

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