

1                   **UNEMPLOYMENT INSURANCE CONTRIBUTION**

2                                   **RATES AMENDMENTS**

3   2008 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Howard A. Stephenson**

6   House Sponsor: Merlynn T. Newbold

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8   **LONG TITLE**

9   **General Description:**

10           This bill modifies provisions of the Employment Security Act regarding the  
11   determination of employer contribution rates in relation to the social contribution rate,  
12   adequate reserve, and overall contribution rate.

13   **Highlighted Provisions:**

14           This bill:

15           ▶ provides that beginning January 1, 2009, the Unemployment Insurance Division of  
16   the Department of Workforce Services shall calculate the social contribution rate to  
17   four decimal places, rounded to three decimal places if the fourth decimal place is  
18   .0004 or less or rounding up to the next higher number if the fourth decimal place is  
19   .0005 or more;

20           ▶ defines adequate reserve, beginning January 1, 2009, as between 18 and 24 months  
21   of benefits at the average of the five highest benefit cost rates in the last 25 years;

22   and

23           ▶ makes certain technical changes.

24   **Monies Appropriated in this Bill:**

25           None

26   **Other Special Clauses:**

27           None

28   **Utah Code Sections Affected:**

29   AMENDS:

30 35A-4-303, as last amended by Laws of Utah 2005, Chapter 12



31  
32 *Be it enacted by the Legislature of the state of Utah:*

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

34 **35A-4-303. Determination of contribution rates.**

35 (1) (a) ~~[On or before January 1 of each year beginning January 1, 1985, an]~~ An  
36 employer's basic contribution rate ~~[will be]~~ is the same as the employer's benefit ratio,  
37 determined by dividing the total benefit costs charged back to an employer during the  
38 immediately preceding four fiscal years by the total taxable wages of the employer for the same  
39 time period, calculated to four decimal places, disregarding the remaining fraction, if any.

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

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

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

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

47 ~~[(2)(a) On or before January 1 of each year beginning with January 1, 1985, all social  
48 costs as defined in Subsection 35A-4-307(1) applicable to the immediately preceding four fiscal  
49 years shall be divided by the total taxable wages of all employers subject to contributions for the  
50 same time period, calculated to four decimal places, disregarding the remaining fraction, if any.]~~

51 ~~[(b)]~~ (2)(a) In calculating the social contribution rate under Subsection (2)~~[(a)]~~(b) or  
52 (c):

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

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

57 ~~[(c) On or after January 1, 2000, the social contribution rate shall be:]~~

58           ~~[(i) set at 0.0010 for any rate year in which the reserve factor established in Subsection~~  
59 ~~(3)(c) is equal to or less than 1.0000; or]~~

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

65           ~~[(d) (i) The social contribution rate for the rate year beginning January 1, 2004, is set at~~  
66 ~~.003.]~~

67           ~~[(ii) (b) [On or after] Beginning January 1, 2005, the division shall calculate the social~~  
68 ~~contribution rate [shall be calculated] by dividing all social costs as defined in Subsection~~  
69 ~~35A-4-307(1) applicable to the preceding four fiscal years by the total taxable wages of all~~  
70 ~~employers subject to contributions for the same period, calculated to four decimal places,~~  
71 ~~disregarding any remaining fraction.~~

72           ~~[(iii) Notwithstanding Subsection (2)(d)(ii), the social contribution rate for only the rate~~  
73 ~~year beginning January 1, 2005, may not exceed .004.]~~

74           (c) Beginning January 1, 2009, the division shall calculate the social contribution rate by  
75 dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding four  
76 fiscal years by the total taxable wages of all employers subject to contributions for the same  
77 period, calculated to four decimal places, disregarding any remaining fraction, and rounded to  
78 three decimal places, disregarding any further fraction, if the fourth decimal place is .0004 or  
79 less, or rounding up to the next higher number, if the fourth decimal place is .0005 or more.

80           ~~[(3) (a) On or before January 1 of each year beginning with January 1, 1985, the reserve~~  
81 ~~factor shall be computed under Subsection (3)(b). For purposes of computing the reserve~~  
82 ~~factor:]~~

83           ~~[(i) the five-year average benefit cost rate is calculated by:]~~

84           ~~[(A) determining the five highest benefit cost rates experienced in the 25 years ending~~  
85 ~~December 31 one year prior to the computation date;]~~

- 86 ~~[(B) adding together the rates determined under Subsection (3)(a)(i)(A); and]~~  
87 ~~[(C) dividing the amount under Subsection (3)(a)(i)(B) by five, calculated to four~~  
88 ~~decimal places, disregarding the remaining fraction, if any;]~~  
89 ~~[(ii) the minimum adequate reserve fund balance is calculated by:]~~  
90 ~~[(A) multiplying the five-year average benefit cost rate by 1.5; and]~~  
91 ~~[(B) multiplying the amount under Subsection (3)(a)(ii)(A) by total wages of the fiscal~~  
92 ~~year ending prior to the computation date, rounded to the nearest dollar;]~~  
93 ~~[(iii) the maximum adequate reserve fund balance is calculated by:]~~  
94 ~~[(A) multiplying the five-year average benefit cost rate by 2.0; and]~~  
95 ~~[(B) multiplying the amount under Subsection (3)(a)(iii)(A) by the total wages used~~  
96 ~~under Subsection (3)(a)(ii)(B), rounded to the nearest dollar; and]~~  
97 ~~[(iv) the computation date is the January 1 on which the reserve factor is calculated.]~~  
98 ~~[(b) (i) The reserve factor is one if the actual reserve fund balance as of June 30~~  
99 ~~preceding the computation date is:]~~  
100 ~~[(A) equal to or greater than the minimum adequate reserve fund balance; and]~~  
101 ~~[(B) equal to or less than the maximum adequate reserve fund balance.]~~  
102 ~~[(ii) If the actual reserve fund balance as of June 30 preceding the computation date is~~  
103 ~~less than the minimum adequate reserve fund balance, the reserve factor shall be the greater of:]~~  
104 ~~[(A) 2.0000 minus an amount equal to the actual reserve fund balance divided by the~~  
105 ~~minimum adequate reserve fund balance, calculated to four decimal places, disregarding the~~  
106 ~~remaining fraction, if any; or]~~  
107 ~~[(B) the reserve factor calculated in the prior year.]~~  
108 ~~[(iii) The reserve factor is 2.0000 if:]~~  
109 ~~[(A) the actual reserve fund balance as of June 30 preceding the computation date is:]~~  
110 ~~[(I) insolvent; or]~~  
111 ~~[(II) negative; or]~~  
112 ~~[(B) there is an outstanding loan from the Federal Unemployment Account.]~~  
113 ~~[(iv) If the actual reserve fund balance as of June 30 preceding the computation date is~~

114 ~~more than the maximum adequate reserve fund balance, the reserve factor shall be calculated~~  
115 ~~by:]~~

116 ~~[(A) dividing the actual reserve fund balance by the maximum adequate reserve fund~~  
117 ~~balance, calculated to four decimal places, disregarding the remaining fraction, if any; and]~~

118 ~~[(B) subtracting the amount under Subsection (3)(b)(iv)(A) from 2.0000.]~~

119 ~~[(c)]~~ (3) (a) Beginning January 1, 2000, the division shall by administrative decision set  
120 the reserve factor at a rate that shall sustain an adequate reserve.

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

122 (i) (A) the adequate reserve is defined as between 17 and 19 months of benefits at the  
123 average of the five highest benefit cost rates in the last 25 years;

124 (B) beginning January 1, 2009, the adequate reserve is defined as between 18 and 24  
125 months of benefits at the average of the five highest benefit cost rates in the last 25 years;

126 (ii) the reserve factor shall be 1.0000 if the actual reserve fund balance as of June 30  
127 preceding the computation date is determined to be an adequate reserve;

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

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

132 (v) if the actual reserve fund balance as of June 30 preceding the computation date is  
133 insolvent or negative or if there is an outstanding loan from the Federal Unemployment  
134 Account, the reserve factor will be set at 2.0000 until the actual reserve fund balance as of June  
135 30 preceding the computation date is determined to be an adequate reserve;

136 (vi) the reserve factor will be set on or before January 1 of each year; and

137 (vii) monies made available to the state under Section 903 of the Social Security Act, as  
138 amended, which are received on or after January 1, 2004, may not be considered in establishing  
139 the reserve factor under this section for the rate year 2005 or any subsequent rate year.

140 ~~[(4) (a) Until January 1, 1995, an employer's overall contribution rate is the employer's~~  
141 ~~basic contribution rate multiplied by the reserve factor, if there is a reserve factor, calculated to~~

142 ~~four decimal places, disregarding any further fraction, plus the social contribution rate, and~~  
143 ~~rounded up to the next higher multiple of .10%, but not more than a maximum overall~~  
144 ~~contribution rate of 8.0% and not less than 1% for new employers.]~~

145 ~~[(b) On or after January 1, 1995, an employer's overall contribution rate is the~~  
146 ~~employer's basic contribution rate multiplied by the reserve factor, calculated to four decimal~~  
147 ~~places, disregarding any further fraction, plus the social contribution rate, and rounded to three~~  
148 ~~decimal places, disregarding any further fraction, if the fourth decimal place is .0004 or less, or~~  
149 ~~rounding up to the next higher number, if the fourth decimal place is .0005 or more, but not~~  
150 ~~more than a maximum overall contribution rate of 8.0% and not less than 1% for new~~  
151 ~~employers.]~~

152 ~~[(c) On or after January 1, 2000, an employer's overall contribution rate is the~~  
153 ~~employer's basic contribution rate multiplied by the reserve factor established according to~~  
154 ~~Subsection (3)(c), calculated to four decimal places, disregarding the remaining fraction, plus~~  
155 ~~the social contribution rate established according to Subsection (2)(c), and calculated to three~~  
156 ~~decimal places, disregarding the remaining fraction, but not more than a maximum overall~~  
157 ~~contribution rate of 8.0%, plus the applicable social contribution rate and not less than 1.1% for~~  
158 ~~new employers.]~~

159 ~~[(d)] (4) (a) On or after January 1, 2004, an employer's overall contribution rate is the~~  
160 ~~employer's basic contribution rate multiplied by the reserve factor established according to~~  
161 ~~Subsection (3)[(c)], calculated to four decimal places, disregarding the remaining fraction, plus~~  
162 ~~the social contribution rate established according to Subsection (2)[(d)], and calculated to three~~  
163 ~~decimal places, disregarding the remaining fraction, but not more than a maximum overall~~  
164 ~~contribution rate of 9.0%, plus the applicable social contribution rate and not less than 1.1% for~~  
165 ~~new employers.~~

166 (b) Beginning January 1, 2009, an employer's overall contribution rate is the employer's  
167 basic contribution rate multiplied by the reserve factor established according to Subsection  
168 (3)(b), calculated to four decimal places, disregarding the remaining fraction, plus the social  
169 contribution rate established according to Subsection (2), and calculated to three decimal

170 places, disregarding the remaining fraction, but not more than a maximum overall contribution  
171 rate of 9%, plus the applicable social contribution rate and not less than 1.1% for new  
172 employers.

173 ~~[(e)]~~ (c) The overall contribution rate does not include the addition of any penalty  
174 applicable to an employer as a result of delinquency in the payment of contributions as provided  
175 in Subsection (9).

176 ~~[(f)]~~ (d) The overall contribution rate does not include the addition of any penalty  
177 applicable to an employer assessed a penalty rate under Subsection 35A-4-304(5)(a).

178 (5) Except as provided in Subsection (9), each new employer shall pay a contribution  
179 rate based on the average benefit cost rate experienced by employers of the major industry as  
180 defined by department rule to which the new employer belongs, the basic contribution rate to be  
181 determined as follows:

182 (a) Except as provided in Subsection (5)(b), ~~[on or before]~~ by January 1 of each year,  
183 the basic contribution rate to be used in computing the employer's overall contribution rate is  
184 the benefit cost rate which is the greater of:

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

189 (ii) 1%.

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

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

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

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

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

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

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

208 (8) (a) If an employer acquires the business or all or substantially all the assets of  
209 another employer and the other employer had discontinued operations upon the acquisition or  
210 transfers its trade or business, or a portion of its trade or business, under Subsection  
211 35A-4-304(3)(a):

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

215 (A) the filing of contribution reports;

216 (B) the payment of contributions; and

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

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

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

224 (b) ~~Any~~ An employing unit or prospective employing unit that acquires the  
225 unemployment experience of an employer shall, for all purposes of this chapter, be an employer



226 as of the date of acquisition.

227 (c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in  
228 Subsection (8)(a), is divested of the employer's unemployment experience by transferring all of  
229 the employer's business to another and by ceasing operations as of the date of the transfer, the  
230 transferring employer shall cease to be an employer, as defined by this chapter, as of the date of  
231 transfer.

232 (9) (a) A rate of less than 8% shall be effective January 1 of any contribution year on or  
233 after January 1, 1985, but before January 1, 1988, and a rate of less than the maximum overall  
234 contribution rate on or after January 1, 1988, only with respect to new employers and to those  
235 qualified employers who, except for amounts due under division determinations that have not  
236 become final, paid all contributions prescribed by the division with respect to the four  
237 consecutive calendar quarters in the fiscal year immediately preceding the computation date on  
238 or after January 1, 1985.

239 (b) Notwithstanding Subsections (1), (5), (6), and (8), on or after January 1, 1988,  
240 [~~any~~] an employer who fails to pay all contributions prescribed by the division with respect to  
241 the four consecutive calendar quarters in the fiscal year immediately preceding the computation  
242 date, except for amounts due under determinations that have not become final, shall pay a  
243 contribution rate equal to the overall contribution rate determined under the experience rating  
244 provisions of this chapter, plus a surcharge of 1% of wages.

245 (c) [~~Any~~] An employer who pays all required contributions shall, for the current  
246 contribution year, be assigned a rate based upon the employer's own experience as provided  
247 under the experience rating provisions of this chapter effective the first day of the calendar  
248 quarter in which the payment was made.

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