

1                   **UNEMPLOYMENT INSURANCE RATES AMENDMENTS**

2                                   2020 FIFTH SPECIAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Daniel McCay**

5                                   House Sponsor: Karianne Lisonbee

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7                   **LONG TITLE**

8                   **General Description:**

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

10                  **Highlighted Provisions:**

11                  This bill:

12                    ▶ modifies provisions related to the Unemployment Compensation Fund, including  
13 the Unemployment Insurance Division's calculation of employer contribution rates  
14 to the Unemployment Compensation Fund for the 2021 calendar year; and

15                    ▶ makes technical changes.

16                  **Money Appropriated in this Bill:**

17                  None

18                  **Other Special Clauses:**

19                  This bill provides a special effective date.

20                  **Utah Code Sections Affected:**

21                  AMENDS:

22                    **35A-4-303**, as last amended by Laws of Utah 2013, Chapter 26

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

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

26                    **35A-4-303. Determination of contribution rates.**

27                    (1) (a) An employer's basic contribution rate is the same as the employer's benefit ratio  
28 and is determined by dividing the total benefit costs charged back to an employer during the  
29 immediately preceding four fiscal years by the total taxable wages of the employer for the same

30 time period, calculated to four decimal places, disregarding any remaining fraction.

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

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

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

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

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

43 or

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

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

48 (c) For calendar year 2021 only, if the calculation of the social contribution rate under  
49 Subsection (2)(a) is greater than 0.002, the social contribution rate for that calendar year is  
50 0.002.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

113 (i) the amount calculated by dividing the total benefit costs charged back to both active

114 and inactive employers of the same major industry for the last two fiscal years by the total  
115 taxable wages paid by those employers that were paid during the same time period, computed  
116 to four decimal places, disregarding any remaining fraction; or

117 (ii) 1%.

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

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

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

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

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

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

137 (8) (a) If an employer acquires the business or all or substantially all the assets of  
138 another employer and the other employer had discontinued operations upon the acquisition or  
139 transfers its trade or business, or a portion of its trade or business, under Subsection

140 [35A-4-304\(3\)\(a\)](#):

141 (i) for purposes of determining and establishing the acquiring party's qualifications for

142 an experience rating classification, the payrolls of both employers during the qualifying period  
143 shall be jointly considered in determining the period of liability with respect to:

144 (A) the filing of contribution reports;

145 (B) the payment of contributions; and

146 (C) the benefit costs of both employers;

147 (ii) the transferring employer shall be divested of the transferring employer's

148 unemployment experience provided the transferring employer had discontinued operations, but  
149 only to the extent as defined under Subsection 35A-4-304(3)(c); and

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

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

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

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

166 (b) Notwithstanding Subsections (1), (5), (6), and (8), an employer who fails to pay all  
167 contributions prescribed by the division for the four consecutive calendar quarters in the fiscal  
168 year immediately preceding the computation date, except for amounts due under  
169 determinations that have not become final, shall pay a contribution rate equal to the overall

170 contribution rate determined under the experience rating provisions of this chapter, plus a  
171 surcharge of 1% of wages.

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

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

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

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

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

186 Section 2. **Effective date.**

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