# Conformity Requirements for State UC Laws

## *Total Reduction/Cancellation of Wage Credits*

**Background**

Section 3304(a)(10) of the Federal Unemployment Tax Act (FUTA) requires that UC may not be denied to any individual by reason of cancellation of wage credits or total reduction of benefit rights for any cause other than:

- Discharge for misconduct connected with work,

- Fraud in connection with a claim for compensation, or

- Receipt of disqualifying income.

Section 3304(a)(10) protects claimants' right to compensation by preventing states from enacting overly-severe denial provisions except for serious offenses. Cancellation of wage credits means that, although the employer has paid taxes on a worker's wages, the wages cannot be used to establish a claim.

Because FUTA does not modify the word "cancellation," <u>no</u> cancellation of wage credits, in or out of the base period, either partial or total, is allowed except for the three reasons listed above. This is in contrast to the partial reduction of benefit rights, which FUTA permits for reasons other than the three listed above.

**Frequently Asked Questions**

1. To what does "total reduction of benefit rights" refer?

<u>Total</u> reduction of benefits refers to the entire benefit year, not to a single week of benefits. A total reduction of benefits is allowed only if one of the three conditions in the law is met. For example, if a claimant is fired for misconduct connected with his work, he or she could be disqualified for <u>all</u> weeks of benefits.

2. May state law provide for a partial reduction of benefit rights for reasons other than those listed in §3304(a)(10), FUTA?

FUTA prohibits only the total reduction of benefits for reasons other than those specified in the statute. Partial reduction of benefits is allowed at state option for reasons other than those specified. For example, if a claimant is entitled to 26 weeks of benefits, he or she could be disqualified for up to 25 weeks for voluntarily quitting work. This would not violate §3304(a)(10), FUTA, because it is not a <u>total</u> reduction of benefit rights.

3. Why may state law provide for a partial reduction of benefit rights, but may not provide for a partial cancellation of wage credits?

Section 3304(a)(10) prohibits a state from cancelling any wage credits for any but the three specified reasons. This is in contrast to the partial reduction of benefit rights, which FUTA permits for any reason. The word "total" before the phrase "reduction of his benefit rights" prohibits a denial of UC through the *total* reduction of benefit rights, but it allows a denial through a *partial* reduction of benefit rights. Thus, a state may partially reduce benefit rights. However, the phrase "cancellation of wage credits" is not modified by the word "total." Thus, UC may not be denied, in whole or in part, by reason of the cancellation of any wage credits (for any but the three specified reasons).

4. How are the terms misconduct, fraud, and disqualifying income defined?

These terms are defined in terms of state law and precedent.

- Misconduct. Many states follow the definition established in the 1941 Wisconsin Supreme Court case, Boynton Cab Co. v. Neubeck, which stated that misconduct "is limited to conduct evincing such willful or wanton disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest an equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer." Wage cancellation is only permitted for misconduct when the misconduct *is in connection with the individual's work.*

- Fraud. In general, fraud exists when an individual knowingly gives false information or withholds information in order to receive UC benefits. The definition of "fraud" is governed by state law.

- Disqualifying income. The definition of "disqualifying income" is also governed by state law and provisions vary widely among states. Most states provide for disqualification for any week during which the claimant receives certain income: wages, wages in lieu of notice, dismissal pay, workers compensation, back pay, holiday or vacation pay, etc. These disqualifications apply only to the week in which or for which the payment is received or attributed. Hence they are not a total reduction of benefit rights. Income must be payable to be disqualifying.

5. What is the difference between seasonality provisions and cancellation of wage credits?

Seasonality provisions restrict the payment of UC to workers who earned some or a substantial part of their base-period wages in employment defined under state law as "seasonal." Some seasonality provisions limit the period during which wage credits can be used to establish a claim to the regular employment season. This type of seasonality

provision is not considered a cancellation of wage credits since it does not actually cancel the wages. Instead, it limits the use of the wages to a specific period (the season).

6. May a state postpone the use of wage credits for reasons other than those listed in Section 3304(a)(10), FUTA?

Yes. State law may provide for a postponement of the use of wage credits for reasons other than those that permit cancellation. For example, state law could provide that an individual may not receive UC until they have returned to work and been employed for at least six weeks and earned six times their benefit amount when the unemployment is due to a voluntary quit from work without good cause. In this case, the wage credits are not cancelled, they are postponed until other conditions have been met.

The state may not, however, designate a postponement or set conditions that would make the use of the wages a virtual impossibility, as such a provision would have the effect of being a prohibited cancellation of wage credits.

**References**

- Orange Book. Draft Legislation to Implement the Employment Security Amendments of 1970 (pp.53-54.)