

1 **UNEMPLOYMENT INSURANCE RATES AMENDMENTS**

2 2021 SECOND SPECIAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Karianne Lisonbee**

5 Senate Sponsor: Daniel McCay

6

LONG TITLE

7 **General Description:**

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

9 **Highlighted Provisions:**

10 This bill:

11

- 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 calendar years 2022, 2023, and 2024;
- 15 and

16

- 17 ► makes technical changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 This bill provides a special effective date.

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **35A-4-303**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 17

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

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

27 **35A-4-303. Determination of contribution rates.**



28 (1) (a) An employer's basic contribution rate is the same as the employer's benefit ratio
29 and is determined by dividing the total benefit costs charged back to an employer during the
30 immediately preceding four fiscal years by the total taxable wages of the employer for the same
31 time period, calculated to four decimal places, disregarding any remaining fraction.

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

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

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

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

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

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

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

49 (c) For calendar year 2021 only, if the calculation of the social contribution rate under
50 Subsection (2)(a) is greater than 0.002, the social contribution rate for that calendar year is
51 0.002.

52 (d) For calendar year 2022 only, if the calculation of the social contribution rate under
53 Subsection (2)(a) is greater than 0.003, the social contribution rate for that calendar year is
54 0.003.

55 (e) For calendar years 2023 and 2024 only, if the calculation of the social contribution
56 rate under Subsection (2)(a) is greater than 0.004, the social contribution rate for that calendar
57 year is 0.004.

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

59 reserve.

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

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

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

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

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

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

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

77 (vii) money made available to the state under Section 903 of the Social Security Act,
78 42 U.S.C. 1103, as amended, which is received on or after January 1, 2004, may not be
79 considered in establishing the reserve factor under this section for the rate year 2005 or any
80 following rate year; ~~and~~

81 (viii) for calendar year 2021 only, the division may not set the reserve factor to be more
82 than 1.0500[-];

83 (ix) for calendar year 2022 only, the division may not set the reserve factor to be more
84 than 1.1500; and

85 (x) for calendar years 2023 and 2024 only, the division may not set the reserve factor to
86 be more than 1.2000.

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

88 (i) except as provided in Subsection (4)(a)(ii) or (iii), the employer's basic contribution
89 rate multiplied by the reserve factor established under Subsection (3)(b), calculated to four

90 decimal places, disregarding any remaining fraction, plus the social contribution rate
91 established under Subsection (2), and the result calculated to three decimal places, disregarding
92 any remaining fraction;

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

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

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

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

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

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

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

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

117 (ii) that is assessed a penalty rate under Subsection [35A-4-304\(5\)\(a\)](#).

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

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

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

128 (ii) 1%.

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

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

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

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

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

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

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

151 [35A-4-304\(3\)\(a\)](#):

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

- 155 (A) the filing of contribution reports;
- 156 (B) the payment of contributions; and
- 157 (C) the benefit costs of both employers;

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

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

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

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

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

177 (b) Notwithstanding Subsections (1), (5), (6), and (8), an employer who fails to pay all
178 contributions prescribed by the division for the four consecutive calendar quarters in the fiscal
179 year immediately preceding the computation date, except for amounts due under
180 determinations that have not become final, shall pay a contribution rate equal to the overall
181 contribution rate determined under the experience rating provisions of this chapter, plus a
182 surcharge of 1% of wages.

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

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

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

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

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

197 Section 2. **Effective date.**

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