

EMPLOYMENT LAW SUMMARY

California: Unemployment Compensation - Employer Contributions



Because You're Different

In the United States, unemployment insurance is financed through a combination of federal and state payroll taxes. The Federal Unemployment Tax Act (FUTA) authorizes the Internal Revenue Service (IRS) to collect annual federal taxes from employers. These taxes are used, in part, to fund unemployment insurance programs in all 50 states, the District of Columbia and Puerto Rico. In addition, the California Unemployment Compensation Code (CUIC) requires employers in the state to make quarterly unemployment premium payments to the California Unemployment Insurance Fund (UI Fund).

COVID-19 Update: Under amendments to the CUIC that went into effect on June 29, 2020, UI benefits paid to an unemployed individual under any federal unemployment benefit program specifically created to respond to the COVID-19 pandemic may not be charged against the reserve account of a tax-rated employer, except under limited circumstances.

COVERED EMPLOYERS

Most employers in California are subject to the CUIC and are therefore liable to make contributions. In general, employers are liable to make UI Fund contributions if they:

- Pay more than \$100 in wages for employment during any calendar quarter; and
- Employ one or more individuals for some portion of a day within the current or preceding calendar year.

However, the CUIC prescribes additional criteria to determine UI Fund liability for certain employers.

EMPLOYERS IN THE MOTION PICTURE, RADIO OR TELEVISION INDUSTRY

Employers in the motion picture, radio or television industry are liable to make contributions to the UI Fund if they pay wages for employment pursuant to a collective bargaining agreement between an employer and a labor organization in the motion picture, radio or television industry. Motion picture payroll services companies are also liable to make contributions if they:

- Pay and control the payment of wages of a motion picture production worker for services either to a motion picture production company or to an allied motion picture services company; and
- File a statement of their intent to be the employer of motion picture production workers within 15 days after first paying wages to the workers.

DOMESTIC EMPLOYERS

Domestic employers are liable to make contributions to the UI Fund if they:

- Pay \$1,000 or more in wages for employment during any calendar quarter in the current or preceding calendar year; and
- Employ individuals to perform domestic service in a private home, college club, fraternity or sorority.

Domestic service includes in-home supportive services where the employer is:

- The recipient of those services, if the state or county pays for the in-home support;

- An individual or entity with whom a county contracts to provide in-home support; or
- Any county that hires and directs in-home supportive personnel.

In general, employment agencies are not considered employers of domestic workers who use the employment agencies' services for UI purposes.

WORK MADE FOR HIRE CONTRACTORS

Any person who contracts for specially ordered or commissioned works of authorship is liable to make contributions to the UI Fund if:

- The parties expressly agree in a signed writing that the work will be considered a work made for hire; and
- The person ordering or commissioning the work obtains ownership of all copyright rights in the work.

EMPLOYER CONTRIBUTIONS

An employer's UI contribution rate is the annual percentage tax that it must pay into the UI Fund. The amount varies based on the employer's experience rating, the condition of the UI Fund and whether the employer qualifies as a new employer.

NEW EMPLOYERS

New employers are assigned a "new employer" rate of 3.4 percent for the first two to three years of being subject to premiums and chargeable with benefits. This rate may go up or down in the second or third year, depending on whether the employer's account has been subject to benefit charges within the 12 consecutive calendar months immediately preceding the computation date, June 30. Thereafter, an employer's UI contribution rate is determined by its experience rating and the condition of the UI Fund.

EXPERIENCE-RATED EMPLOYERS

Experience-rated employers' contribution rates are based on one of seven contribution rate schedules established by the CUIIC. An employer's rate is determined by its reserve ratio and the UI Fund balance. An employer's reserve ratio is calculated by dividing the employer's reserve account balance as of July 31 of the current year by the employer's average taxable payroll for the previous three years. The reserve ratio is then compared to the applicable rate schedule in effect for the coming year. To determine which of the seven contribution rate schedules is in effect for the calendar year, the balance of the UI Fund on Sept. 30 of the current year is divided by the total gross wages reported by all employers during the fiscal year ending on the computation date, June 30. The resulting percentage is then compared to the following table to determine the applicable rate schedule:

Greater Than:	Equal To or Less Than:	Contribution Rate Schedules
1.8%		AA
1.6%	1.8%	A
1.4%	1.6%	B
1.2%	1.4%	C
1.0%	1.2%	D
0.8% (or equal to)	1.0%	E
0.6% (or equal to)	0.799%	F

If the calculation produces a ratio less than 0.6 percent, an emergency solvency surcharge rate of 1.15 times the rates on Schedule F is in effect (called Schedule F+).

VOLUNTARY UI CONTRIBUTION

During the years when contribution rate schedules AA through D are in effect, eligible employers may voluntarily pay an additional UI contribution to obtain a lower rate. A Voluntary UI Contribution Notice (DE 2088A) is sent to eligible employers, reflecting the amounts payable to receive a lower rate. If an employer is eligible, it has until the last working day in March to submit a payment. Late payments will not be accepted under any circumstance, and extension periods will not be granted. Specific instructions are provided on the DE 2088A. Employers are not eligible to participate in the voluntary UI contribution program if they:

- Have a required rate of 3.4 percent;
- Have a negative reserve account balance;

- Already have been assigned the lowest possible rate;
- Have been notified prior to Sept. 1 of any unpaid amount owed which is not the subject of a timely petition for reassessment on Sept. 30 preceding the year to which a contribution rate is applicable; or
- Are subject to a penalty contribution rate, as described below.

An employer may choose, but is not required, to participate in the voluntary UI contribution program. The voluntary UI contribution is not a prepayment, but an additional payment, and cannot be deducted on a future tax return. Once a voluntary payment is made, the reduced rate is in effect for the full calendar year and the payment is not refundable. Voluntary UI contributions are prohibited when rate schedule E, F or F+ is in effect.

PENALTY CONTRIBUTION RATE

Employers are prohibited from obtaining or attempting to obtain a more favorable contribution rate through deliberate ignorance, reckless disregard, fraud, intent to evade, misrepresentation or willful nondisclosure. Any employer who does this will be assigned a penalty contribution rate of the maximum contribution rate plus two percent for each applicable rating period, the current rating period and the subsequent rating period. In addition, employers that violate the CUIC may be imprisoned for up to one year, fined up to \$20,000 or both. Violations include, but are not limited to:

- Willfully making a false statement, representation or concealment relating to UI Fund liability;
- Unlawfully deducting from employee wages for UI Fund contributions;
- Failing to appear, testify or produce records for any required hearing or inspection;
- Willfully failing or refusing to make contributions which are due;
- Willfully failing to register or report as an employer who is liable for UI Fund contributions;
- Unlawfully disclosing confidential information; or
- Advising, aiding or assisting another with respect to CUIC violations.

MORE INFORMATION

For more information on unemployment compensation laws in California, visit the California Employment Development Department website, or contact your Heffernan Insurance Brokers representative.

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