

EMPLOYER LIABILITY

Who Is A Liable Employer?

A liable employer is an individual or type of organization including any partnership, association, trust, estate, corporation, limited liability company or governmental agency who employs people and meets the coverage provisions of the Nebraska Employment Security Law. *Neb. Rev. Stat.* § 48-603

A "contributory employer" is a liable employer who is required to pay quarterly combined tax which consists of contributions and state unemployment insurance tax on wages at the applicable combined tax rate. *Neb. Rev. Stat.* § 48-649

A "reimbursable employer" is a liable employer who elects to make payments in lieu of combined tax. Such an employer is required to reimburse the agency for benefits paid to former employees. The reimbursing employer option is available only to governmental entities and non-profit organizations with a 501 (c)(3) IRS exempt status. *Neb. Rev. Stat.* § 48-649 (7)

Application For An Unemployment Insurance Account Number

Every employer who begins operations in this state and employs a person or persons is required to file an Application For An Unemployment Insurance Account Number, (UI Form 1) even though such an employer may not be liable to the Law. (See appendix for form). *Neb. Rev. Stat.* § 48-612. Upon receipt of the completed form, a determination of the employer's liability will be made. An appeal for review from the liability determination may

be made to the Commissioner of Labor within thirty days from the date of mailing of such a determination. *Neb. Admin. Code* 220, Chapter 12

You can get an application for an unemployment insurance account by calling 402.471.9935. You may also register for an account at uiconnect.ne.gov. (See Appendix).

How Is Liability Established?

An employer becomes liable under the following circumstances:

Neb. Rev. Stat. § 48-603

General business employers:

1. Employs one or more persons in covered employment on a day in twenty different calendar weeks in a calendar year (such weeks need not be consecutive).
2. Has paid gross wages for employment in the total sum of \$1,500 or more in any calendar quarter in a calendar year.
3. Acquired the organization, trade or business, or substantially all the assets thereof, of another employer which at the time of acquisition was an employer subject to the Law.
4. Acquired the organization, trade or business, or substantially all the assets thereof, of another employer, not subject to the Law, and which if subsequent to such acquisition it were treated as a single unit with such other employer, who had in its employ one or more persons on a day in twenty different calendar weeks in a calen-

dar year, or had paid gross wages of \$1,500 or more in a calendar quarter.

5. An employer not otherwise subject who has employment in this state and is liable under the provisions of the Federal Unemployment Tax Act (FUTA). *Neb. Rev. Stat.* § 48-603 (7)

Employers of domestic (household) workers:

With respect to services performed in domestic services in a private home, on the farm, local college club or local chapter of a college fraternity or sorority if the employer has paid cash wages of \$1,000 or more in any calendar quarter in a calendar year. *Neb. Rev. Stat.* § 48-604 (4)

Employers of agricultural workers:

1. With respect to services performed in agricultural employment for an employer if such employer employs ten or more workers on a day in twenty different calendar weeks in a calendar year. *Neb. Rev. Stat.* § 48-604 (4)
2. With respect to services performed in agricultural employment for an employer who has paid cash wages of \$20,000 or more in a calendar quarter in a calendar year. *Neb. Rev. Stat.* § 48-604 (4)

Nonprofit organizations (501(c)(3))

For services performed for an organization that is exempt under Section 501 (c)(3) of the Internal Revenue Code and has had in its employ four or more individuals for some portion of a day in each of twenty different calendar weeks,

whether or not such weeks were consecutive, within a calendar year (these organizations have the option to become liable on a reimbursable basis). *Neb. Rev. Stat.* § 48-604 (4)

Governmental entities:

With respect to any services performed in the employ of this state or any of its instrumentalities, or any political subdivision thereof. (These employers have the option to become liable on a reimbursable basis.) *Neb. Rev. Stat.* § 48-649 (7)

Voluntary Election:

Employing units not meeting the foregoing conditions, may elect to cover workers for unemployment insurance upon approval by the Commissioner of Labor. Such election will include all employment during the calendar year and will continue to be in effect for at least two complete calendar years. *Neb. Rev. Stat.* § 48-661 (3)

Period Of Liability

Liability of an employer is determined on a calendar year basis. This means that if an employer becomes liable during any calendar quarter, they are liable for the entire year and the following year. *Neb. Rev. Stat.* § 48-661. Combined tax is due for wages paid for the entire year up to the taxable wage base for the year.

Addresses

Each employer's account has the capability of carrying multiple addresses. For example, an employer desiring to have tax information sent to one address and the

request for benefit separation (Form 350) to another address may do so by notifying the UI Tax Section, Attn: Status Unit, Box 94600, Lincoln, NE 68509.

Termination Of Liability

Once an employer is determined liable, liability is continuous. To terminate coverage, a *General Business Employer* must not have in their employ one or more persons in 20 different weeks and not have a payroll of \$1,500 in any calendar quarter. Both conditions must be met to terminate liability. Written application to terminate must be filed on or before January 31st following such year. *Neb. Rev. Stat. § 48-661 (2)*

Nonprofit Organizations exempt under Section 501(c)(3) of the Internal Revenue Code must complete a full calendar year in which they did not employ four or more persons in twenty different calendar weeks. *Neb. Rev. Stat. § 48-661 (2)(b)*

An *Agricultural Employer* must not have in their employ 10 or more persons in 20 different weeks and did not pay cash wages of \$20,000 or more during any calendar quarter in order to terminate coverage. Both conditions must be met to terminate liability. *Neb. Rev. Stat. § 48-661 (2)(c)*

For a *Domestic Employer* to terminate coverage, a calendar year must be completed during which cash wages of \$1,000 or more were not paid in a calendar quarter. *Neb. Rev. Stat. § 48-661 (2)(d)*

When an employer no longer has persons in their employ, they cease to be liable to unemployment insurance tax and the account will be terminated one year after

employment ceases. The account must be reinstated if the employer again has employment within one calendar year after termination. If liability requirements have been reestablished, the account may be reinstated by written application if the employer again has employment within two calendar years after termination. *Neb. Rev. Stat. § 48-652 (4)*

Contributory vs. Reimbursable

Nonprofit organizations who have received a tax exemption under Section 501(c)(3) and governmental entities have the option of becoming liable to unemployment insurance on a contributory or reimbursable basis. A contributory employer pays quarterly unemployment insurance combined tax at an assigned rate based on experience. A reimbursable employer repays the agency for all benefits paid to former employees.

Before an eligible employer makes this decision, consideration should be given to the following:

Advantages Of Being A Contributory Employer

1. Expenses are limited to the amount of taxable wage base multiplied by the employer's tax rate.
2. It is easier to budget unemployment insurance expense because it is more predictable.
3. Contributory employers can receive non-charging of benefits status in some situations.
4. Contributory employers are eligible for reduced tax rates.

5. Benefit overpayments are credited to the account as soon as they are established.

Disadvantages Of Being A Contributory Employer

1. There may be some unemployment insurance expense each year even if no benefits are paid.
2. The employer must calculate and report gross, excess, and taxable wages on each quarterly combined tax report.

Advantages Of Being A Reimbursable Employer

1. If benefits are not charged to your account, the employer pays nothing for the quarter.
2. There is no need to calculate excess wages and taxable wages on quarterly combined tax report forms. Reimbursable employers will still have to file a quarterly report showing number of employees and gross wages paid as well as completing a wage report.

Disadvantages Of Being A Reimbursable Employer

1. Heavy expenses could be incurred in one quarter—up to 13 times the employee's weekly benefit amount or more.
2. Reimbursable employers cannot be granted non-charging. This means *all* benefits paid out must be reimbursed by the employer.
3. Benefit overpayments are not credited to your account until collection has been received from the claimant.

Changing Financing Methods

A nonprofit or governmental organization that has elected to become a reimbursable employer for payments in lieu of combined tax must continue to occupy such status until it files a written notice terminating its election to be reimbursable not later than thirty days prior to the beginning of the taxable year for which such termination is to be effective. *Neb. Rev. Stat. § 48-660.01 (2) (d)*

Benefits paid on subsequent claims that include any quarter within the base period that is prior to the effective date of termination of the election shall be chargeable to the reimbursable account of such employer and such employer shall continue to be liable to reimburse such benefits paid after the date of termination. *Neb. Rev. Stat. § 48-649 (6)*

If an employer elects to change from reimbursable to contributory, the employer would be liable for combined tax payments as well as potential reimbursable charges for a period of time. *Neb. Rev. Stat. § 48-649 (7)(c)*

A nonprofit or governmental organization which has been paying combined tax may change to a reimbursable basis by filing not later than 30 days prior to the beginning of any taxable year written notice of election to become a reimbursable employer. Such election is not terminable for a period of two years. *Neb. Rev. Stat. § 48-660.01 (2)*

Employee Leasing

Employee leasing companies or professional employer organizations (PEOs) are

required to report wages and pay combined tax for client workers under the account number for the client. Worksite employees are considered to be employees of the client for purposes of the Employment Security Law. *Neb. Rev. Stat. § 48-648 (3)*

EMPLOYMENT AND WAGES

What Is Employment?

The term “employment” is defined as all services or work performed in Nebraska including temporary work except those services which are *specifically exempt* as follows:

Neb. Rev. Stat. § 48-604

1. Casual labor not in the course of any employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service.
2. Family employment-service rendered by an individual in the employ of their son, daughter, or spouse, or a child under the age of 21 in the employ of their father or mother. This applies only to sole proprietorships and partnerships where the relationship of the family member is the same for each partner.
3. Service performed for church or an organization operated primarily for religious purposes and is operated by a church or an association of churches.
4. Service performed by a minister in the exercise of the ministry or by a member of a religious order in the exercise of the duties required by such order.
5. Service performed for 501(c)(3) nonprofit or governmental organizations by employees in a sheltered workshop if the earning capacity of such employees is impaired.
6. Service performed for 501(c)(3) nonprofit or governmental organizations as a part of an unemployment work relief or work training program assisted or financed in part by a governmental agency.
7. Services of patients in hospitals.
8. Services performed by a student or spouse in the employ of a school, college, or university; if such services are performed by a student enrolled, regularly attending classes at, and working for such school, college or university pursuant to financial assistance arrangement with such school, college, or university or by the spouse of such student provided such spouse was employed to provide financial assistance to the student enrolled in a school, college, or university.
9. Service performed by a student nurse or intern if performed as a part of a training program.
10. Services performed by a real estate or insurance agent if all such service is performed for remuneration solely by way of commission.

11. Services performed by an individual under the age of 18 in delivery or distribution of newspapers.
12. Services performed by an individual in an arrangement under which newspapers and magazines are all sold at a fixed price and the compensation is based on the retention of the excess of such price over the cost.
13. State and local governmental services performed by elected officials, members of legislative and judicial bodies, members of Army National Guard, Air National Guard, temporary employees hired for storm emergencies or similar situations, as advisory or policy making employees working eight hours or less per week.
14. Services performed at a custodial or penal institution by inmates.
15. Service performed by an owner-operator and driving a truck for a motor carrier.
16. Service performed by a home worker processing data for a business engaged in compilation of marketing data bases.
17. Service performed by an individual as a voluntary research subject who is paid on a per study basis for scientific, medical or drug related testing. This does not apply to governmental entities or organizations as described in Section 501(c)(3) of the Internal Revenue Code of 1954.
18. Services for which academic credits are given, performed by an individual who is a student enrolled in a full-time program, at a nonprofit or public school.
19. Service performed by a direct seller if engaged in the trade or business of selling or soliciting the sale of consumer products or services to any buyer on a buy-sell basis or deposit-commission basis for resale, by the buyer or any other person in the home or otherwise than in a permanent retail establishment; or engaged in the trade or business of selling or soliciting the sale of consumer products or services in the home or otherwise than in a permanent retail establishment.
20. Service performed or a participant of AmeriCorp.
21. An election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars.

Independent Contractors (Contract Labor)

To consider any individual an independent contractor, it must be shown to the satisfaction of the Commissioner of Labor that:

Neb. Rev. Stat. § 48-604 (5)

- a. Such individual has been and will continue to be free from control or direction over the performance of such services, both under contract of service and in fact,

- b. Such service is either outside the usual course of the business, or such service is performed outside of all the places of business of the enterprise for which service is performed, and
- c. Such individual is customarily engaged in an independently established trade, occupation, profession, or business.

All three parts of the above must be met to be considered Contract Labor.

Wages Defined

The term “wages” means payment for services rendered for an employer who is liable to the Nebraska Employment Security Law. Wages include all payments for services including commissions, bonuses, tips, reasonable value of meals and lodging, or any other form of payment. *Neb. Rev. Stat. § 48-602 (29)*

- Tips are reported to the extent they are reportable under 6053(a) of the Internal Revenue Code. Employee reports tips on Form 4070.
- Payments for sickness or disabilities are reportable. This includes payments made by a third party who make an accounting to you.
- Deferred payments under a 401K Plan deducted from the workers wages are reportable.
- Officers of a corporation (including sub-chapter-S) who perform services and receive remuneration must be reported.
- Cash value of commodities not intended for personal consumption.

Wages in lieu of money:

- a. If board, lodging or any other payment in kind considered as payment for services performed by a worker is in addition to or in lieu of (rather than a deduction from) monetary wages, the Commissioner determines or approves the cash value of such payment in kind, and the employer shall use the cash values in computing contributions due under the law. *Neb. Admin. Code 220, Chapter 2*
- b. Where a cash value for board and lodging furnished a worker is agreed upon in any contract of hire, the amount so agreed upon shall, if more than the rates prescribed herein, be deemed the value of such board and lodging. *Neb. Admin. Code 220, Chapter 3*

Excluded Wages:

- 1. Remuneration paid in excess of taxable wage base to an employee during a calendar year. The taxable wage base for 2006 is \$8000. The taxable wage base for 2007 and thereafter is \$9000. Wages paid by an employer for services performed in another state or wages paid by the predecessor employer may be used in determining wages in excess of the taxable wage base. *Neb. Rev. Stat. § 48-648.02*

2. Payments received under a workers' compensation law.
3. Directors' fees if customary and reasonable.
4. Deduction from workers' wages for benefits under a cafeteria plan (IRS Section 125).
5. Members wages under a LLC unless LLC filing as an "s" corporation.

Required Records

Every individual or organization if employing even one person is required to keep records and upon request make reports to the Office of Unemployment Insurance. *Neb. Rev. Stat. § 48-612.*

Records with respect to employment performed must be preserved for a period of not less than four calendar years after the calendar year in which the wages were paid or if not paid were due. The employer may maintain records in any manner provided the records will show:

For Each Worker

- Name and social security number
- The residence of each employee
- Place or places in which the employee's services were performed
- Date on which the employee was hired, rehired, or returned to work after temporary layoff and date separated from work

- The amount of gross wages paid to the employee and the period for which paid, showing separately
 1. Cash wages, including special payments
 2. Reasonable cash value or remuneration in any medium other than cash

General Payroll

- Beginning and ending dates of each pay period
- Total amount of wages paid and total amount paid in each calendar quarter
- Date in each calendar week on which there was the largest number of such workers
Neb. Admin. Code 221, Chapter 1

Each employer shall make such reports as are prescribed on forms issued and required by the Commissioner of Labor. The instructions accompanying any such report forms shall have the force and effect of regulations issued in accordance with the provisions of the Nebraska Employment Security Law. *Neb. Rev. Stat. § 48-607*

REPORTING AND PAYING UNEMPLOYMENT INSURANCE COMBINED TAX

New Employer Rates

Employers who are not eligible for experience rating are assigned a combined tax rate which will vary each year. For non-construction employers the rate will be the lesser of the state's average tax rate or 2.5%. For employers in the construction industry the combined tax rate will

be equal to the rate assigned to category 20 in the rate schedule. The rates for all 20 categories as well as the state average tax rate are determined in December each year. Employers must have reported wages in each of the two four-quarter periods ending September 30 to be eligible for experience rating. *Neb. Rev. Stat. § 48-649*

Taxable Wage Base

The taxable wage base for Nebraska unemployment insurance combined tax was \$8,000 in 2006 and \$9,000 in 2007 and

The following is an example of reporting wages for one individual paid \$2,000 per month during 2006 when the taxable wage base was \$8,000.

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Summary for the year
Gross wages	\$6,000	\$6,000	\$6,000	\$6,000	\$24,000
Excess wages	\$0	\$4,000	\$6,000	\$6,000	\$16,000
Taxable wages	\$6,000	\$2,000	\$0	\$0	\$8,000

The following is an example of reporting wages for one individual paid \$2,000 per month during 2007 when the taxable wage base was \$9,000.

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Summary for the year
Gross wages	\$6,000	\$6,000	\$6,000	\$6,000	\$24,000
Excess wages	\$0	\$3,000	\$6,000	\$6,000	\$15,000
Taxable wages	\$6,000	\$3,000	\$0	\$0	\$9,000

	Months	Due date
Quarter 1	January – February – March	30-Apr
Quarter 2	April – May – June	31-Jul
Quarter 3	July – August – September	31-Oct
Quarter 4	October – November – December	31-Jan

thereafter. Employers pay unemployment insurance combined tax each year on wages of each employee up to the taxable wage base limit. All earnings above the taxable wage base are considered excess wages and are not taxed.

Computing Combined Tax Due

Once you have an active account established, your quarterly Combined Tax Report will be mailed to you automatically at the end of each calendar quarter. Each contributory employer, including domestic employers, is required to file a Combined Tax Report form UI -11T for each calendar quarter with payment of any amount due. All combined tax due is payable by the employer and is not withheld from employee wages. *Neb. Rev. Stat. § 48-648* The Combined Tax Report you receive will have your combined tax rate preprinted on the form. (See Appendix).

When you are determining the amount of combined tax to pay for any given quarter, you must calculate the excess and taxable wages for each employee. Once the employee reaches their maximum wage base for the calendar year, their remaining wages are excess wages for the remainder of the calendar year.

NOTE

Any employer who has not submitted all quarterly tax reports when rates are calculated in late November will be assigned the highest tax rate for the following year. The tax rate will be adjusted if the missing report(s) is received by December 31. Be sure to submit all reports timely—even if you are not able to pay the tax due.

Once gross, excess, and taxable wages are calculated for each employee the totals are transferred to the quarterly Combined Tax Report (lines 2,3, and 4 of the UI – 11T). Multiply taxable wages by the tax rate printed on the report and send the Combined Tax Report, Wage Report and payment so it is received by

the due dates as shown in the chart on page 17.

If a contributory employer fails to file a report, the Commissioner of Labor may assess the combined tax payable on the basis of available information and shall collect combined tax on that basis. *Neb. Rev. Stat. § 48-656*

An employer who has elected to make payments in lieu of combined tax is required to file an Employers Combined Tax Report (UI-11T) for each calendar quarter. The monthly employment data reported should be a count of all full-time and part-time workers who worked during or received pay (subject to Unemployment Insurance taxes) for the payroll period which includes the 12th of the month.

Employers with a payroll exceeding \$100,000 in either of the two previous

years is expected to file reports and pay electronically. *Neb. Rev. Stat. § 48-648*

Quarterly Wage Reports

Wage reports (Form UI-11W) are required from all types of employing entities including the private sector, nonprofit and governmental entities. Nonprofit organizations and governmental entities are required to file wage reports regardless of whether they finance their unemployment costs through the contributory method or through the reimbursement method. *Neb. Rev. Stat. § 48-648.01*

The wage report includes three items of information for each employee:

1. Social Security Number
2. Last name followed by first and middle initials
3. Total gross wages paid during the quarter

Employers using computer printouts or supplemental sheets for wage reports should format their document to replicate the UI Form 11W (See Appendix). The employer's account number, filing year, filing quarter, and page number should be included in the heading of the document.

ACCESSING UICONNECT

Go to uiconnect.ne.gov

Enter your account number and PIN number found on the UI-11T (Tax Report).

Employers with a payroll exceeding \$100,000 in either of the two previous years is expected to file reports and pay electronically. *Neb. Rev. Stat. § 48-648.01*

Electronic Reporting and Payment—UICConnect®

UICConnect® offers employers a new and better way to file and pay their quarterly unemployment insurance tax and wage reports. Employers can file online. (See Appendix). Once the employer completes an initial wage report online with the employees' names and social security numbers, this information will be retained and will not need to be reentered in following quarters. A file transfer protocol (FTP) option is available and especially convenient for larger employers. Specifications for formatting a FTP file are found on the website. Once the wage information is entered into the computer, UICConnect® will make all mathematical computations including excess wages for each employee and total tax due. At the conclusion of filing, the employer may choose to pay electronically through EFT (electronic funds transfer) or print a voucher and mail a check to the address on the voucher. Those who have used electronic filing have responded with favorable comments.

UICConnect® offers additional features including; applying for tax account number; amending reports; paying delinquencies or updating the name and address of your account. (See Appendix).

Interest On Delinquent Combined Tax

Combined tax is due on the first day and delinquent after the last day of the month following the end of the calendar quarter to which they apply. Interest will be charged on delinquent combined tax at the rate of 1.5 percent a month from the delinquent date to the date paid.

Payments in lieu of combined tax to be made by reimbursable employers are due when billed and are delinquent 30 days from the date request is made for reimbursement. Interest will be charged at the rate of 1.5 percent a month from the date payments are delinquent until paid. *Neb. Rev. Stat. § 48-655*

A delinquent statement is mailed to employers on the 15th of the month if there are any delinquent reports, tax, interest or penalties (See Appendix).

Penalty On Delinquent Combined Tax and Wage Reports

Employers will be penalized when they, or their agents, fail to file a required quarterly combined tax report and wage report by the tenth day of the second month following the quarter. The penalty assessed will be equal to 0.1% of the total gross wages paid during the quarter, but

not less than \$25 nor more than \$200. *Neb. Rev. Stat. § 48-656 (3)*

Claims For Adjustment Or Refund

If combined tax, penalty or interest is overpaid by an employer, proper adjustments with respect thereto are made in connection with subsequent combined tax by credit memorandum. If such overpayments cannot be applied within a reasonable time, the overpayment is refunded. Claims for refund should be made on Form UI26, Application For Contribution Refund and must be made within four years of such overpayment. *Neb. Rev. Stat. § 48-660 (See Appendix)*

State Unemployment Insurance Tax

SUIT (State Unemployment Insurance Tax) can be triggered on or off on an annual basis. When SUIT is triggered on, Nebraska employers pay contributions and SUIT each quarter. The total is called combined tax. The SUIT tax rate can be set anywhere between 0% and 20% of combined tax due as determined by the Commissioner of Labor each year. *Neb. Rev. Stat. § 48-649 (2)*. The SUIT portion is collected and deposited into a special reserve fund—the State Unemployment Insurance Trust Fund. This fund is to be used as a reserve to pay unemployment benefits only and will be used if needed by the Unemploy-

NOTE

Remember, the FUTA taxable wage base is \$7,000 and Nebraska's taxable wage base is \$8,000 in 2006 and \$9,000 in 2007 and after. You must calculate taxable wages based on the correct taxable wage base.

ment Trust Fund. The interest earned on the State Unemployment Insurance Trust Fund is used to fund worker training programs.

When SUI rate is zero, all combined tax paid will be considered contributions and credited to an employer's reserve balance. Employers receive credit in their reserve balance for the contribution portion of combined tax but not for the SUI portion. *Neb. Rev. Stat. § 48-652 (2)*

Contractor Certification As To Combined Tax Status

Any contractor who has completed a public contract is furnished, upon request and without cost a statement as to his or her standing with respect to combined tax, penalty, or interest due the Unemployment Compensation Fund. A Nebraska UI Form 16, Certification as to Contribution Status, will be issued if the contractor has paid all combined tax, penalty and interest due. Under the Employment Security Law, public agencies are required to withhold final settlement with contractors until such a certification is furnished. *Neb. Rev. Stat. § 48-657 (4)*

Annual Federal Unemployment Tax Returns

If an employer meets the criteria to pay combined tax, they generally are required to file a Form 940 with the IRS, this is the annual FUTA (Federal Unemployment Tax Act) return filed January 31st of each year. Domestic employers file a Schedule H with their annual 1040 to show domestic work-

ers. Employers who pay their Combined Tax timely and in full will receive maximum credit against the Federal Unemployment Tax liability. Reimbursable employers are not required to file a Federal Unemployment Tax Return.

TRANSFER OF EXPERIENCE

What Is A Transfer?

A transfer of a previous owner's (predecessor's) experience account puts the new owner (successor) into a position of receiving a "hand off" of the existing business's experience account. A transfer of a predecessor's experience account can have advantages and disadvantages for the successor. The advantages include an existing reserve balance in the account that can qualify the employer for a reduced tax rate immediately. The primary disadvantage is that the successor employer becomes liable for any benefit charges for current and former employees of the business – even those who may have separated before the business was acquired. Recent or future claims for such charges can affect the successor's combined tax rate for years. For this reason a successor must carefully consider the potential liability for current or future claims before making the application to acquire the experience account of a predecessor. *Neb. Rev. Stat. § 48-654*

A transfer of experience account can be either a full transfer if the entire business was acquired or it can be a mandatory partial transfer if the successor acquired

an identifiable and segregable portion of the predecessor's business and substantial common ownership exists between the predecessor and successor. *Neb. Rev. Stat. § 48-654.01 (1) (a)*

How To Apply For A Transfer

To apply for or reject a transfer the successor completes a Nebraska "UI Form 1–Application for an Unemployment Insurance Account Number" (See Appendix) within 120 days of the date of transfer. Generally, a successor unrelated in a business sense to the predecessor has the option of electing to accept or reject the transfer of the predecessor's experience account. The predecessor completes a Nebraska "UI Form 37–Employer's Report on Change of Ownership" (See Appendix).

An employer who acquires the organization, trade or business or substantially all the assets of another contributory employer subject to the Law shall notify the agency by registered or certified mail not later than five days prior to the date of acquisition. Unless such notice is given, the successor employer may be liable for the unpaid combined tax, penalty and interest of the predecessor. *Neb. Rev. Stat. § 48-658*

If an employer transfers its trade or business or a portion to another employer and there is substantial common ownership, management or control of the two, then the transfer of experience account is mandatory. A transfer of a business takes place when some or all of an employer's workforce moves to a

new employer continuing the trade or business with the new employer and the transferring employer no longer performs the trade or business with respect to the workers moved. *Neb. Rev. Stat. § 48-654.01 (2) (a)*

An unemployment insurance experience account will not be transferred if a business is acquired solely or primarily for the purpose of obtaining a lower combined tax rate. *Neb. Rev. Stat. § 48-654.01 (2) (b)*

The Employment Security Law includes civil and criminal sanctions for violating, attempting to violate or advising violation of appropriate experience rating practices.

EXPERIENCE RATING

Introduction

Each legal entity must have a separate experience rate account. *Neb. Rev. Stat. § 48-652 (1)*. Experience rates are calculated annually based on the account's experience with regard to their reserve balance and average taxable wage. An appeal on this rate determination may be made within thirty days of the date of the Combined Tax Rate Notice in accordance with Section 48-650 of the Nebraska Employment Security Law.

New Employer Rate

Employers who are not eligible for experience rating are assigned a combined tax rate which will vary each year. For non-construction employers the rate will be the lesser of the state's average tax rate or 2.5%. For employers in the construc-

tion industry the combined tax rate will be equal to the rate assigned to category 20 in the rate schedule. The rates for all 20 categories as well as the state average tax rate are determined in December each year. Employers must have reported wages in each of the two preceding four-quarter periods ending September 30 to be eligible for experience rating.

Experienced Employer Rates

In order to be eligible for a lower rate, an employer's account must meet two statutory standards. These standards provide that (1) benefits could have been payable from and chargeable to the account throughout the preceding one calendar year and (2) wages for employment have been paid by the employer in each of the two preceding four-calendar-qr periods. Employers who meet these two requirements are eligible for reduced combined tax rates according to the schedule in use. *Neb. Rev. Stat. § 48-649 (4)*

The Rate Setting Process

Beginning with 2006 unemployment insurance combined tax rates will be calculated and assigned according to a new process. Rates will continue to be based on each employer's individually calculated reserve ratio. However, the process of setting rates using the reserve ratios will change. The process will be driven by mathematical calculations rather than based upon a rate structure determined by the commissioner as in the past. There are no set minimum or maximum rates. Rates for the following year will be calculated and mailed during December each year.

The new rate setting process consists of three parts. First, the target revenue for the next year is determined. This amounts to benefits paid adjusted by a factor which increases or decreases this amount based upon the health of the trust fund. Second, a state average tax rate is calculated and each of the twenty rate categories is assigned a rate as a defined percentage of the state average tax rate. Third, employers are arrayed into the twenty categories by individual reserve ratios with each of the twenty categories limited to five percent of the state's total taxable wages.

Voluntary Contributions And Combined Tax Rate Notices

Complete experience rating information will be sent to all subject employers in December of each year. This information will include the computed combined tax rate for each employer for the ensuing year. In addition, information will be furnished indicating the amount of voluntary contribution that will be required to attain the next lower rate. If the next lower rate is desired, the appropriate voluntary contribution must be made on or before January 10 for the voluntary to be applied to the current calendar year. Employers are limited to voluntary payments to reduce tax rate by one category. *Neb. Rev. Stat. § 48-649 (5)*

Reporting Units

When an employer has one Federal Identification Number, but operates two or more entities with separate liability requirements, the agency will establish a master tax account number. Each one of these separate entities (reporting

units) will have a subsidiary tax account number established under the master tax account number. This process allows for maintaining accurate labor statistics.

For experience rating purposes, the master account and all of the reporting units will be considered as one account.

A reporting unit may also be assigned to an employing entity based on the employer requesting separate reports.

MULTI-STATE EMPLOYMENT

Localized Workers

Individuals who perform all of their service for an employer within Nebraska must be reported to Nebraska, regardless of the state in which the worker resides. *Neb. Rev. Stat. § 48-604*

Individuals localized in Nebraska who occasionally perform temporary work outside of Nebraska that is incidental to their regular work should be reported to Nebraska.

Multi-state Workers

Individuals who customarily perform services for the same employer in Nebraska and one or more other states and are not "localized" (see above) are referred to as multi-state workers. These workers would be reported to Nebraska :

1. If the employee's base of operations is located in Nebraska.
2. If there is no base of operations, then the place from which the service is directed or controlled is in Nebraska.

3. If the state of coverage cannot be determined by either of the first two tests and the worker performed some service and lived in Nebraska. *Neb. Rev. Stat. § 48-604 (2)*

Foreign Services

Services performed outside the United States or Canada by a citizen of the United States for an American employer would be covered under the Nebraska Employment Security Law if:

1. The employer's principle place of business in the United States is located in Nebraska; or
2. The employer has no place of business in the United States, but:
 - a. The employer is an individual who is a resident of Nebraska; or
 - b. The employer is a corporation which is organized under the laws of Nebraska; or
 - c. The employer is a partnership or trust and the number of partners or trustees who are residents of Nebraska is greater than the number of partners who are residents of any other state; or
 - d. None of the above criteria are met but the employer has elected coverage of the foreign worker. *Neb. Rev. Stat. § 48-604 (3)*