January 1, 1979, pay an amount equal to 50% of such costs and with respect to extended benefit costs for weeks of unemployment beginning on or after January 1, 1979, shall pay 100% of such costs. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer liable for the payments shall be determined in accordance with Subsection (4)(a) or (4)(b).
- (a) If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.
- (b) If benefits paid to an individual are based on wages paid by two or more employers who are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.
- (5)

- (a) Two or more Indian tribe or tribal unit employers who have become liable for payments in lieu of contributions, in accordance with the provisions of this section and Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of these employers. Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this Subsection (5).
- (b) Upon approval of the application, the division shall establish a group account for these employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. This account shall remain in effect for not less than one contribution year and thereafter until terminated at the discretion of the division or upon application by the group.
- (c) Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in the quarter bear to the total wages paid during the quarter for service performed in the employ of all members of the group.

Amended by Chapter 297, 2011 General Session

35A-4-312 Records.

- (1)
 - (a) An employing unit shall keep true and accurate work records containing information the department may prescribe by rule.
 - (b) A record shall be open to inspection and subject to being copied by the division or its authorized representatives at a reasonable time and as often as necessary.
 - (c) An employing unit shall make a record available in the state for three years after the calendar year in which the services are rendered.
- (2) The division may require from an employing unit a sworn or unsworn report with respect to a person employed by the employing unit that the division considers necessary for the effective administration of this chapter.
- (3) Except as provided in this section or in Sections 35A-4-103 and 35A-4-106, information obtained under this chapter or obtained from an individual may not be published or open to public inspection in a manner revealing the employing unit's or individual's identity.
- (4)
 - (a) The information obtained by the division under this section may not be used in court or admitted into evidence in an action or proceeding, except:
 - (i) in an action or proceeding arising out of this chapter;
 - (ii) if the Labor Commission enters into a written agreement with the division under Subsection (6)(b), in an action or proceeding by the Labor Commission to enforce:
 - (A) Title 34, Chapter 23, Employment of Minors;
 - (B) Title 34, Chapter 28, Payment of Wages;
 - (C) Title 34, Chapter 40, Utah Minimum Wage Act; or
 - (D) Title 34A, Utah Labor Code;
 - (iii) under the terms of a court order obtained under Subsection 63G-2-202(7) and Section 63G-2-207; or
 - (iv) under the terms of a written agreement between the Office of State Debt Collection and the division as provided in Subsection (5).

- (b) The information obtained by the division under this section shall be disclosed to:
 - (i) a party to an unemployment insurance hearing before an administrative law judge of the department or a review by the Workforce Appeals Board to the extent necessary for the proper presentation of the party's case; or
 - (ii) an employer, upon request in writing for information concerning a claim for a benefit with respect to a former employee of the employer.
- (5) The information obtained by the division under this section may be disclosed to:
 - (a) an employee of the department in the performance of the employee's duties in administering this chapter or other programs of the department;
 - (b) an employee of the Labor Commission for the purpose of carrying out the programs administered by the Labor Commission;
 - (c) an employee of the Department of Commerce for the purpose of carrying out the programs administered by the Department of Commerce;
 - (d) an employee of the governor's office or another state governmental agency administratively responsible for statewide economic development, to the extent necessary for economic development policy analysis and formulation;
 - (e) an employee of another governmental agency that is specifically identified and authorized by federal or state law to receive the information for the purposes stated in the law authorizing the employee of the agency to receive the information;
 - (f) an employee of a governmental agency or workers' compensation insurer to the extent the information will aid in:
 - (i) the detection or avoidance of duplicate, inconsistent, or fraudulent claims against:
 - (A) a workers' compensation program; or
 - (B) public assistance funds; or
 - (ii) the recovery of overpayments of workers' compensation or public assistance funds;
 - (g) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or in aid of a felony criminal investigation;
 - (h) an employee of the State Tax Commission or the Internal Revenue Service for the purposes of:
 - (i) audit verification or simplification;
 - (ii) state or federal tax compliance;
 - (iii) verification of a code or classification of the:
 - (A) 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or
 - (B) 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and
 - (iv) statistics;
 - (i) an employee or contractor of the department or an educational institution, or other governmental entity engaged in workforce investment and development activities under the Workforce Innovation and Opportunity Act, 29 U.S.C. Sec. 3101 et seq., for the purpose of:
 - (i) coordinating services with the department;
 - (ii) evaluating the effectiveness of those activities; and
 - (iii) measuring performance;
 - (j) an employee of the Governor's Office of Economic Development, for the purpose of periodically publishing in the Directory of Business and Industry, the name, address, telephone number, number of employees by range, code or classification of an employer, and type of ownership of Utah employers;

- (k) the public for any purpose following a written waiver by all interested parties of their rights to nondisclosure;
 - (l) an individual whose wage data is submitted to the department by an employer, if no information other than the individual's wage data and the identity of the employer who submitted the information is provided to the individual;
 - (m) an employee of the Insurance Department for the purpose of administering Title 31A, Chapter 40, Professional Employer Organization Licensing Act;
 - (n) an employee of the Office of State Debt Collection for the purpose of collecting state accounts receivable as provided in Section 63A-3-502;
 - (o) a creditor, under a court order, to collect on a judgment as provided in Section 35A-4-314; or
 - (p) an employee of the Wage and Hour Division of the United States Department of Labor for the purpose of carrying out the programs administered by the Wage and Hour Division as permitted under 20 C.F.R. 603.5(e), if the information is subject to the payment of costs described in 20 C.F.R. 603.8(d) and:
 - (i) is limited to:
 - (A) the name and identifying information of an employer found by the department to have misclassified one or more workers under Subsection 35A-4-204(3);
 - (B) the total number of misclassified workers for that employer; and
 - (C) the aggregate amount of misclassified wages for that employer;
 - (ii) an employer is given the opportunity to cure a misclassification of one or more workers, in a manner established by division rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, before the information is disclosed as described in this Subsection (5)(p); and
 - (iii) an annual report regarding the benefit to the state from disclosure of information under this Subsection (5)(p) is provided to the department for inclusion in the department's annual report described in Section 35A-1-109.
- (6) Disclosure of private information under Subsection (4)(a)(ii) or Subsection (5), with the exception of Subsections (5)(a), (g), and (o), may be made if:
- (a) the division determines that the disclosure will not have a negative effect on:
 - (i) the willingness of employers to report wage and employment information; or
 - (ii) the willingness of individuals to file claims for unemployment benefits; and
 - (b) the agency enters into a written agreement with the division in accordance with rules made by the department.
- (7)
- (a) The employees of a division of the department other than the Workforce Research and Analysis Division and the Unemployment Insurance Division or an agency receiving private information from the division under this chapter are subject to the same requirements of privacy and confidentiality and to the same penalties for misuse or improper disclosure of the information as employees of the division.
 - (b) Use of private information obtained from the department by a person or for a purpose other than one authorized in Subsection (4) or (5) violates Subsection 76-8-1301(4).

Amended by Chapter 296, 2016 General Session

35A-4-312.5 Suspected misuse of personal identifying information.

- (1) As used in this section:
 - (a) "Child identity protection plan" is a program operated by the attorney general that uses IRIS and allows the attorney general to enter into an agreement with a third party to transmit

verified personal information of a person younger than 18 years of age through secured means to enable the protection of the person's Social Security number from misuse.

- (b) "IRIS" means the Identity Theft Reporting Information System operated by the attorney general.
 - (c) "Personal identifying information" has the same meaning as defined in Section 76-6-1102.
 - (d) "Suspected misuse of personal identifying information" includes:
 - (i) a Social Security number under which wages are being reported by two or more individuals;
or
 - (ii) a Social Security number of an individual under the age of 18 with reported wages exceeding \$1,000 for a single reporting quarter.
- (2) Notwithstanding Section 35A-4-312, if the department records disclose a suspected misuse of personal identifying information by an individual other than the purported owner of the information, or if a parent, guardian, or individual under the age of 18 is enrolling or has enrolled in the child identity protection plan, the department may:
- (a) inform the purported owner of the information or, if the purported owner is a minor, the minor's parent or guardian, of the suspected misuse; and
 - (b) provide information of the suspected misuse to an appropriate law enforcement agency responsible for investigating an identity fraud violation.

Amended by Chapter 57, 2011 General Session

35A-4-313 Determination of employer and employment.

The division or its authorized representatives may, upon its own motion or upon application of an employing unit, determine whether an employing unit constitutes an employer and whether services performed for, or in connection with the business of, an employer constitute employment for the employing unit. The determinations may constitute the basis for determination of contribution liability under Subsection 35A-4-305(2) and be subject to review and appeal as provided.

Renumbered and Amended by Chapter 240, 1996 General Session

35A-4-314 Disclosure of information for debt collection -- Court order -- Procedures -- Use of information restrictions -- Penalties.

- (1) The division shall disclose to a creditor who has obtained judgment against a debtor the name and address of the last known employer of the debtor if:
 - (a) the judgment creditor obtains a court order requiring disclosure of the information as described in Subsection (2); and
 - (b) the judgment creditor completes the requirements described in Subsection (3), including entering into a written agreement with the division.
- (2)
 - (a) A court shall grant an order to disclose the information described in Subsection (1) if, under the applicable Utah Rules of Civil Procedure:
 - (i) the judgment creditor files a motion with the court, which includes a copy of the judgment, and serves a copy of the motion to the judgment debtor and the division;
 - (ii) the judgment debtor and the division have the opportunity to respond to the motion; and
 - (iii) the court denies or overrules any objection to disclosure in the judgment debtor's and the division's response.

- (b) A court may not grant an order to disclose the information described in Subsection (1), if the court finds that the division has established that disclosure will have a negative effect on:
 - (i) the willingness of employers to report wage and employment information; or
 - (ii) the willingness of individuals to file claims for unemployment benefits.
- (c) The requirements of Subsection 63G-2-202(7) and Section 63G-2-207 do not apply to information sought through a court order as described in this section.
- (3) If a court order is granted in accordance with this section, a judgment creditor shall:
 - (a) provide to the division a copy of the order requiring the disclosure;
 - (b) enter into a written agreement with the division, in a form approved by the division;
 - (c) pay the division a reasonable fee that reflects the cost for processing the request as established by department rule; and
 - (d) comply with the data safeguard and security measures described in 20 C.F.R. Sec. 603.9 with respect to information received from the division under this section.
- (4) If a judgment creditor complies with Subsection (3), the division shall provide the information to the judgment creditor within 14 business days after the day on which the creditor complies with Subsection (3).
- (5) A judgment creditor may not:
 - (a) use the information obtained under this section for a purpose other than satisfying the judgment between the creditor and debtor; or
 - (b) disclose or share the information with any other person.
- (6) The division may audit a judgment creditor or other party receiving information under this section for compliance with the data safeguard and security measures described in 20 C.F.R. Sec. 603.9.
- (7) If a judgment creditor or other party fails to comply with the data safeguard and security measures under 20 C.F.R. Sec. 603.9, the judgment creditor or other party is subject to a civil penalty of no more than \$10,000 enforceable by the Utah Office of the Attorney General as follows:
 - (a) the attorney general, on the attorney general's own behalf or on behalf of the division, may file an action in district court to enforce the civil penalty; and
 - (b) if the attorney general prevails in enforcing the civil penalty against the judgment creditor or other party:
 - (i) the attorney general is entitled to an award for reasonable attorney fees, court costs, and investigative expenses; and
 - (ii) the civil penalty shall be deposited into the special administrative expense account described in Subsection 35A-4-506(1).

Enacted by Chapter 473, 2013 General Session