

EMPLOYMENT LAW SUMMARY

New York: Unemployment Compensation - Employer Contributions



Because You're Different

Most employers in New York are subject to New York's Unemployment Insurance Law (NYUIL) and are therefore liable to make contributions to the state's unemployment insurance fund (UI Fund) each quarter. Contribution rates are determined by an employer's experience rating, the condition of the unemployment insurance fund and whether or not the employer qualifies as a new employer.

COVERED EMPLOYERS

In general, employers are liable to make UI Fund contributions if they:

- Pay \$300 or more in wages for employment during any calendar quarter; or
- Acquire any or all of the business of a liable employer.

As of Jan. 1, 2020, this includes all agricultural employers. (Previously, employers of workers engaged in agricultural labor were liable to make contributions to the UI Fund only if they had fewer than ten employees and paid less than \$20,000 in wages in any of the eight preceding calendar quarters.)

Also effective Jan. 1, 2020, the law clarifies that if services performed by an individual constitute employment, but the supervision, direction and control are exercised by one or more entities, and one entity places the individual with, or provides the individual to, another entity to perform the services, then the entity that pays the individual for the services is considered the employer. However, the other entity may be considered the employer if the parties specify this by contract. Also, entities that provide payroll services on behalf of another employer are generally exempt from this new provision.

EXCEPTION FOR DOMESTIC EMPLOYERS

Domestic employers are generally liable to make contributions to the UI Fund to the same extent as other employers. However, domestic employers become liable for contributions only if they pay \$500 or more in wages for employment during any calendar quarter. Domestic employment is defined as personal or domestic service performed in private homes.

EMPLOYER CONTRIBUTION RATE

An employer's New York State unemployment insurance contribution rate consists of two parts - the normal and the subsidiary tax. When combined, these rates make up an employer's total contribution rate for the year. The UI Fund balance determines the employer's normal tax rate, while the balance in the General Account determines the subsidiary tax rate. Both of these taxes are experience rated, meaning they are dependent upon the individual employer's unemployment experience.

NEW EMPLOYERS

New employers are assigned a "new employer" rate for the first five quarters of being subject to premiums and chargeable with benefits.

- Normal Tax Rate – A new employer's normal tax rate is fixed each year according to the size of the UI Fund, with a maximum rate of 3.4 percent.

- **Subsidiary Tax Rate** – A new employer’s subsidiary tax rate is determined using the Subsidiary Tax Rate Table, according to the balance in the General Account. The new employer subsidiary rate is the rate for an account percentage of 0.0 percent but less than 5.5 percent in the appropriate column of the subsidiary tax rate table.

After filing reports for the five quarters before the rate computation date of Dec. 31, an employer’s contribution rate is determined by its experience rating and the balance of the UI Fund and General Account. If an employer’s account remains positive in the fifth through the 21st quarter of liability, the employer is eligible for a Benefit Equalization Factor. This factor is a mathematical calculation that creates a graduated rate reduction for newer employers. This is done to give new employers an equal opportunity with established employers to earn rate reductions.

EXPERIENCE-RATED EMPLOYERS

Experience-rated employers’ contribution rates are based on the Employer Tax Rate Table established by New York’s unemployment insurance law. An employer’s rate is determined by the employer’s account percentage and the UI Fund or General Account balance. The employer’s account percentage is calculated by dividing the employer’s account balance by the employer’s average taxable payroll for the previous five years. The account percentage is then compared to the applicable employer tax rate table to determine the employer’s corresponding normal and subsidiary rates.

PENALTIES FOR NONCOMPLIANCE

Employers must provide complete and correct reporting information to the NYSDOL, and face monetary penalties for noncompliance. Penalties may be abated if the employer provides complete and correct information within 30 days after the NYSDOL sends notice of the noncompliance.

- If the noncompliance is discovered through an examination of the employer’s records, the employer will be fined for each employee who is not included or incorrectly reported, as follows:
 - \$1 per employee for a first violation in any eight calendar quarters, up to \$1,000;
 - \$5 per employee for a second violation in any eight calendar quarters, up to \$2,000; and
 - \$25 per employee for subsequent violations in any eight calendar quarters, up to \$5,000.
- If the noncompliance is discovered in relation to a specific claimant’s claim for benefits, the employer will be fined \$25 per occurrence.

In addition, employers that violate the NYUIL may be charged with a misdemeanor, which is punishable by imprisonment for up to one year, a fine of up to \$500 or both. Violations include, but are not limited to:

- Willfully making a false statement, representation or concealment relating to UI Fund liability or any claimant’s eligibility for benefits;
- Willfully failing or refusing to make contributions which are due;
- Refusing to allow the NYSDOL to inspect payroll or other records; or
- Deducting from employee wages to pay UI contributions.

MORE INFORMATION

For more information on unemployment compensation laws in New York, visit the NYSDOL website, or contact your Heffernan Insurance Brokers representative.

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