

1 **UNEMPLOYMENT INSURANCE AMENDMENTS**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: John E. Swallow**

5 AN ACT RELATING TO UNEMPLOYMENT INSURANCE; AMENDING THE
6 UNEMPLOYMENT INSURANCE TAX RATE FORMULA TO FIX THE SOCIAL
7 CONTRIBUTION RATE AT A SET AMOUNT AND TO PROVIDE AN ADMINISTRATIVE
8 ADJUSTMENT FOR THE RESERVE FACTOR; AND MAKING TECHNICAL CHANGES.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **35A-4-303**, as last amended by Chapter 148, Laws of Utah 1997

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

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

14 **35A-4-303. Determination of contribution rates.**

15 (1) (a) On or before January 1 of each year beginning January 1, 1985, an employer's basic
16 contribution rate will be the same as the employer's benefit ratio, determined by dividing the total
17 benefit costs charged back to an employer during the immediately preceding four fiscal years by
18 the total taxable wages of the employer for the same time period, calculated to four decimal places,
19 disregarding the remaining fraction, if any.

20 (b) In calculating the basic contribution rate under Subsection (1)(a):

21 (i) if four fiscal years of data are not available, the data of three fiscal years shall be
22 divided by the total taxable wages for the same time period;

23 (ii) if three fiscal years of data are not available, the data of two fiscal years shall be
24 divided by the total taxable wages for the same time period; or

25 (iii) if two fiscal years of data are not available, the data of one fiscal year shall be divided
26 by the total taxable wages for the same time period.

27 (2) (a) On or before January 1 of each year beginning with January 1, 1985, all social costs

28 as defined in Subsection 35A-4-307(1) applicable to the immediately preceding four fiscal years
29 shall be divided by the total taxable wages of all employers subject to contributions for the same
30 time period, calculated to four decimal places, disregarding the remaining fraction, if any.

31 (b) In calculating the social contribution rate under Subsection (2)(a):

32 (i) if four fiscal years of data are not available, the data of three fiscal years shall be
33 divided by the total taxable wages for the same time period; or

34 (ii) if three fiscal years of data are not available, the data of two fiscal years shall be
35 divided by the total taxable wages for the same time period.

36 ~~[(c) The quotient under Subsections (2)(a) and (b) is the social contribution rate and shall
37 be added to each employer's basic contribution rate after the basic contribution rate has been
38 adjusted by the reserve factor, if there is a reserve factor for that year.]~~

39 (c) On or after January 1, 2000, the social contribution rate shall be:

40 (i) set at 0.0010 for any rate year in which the reserve factor established in Subsection
41 (3)(c) is equal to or less than 1.0000; or

42 (ii) calculated by dividing all social costs as defined in Subsection 35A-4-307(1)
43 applicable to the preceding four fiscal years by the total taxable wages of all employers subject to
44 contributions for the same time period, calculated to four decimal places, disregarding any
45 remaining fraction, for any rate year in which the reserve factor established in Subsection (3)(c)
46 is greater than 1.0000.

47 (3) (a) On or before January 1 of each year beginning with January 1, 1985, the reserve
48 factor shall be computed under Subsection (3)(b). For purposes of computing the reserve factor:

49 (i) the five-year average benefit cost rate is calculated by:

50 (A) determining the five highest benefit cost rates experienced in the 25 years ending
51 December 31 one year prior to the computation date;

52 (B) adding together the rates determined under Subsection (3)(a)(i)(A); and

53 (C) dividing the amount under Subsection (3)(a)(i)(B) by five, calculated to four decimal
54 places, disregarding the remaining fraction, if any;

55 (ii) the minimum adequate reserve fund balance is calculated by:

56 (A) multiplying the five-year average benefit cost rate by 1.5; and

57 (B) multiplying the amount under Subsection (3)(a)(ii)(A) by total wages of the fiscal year
58 ending prior to the computation date, rounded to the nearest dollar;

- 59 (iii) the maximum adequate reserve fund balance is calculated by:
- 60 (A) multiplying the five-year average benefit cost rate by 2.0; and
- 61 (B) multiplying the amount under Subsection (3)(a)(iii)(A) by the total wages used under
- 62 Subsection (3)(a)(ii)(B), rounded to the nearest dollar; and
- 63 (iv) the computation date is the January 1 on which the reserve factor is calculated.
- 64 (b) (i) The reserve factor is one if the actual reserve fund balance as of June 30 preceding
- 65 the computation date is:
- 66 (A) equal to or greater than the minimum adequate reserve fund balance; and
- 67 (B) equal to or less than the maximum adequate reserve fund balance.
- 68 (ii) If the actual reserve fund balance as of June 30 preceding the computation date is less
- 69 than the minimum adequate reserve fund balance, the reserve factor shall be the greater of:
- 70 (A) 2.0000 minus an amount equal to the actual reserve fund balance divided by the
- 71 minimum adequate reserve fund balance, calculated to four decimal places, disregarding the
- 72 remaining fraction, if any; or
- 73 (B) the reserve factor calculated in the prior year.
- 74 (iii) The reserve factor is 2.0000 if:
- 75 (A) the actual reserve fund balance as of June 30 preceding the computation date is:
- 76 (I) insolvent; or
- 77 (II) negative; or
- 78 (B) there is an outstanding loan from the Federal Unemployment Account.
- 79 (iv) If the actual reserve fund balance as of June 30 preceding the computation date is more
- 80 than the maximum adequate reserve fund balance, the reserve factor shall be calculated by:
- 81 (A) dividing the actual reserve fund balance by the maximum adequate reserve fund
- 82 balance, calculated to four decimal places, disregarding the remaining fraction, if any; and
- 83 (B) subtracting the amount under Subsection (3)(b)(iv)(A) from 2.0000.
- 84 (c) Beginning January 1, 2000, the division shall by administrative decision set the reserve
- 85 factor at a rate that shall sustain an adequate reserve. For the purpose of setting the reserve factor:
- 86 (i) the adequate reserve is defined as between 17 and 19 months of benefits at the average
- 87 of the five highest benefit cost rates in the last 25 years;
- 88 (ii) the reserve factor shall be 1.0000 if the actual reserve fund balance as of June 30
- 89 preceding the computation date is determined to be an adequate reserve;

90 (iii) the reserve factor will be set between 0.5000 and 1.0000 if the actual reserve fund
91 balance as of June 30 preceding the computation date is greater than the adequate reserve;

92 (iv) the reserve factor will be set between 1.0000 and 1.5000 if the actual reserve fund
93 balance as of June 30 prior to the computation date is less than the adequate reserve;

94 (v) if the actual reserve fund balance as of June 30 preceding the computation date is
95 insolvent or negative or if there is an outstanding loan from the Federal Unemployment Account,
96 the reserve factor will be set at 2.0000 until the actual reserve fund balance as of June 30 preceding
97 the computation date is determined to be an adequate reserve; and

98 (vi) the reserve factor will be set on or before January 1 of each year.

99 (4) (a) Until January 1, 1995, an employer's overall contribution rate is the employer's
100 basic contribution rate multiplied by the reserve factor, if there is a reserve factor, calculated to
101 four decimal places, disregarding any further fraction, plus the social contribution rate, and
102 rounded up to the next higher multiple of .10%, but not more than a maximum overall contribution
103 rate of 8.0% and not less than 1% for new employers.

104 (b) On or after January 1, 1995, an employer's overall contribution rate is the employer's
105 basic contribution rate multiplied by the reserve factor, calculated to four decimal places,
106 disregarding any further fraction, plus the social contribution rate, and rounded to three decimal
107 places, disregarding any further fraction, if the fourth decimal place is .0004 or less, or rounding
108 up to the next higher number, if the fourth decimal place is .0005 or more, but not more than a
109 maximum overall contribution rate of 8.0% and not less than 1% for new employers.

110 (c) On or after January 1, 2000, an employer's overall contribution rate is the employer's
111 basic contribution rate multiplied by the reserve factor established according to Subsection (3)(c),
112 calculated to four decimal places, disregarding the remaining fraction, plus the social contribution
113 rate established according to Subsection (2)(c), and calculated to three decimal places, disregarding
114 the remaining fraction, but not more than a maximum overall contribution rate of 8.0%, plus the
115 applicable social contribution rate and not less than 1.1% for new employers.

116 [(c)] (d) The overall contribution rate does not include the addition of any penalty
117 applicable to an employer as a result of delinquency in the payment of contributions as provided
118 in Subsection (10).

119 (5) Except as provided in Subsection (10), each new employer shall pay a contribution rate
120 based on the average benefit cost rate experienced by employers of the major industry as defined

121 by department rule to which the new employer belongs, the basic contribution rate to be
122 determined as follows:

123 (a) Except as provided in Subsection (5)(b), on or before January 1 of each year, the basic
124 contribution rate to be used in computing the employer's overall contribution rate is the benefit cost
125 rate which is the greater of:

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

130 (ii) 1%.

131 (b) If the major industrial classification assigned to a new employer is an industry for
132 which a benefit cost rate does not exist because the industry has not operated in the state or has not
133 been covered under this chapter, the employer's basic contribution rate shall be 5.4%. This basic
134 contribution rate is used in computing the employer's overall contribution rate.

135 (6) (a) A reopening employer's basic contribution rate is the average overall contribution
136 rate for all employers in the state, but not less than 1%, until such time as the reopening employer
137 becomes a qualified employer as defined in Section 35A-4-301.

138 (b) The average overall contribution rate for all employers in the state shall be defined by
139 rule.

140 (c) The reopening employer is an employer that is not substantially related to or affiliated
141 with the predecessor employer and that acquires, for the purpose of reopening, substantially all the
142 assets of a business or operating component of a business that has been closed or substantially
143 closed for 90 days or more of its normal operating period immediately prior to the acquisition.

144 (d) A business or operating component of a business has been substantially closed if:

145 (i) its normal production has been stopped;

146 (ii) a majority of its workers have been laid off; and

147 (iii) the services of remaining employees are devoted to the protection and disposition of
148 assets and inventory or administrative duties.

149 (7) Notwithstanding any other provision of this chapter, and except as provided in
150 Subsection (8), if an employing unit that moves into this state is declared to be a qualified
151 employer because it has sufficient payroll and benefit cost experience under another state, a rate

152 shall be computed on the same basis as a rate is computed for all other employers subject to this
153 chapter if that unit furnishes adequate records on which to compute the rate.

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

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

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

161 (c) required to have a contractor's license or similar qualification under Title 58, Chapter
162 55, Utah Construction Trades Licensing Act, or the equivalent in laws of another state.

163 (9) (a) If an employer, other than a reopening employer, acquires the business or all or
164 substantially all the assets of another employer and the other employer had discontinued operations
165 upon the acquisition:

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

169 (A) the filing of contribution reports;

170 (B) the payment of contributions; and

171 (C) after January 1, 1985, the benefit costs of both employers; and

172 (ii) the transferring employer shall be divested of the transferring employer's payroll
173 experience.

174 (b) Any employing unit or prospective employing unit that acquires the payroll experience
175 of an employer shall, for all purposes of this chapter, be an employer as of the date of acquisition.

176 (c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in
177 Subsection (9)(a), is divested of the employer's payroll experience by transferring all of the
178 employer's business to another and by ceasing operations as of the date of the transfer, the
179 transferring employer shall cease to be an employer, as defined by this chapter, as of the date of
180 transfer.

181 (10) (a) A rate of less than 8% shall be effective January 1 of any contribution year on or
182 after January 1, 1985, but before January 1, 1988, and a rate of less than the maximum overall

183 contribution rate on or after January 1, 1988, only with respect to new employers and to those
184 qualified employers who, except for amounts due under division determinations that have not
185 become final, paid all contributions prescribed by the division with respect to the four consecutive
186 calendar quarters in the fiscal year immediately preceding the computation date on or after January
187 1, 1985.

188 (b) Notwithstanding Subsections (1), (5), (6), (7), and (9), on or after January 1, 1988, any
189 employer who fails to pay all contributions prescribed by the division with respect to the four
190 consecutive calendar quarters in the fiscal year immediately preceding the computation date,
191 except for amounts due under determinations that have not become final, shall pay a contribution
192 rate equal to the overall contribution rate determined under the experience rating provisions of this
193 chapter, plus a surcharge of 1% of wages.

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

198 (d) Delinquency in filing contribution reports shall not be the basis for denial of a rate less
199 than the maximum contribution rate.

Legislative Review Note

as of 2-4-00 9:05 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel