

## Changes in Federal and State unemployment insurance legislation in 2004

*State enactments include provisions relating to SUTA dumping, professional employer organizations, and staff leasing companies; voluntary quits; disqualification from benefits; noncharging benefits; pension offset; and financing; one Federal bill that was enacted made several changes, affecting the unemployment compensation program*

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**D**uring 2004, there was one Federal legislative enactment that affected the Federal-State unemployment insurance program. The SUTA (State unemployment tax acts) Dumping Prevention Act of 2004 (P.L. 108–295) was signed on August 9, 2004, and requires States to enact laws prohibiting SUTA dumping. SUTA dumping is an abusive practice used by some employers to manipulate experience-rating provisions of State law that apply when businesses are bought and sold. Briefly, the law establishes a nationwide minimum standard for curbing SUTA dumping. Under the law, States will be required to (a) prohibit practices that allow employers to pay lower State unemployment compensation taxes than their unemployment experience would otherwise allow; (b) have procedures to detect such practices; and (c) impose penalties on employers and financial advisors for knowingly violating

(or attempting to violate) provisions of State law. States must enact these provisions as a condition of receiving administrative grants for operation of the unemployment compensation program. Thus, all States will need to amend their laws.

This act also authorizes States to access the Department of Health and Human Services' National Directory of New Hires (NDNH) for administration of the Federal or State unemployment compensation program. States' access to this directory allows for the quick detection of individuals who continue to collect unemployment compensation benefits after returning to work. This approach is a means of combating unemployment insurance fraud and preventing overpayments.

The following is a summary of some significant changes in State unemployment insurance legislation enacted in 2004.

### Alabama

*Financing.* Up to 15 percent of Reed Act monies were appropriated to administer the unemployment compensation law and public employment offices.

The 0.06 percent rate reduction applicable to certain employers has been extended from March 31, 2004, to March 31, 2006.

*Monetary entitlement.* The weekly maximum benefit amount increased from \$210 to \$220, for benefit years beginning on or after July 4, 2004.

### Alaska

*Administration.* Upon the written request by a State district attorney, a municipal agency/attorney, a U.S. attorney, or the Federal Bureau of Investigation, the Alaska Department of Labor and Workforce Development may release to the requestor certain information for the investigation or prosecution of a crime or to enforce an order of a court in a criminal matter, including enforcing probation or parole conditions.

*Appeals.* Each member, manager, or employee of a limited liability company, including a limited partnership and a limited liability partnership, who is required to pay the contributions and interest owed by the limited liability company, including the limited partnership and the limited liability partnership, is permitted to appeal individually their duty to pay.

*Coverage.* For purposes of collecting delinquent contributions, the term "employer" also includes a member, manager, or employee of a limited liability company, including a limited partnership and a limited liability partnership, who, as manager, is under a duty to pay the required contributions.

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*Financing.* The term “wages” excludes the amount of payment made, or benefit furnished, by the employer under a plan to provide educational assistance to or for the benefit of an employee if, at the time of the payment or the furnishing, it is reasonable to believe that the employee will be able to exclude the payment or benefit from income.

## Arizona

*Appeals.* With respect to a reconsideration of determination of liability, the requirement for an employing unit to file contribution and wage reports within 30 days of the reconsidered determination in order to be afforded a hearing has been deleted and, instead, the employing unit is required to submit all required contribution and wage reports to the Arizona Department of Economic Security within 45 days after the decision by the appeals board.

*Financing.* Benefits against an employer’s account are noncharged for separations from work due to domestic violence.

The contribution rate decreased from 2.7 percent to 2.0 percent for employers whose accounts have not been charged with benefits for the 12-month period ending June 30 of the preceding calendar year, effective from and after December 31, 2004.

The minimum contribution rate decreased from 0.05 percent to 0.02 percent for positive reserve ratio employers.

The employer adjusted rate reduced from 0.05 percent to 0.0025 percent.

From and after December 31, 2004, the payment of contributions or job training employer taxes is not required if the quarterly amount of the contributions and taxes is less than \$10.

*Monetary entitlement.* The quarterly wages needed in the base period to monetarily qualify for unemployment benefits increased from \$1,000 to \$1,500.

The maximum weekly benefit amount increased from \$205 to \$240, effective from and after June 30, 2004.

*Nonmonetary eligibility.* Effective from and after December 31, 2004, an individual will not be deemed unemployed if:

- with respect to any week of less than full-time work if the loss of full-time work is directly attributable to the fault of the individual;
- the individual is receiving wages in lieu of notice, dismissal pay or sever-

ance pay. The period of time for which wages in lieu of notice, dismissal pay, or severance pay are allocable will be determined by either of the following:

- if there was a written contract between the employer and the claimant in effect at the time of separation, allocate to the appropriate period in accordance with the contract, continuing for the number of work days that the pay would cover at the regular wage rate;
- if no written contract was in effect at the time of separation, allocate to the appropriate period following the last day of performance of services, continuing for the number of work days that the pay would cover at the regular wage rate.

When an employer continues to give the part-time worker employment opportunities to the same extent while he or she is receiving benefits as during the base period, places the burden of proof to establish that the employer failed to give employment opportunities to the individual to the same extent as during the base period on the Arizona Employment Security Commission.

An individual who is a victim of domestic violence and leaves employment due to a documented case of a domestic violence offense will not be disqualified from receiving unemployment benefits.

An individual is disqualified for benefits for any week in which the individual is incarcerated.

Benefits will not be reduced by the receipt of Social Security retirement in order to take into account contributions made by the individual for the pension.

## California

*Administration.* The director must furnish quarterly, instead of annually, to each employer an itemized statement of the charges to the reserve account, and a statement of the reserve account activities.

A penalty is assessed against employers if found that any employer or employee, officer, or agent of any employer, in submitting a written statement concerning the reasonable assurance of a claimant’s reemployment, willfully makes a false statement or representation or willfully fails to report a material fact concerning the reasonable assurance of that reemployment in an amount

not less than 2 nor more than 10 times the weekly benefit amount of that claimant; provides for the collection of the penalty and requires the deposit of the penalties in the contingent fund.

The California Employment Development Department is required to:

- develop small business educational events and materials that explain the process of the department’s determination of whether an individual is an employee or independent contractor as specified;
- collect certain data related to employee/independent contractor determinations; and
- report its findings and any recommendations to the State Legislature by July 1, 2006.

*Coverage.* Payments to an individual by an employer for failure to provide the advance notice of a facility closure required by the Worker Adjustment and Retraining Notification Act are not wages or compensation for personal services for purposes of unemployment insurance.

*Extensions and special programs.* The expiration date for the California Benefits Training program is extended from January 1, 2005, to January 1, 2010.

*Financing.* The State law is amended to include SUTA dumping prevention provisions which:

- mandate transfer of experience from one employer to another when there is substantially common ownership, management, or control; apply to both total and partial transfers;
- prohibit transfer of experience if a person becomes an employer by acquiring an existing business and if the purpose of the acquisition is to obtain a lower contribution rate; apply to persons, who prior to the acquisition of the business, (a) had no employees and (b) had some employees but not enough to be an employer for State law purposes;
- provide meaningful civil and criminal penalties for knowingly violating or attempting to violate the law’s requirements, and for knowingly advising to violate the law; and
- establish procedures to identify the transfer or acquisition of a business for purposes of the law.

*Nonmonetary eligibility.* The denial or reduction of unemployment insurance for receipt of payments due to an employer failing to provide the advance notice of a facility closure required by the Worker Adjustment and Retraining Notification Act is prohibited.

## Colorado

*Financing.* The definition of wages excludes payments by employers into a supplemental unemployment benefit fund for employees; this exclusion does not apply if the employee has the option to receive a lump-sum payment instead of periodically distributed supplemental unemployment benefits.

## Connecticut

*Administration.* A late filing fee of \$25 is imposed for any employer who fails to submit timely quarterly wage information.

*Financing.* The collected fees must be deposited into the Employment Security Administration Fund.

*Nonmonetary eligibility.* The time period during which acts of willful misconduct are considered changed from 18 months to 12 months; except with respect to tardiness, each instant in which an employee is absent for 1 day or 2 consecutive days without either good cause for the absence or notice to the employer that could have reasonably been provided constitutes a separate instance.

*Overpayments.* A 1-percent-per-month interest rate is charged on any overpayment made on or after July 1, 2005.

*Monetary entitlement.* The weekly benefit amount will not be reduced by prorated weekly Social Security payments.

## Florida

*Financing.* Any funds collected for enhanced, specialized, or value-added labor market information services must be deposited in the Employment Security Administration Trust Fund.

*Nonmonetary eligibility.* Effective July 1, 2004, an individual will not be disqualified for benefits for voluntarily leaving work to relocate as a result of his/her military-connected spouse's permanent change of station, activation, or unit deployment orders.

## Georgia

*Financing.* The suspension of the overall rate increase (which is dependent on the statewide reserve ratio) was extended from December 31, 2004, through December 31, 2005.

*Nonmonetary eligibility.* The alternative base period set to expire June 30, 2004, is now permanent.

## Idaho

*Financing.* The time period for employers to request a discretionary transfer of an experience rating account increased from 90 to 180 days.

Whenever an individual or organization succeeds to or acquires all, substantially all, or part of the business of a covered employer, the transfer of the predecessor's experience rating account to the successor employer must be mandatory if the management, ownership, or control is substantially the same for the successor as for the predecessor and there is a continuity of business activity by the successor.

For purposes of a successorship, an employer's experience rating account must consist of the actual contribution, benefit, and taxable payroll experience of the employer and any amounts due from the employer as required by State law.

## Kansas

*Coverage.* If a successor employer is determined to be qualified to receive the experience rating factors of the predecessor employer, the rate assigned to the successor employer for the remainder of the contributions year will be determined by the following:

- if the acquiring employing unit was an employer prior to the date of the transfer, the rate of contribution will be the same as the contribution rate of the acquiring employer on the date of the transfer; and
- if the acquiring employing unit was not an employer prior to the date of the transfer, the successor employer will have a newly computed rate for the remainder of the contribution year that will be based on the transferred experience rating factors as they existed on the most recent computation date immediately preceding the date of acquisition. These experience rating factors consist of all contributions paid, benefit experience, and annual payrolls.

The exclusion from employment for service performed by an inmate of a custodial or correctional institution applies to service performed for a private, for-profit employer.

*Nonmonetary eligibility.* An individual is considered to have voluntarily resigned for failure to return to work after expiration of approved personal or medical leave, or both, and such individual is disqualified from benefits for voluntarily leaving work without good cause attributable to the work or employer.

The definition of "misconduct" includes:

- the failure of the employee to notify the employer of an absence; and
- under certain conditions, repeated absences, including incarceration, resulting in absence from work of 3 days or longer, excluding Saturdays, Sundays, and legal holidays.

If the employee alleges his/her repeated absences were the result of health-related issues, such employee must present evidence that includes documentation from a licensed and practicing healthcare provider.

An individual disqualifies for benefits if discharged for failing a pre-employment drug screen required by the employer and if such discharge occurs not later than 7 days after the employer is notified of the results of such drug screen; the disqualification will begin the day following the separation and continue until after reemployment and earnings in insured work of at least three times the weekly benefit amount.

## Louisiana

*Administration.* The per diem pay for Board of Review members increased from \$60 to \$90 per day of active service.

*Extensions and special programs.* Effective January 1, 2005, a self-employment assistant (SEA) program is established.

*Financing.* Benefits paid under the SEA program must not be charged and recouped as a social charge to all employers.

## Maine

*Nonmonetary eligibility.* An emergency rule relating to part-time work provides that a claimant who is not able and available for full-time work will not be disqualified from receiving benefits if:

- more than 50 percent of the weeks worked during the claimant's base period were less than full time, and the claimant is able to work and available for and actively seeking work for a number of hours comparable to the number of hours worked during those weeks; or
- the majority of the weeks worked during the claimant's base period were full time but the claimant is only able and available for less than full-time work due to the illness or disability of the claimant's immediate family member, or when necessary for the safety or protection of the claimant or the claimant's immediate family member, including protection from domestic abuse; and
- the claimant is not able to work full time due to a covered disability under the Americans with Disabilities Act but is able and available to work less than full time. Once a claimant has returned to work and is working the full number of hours for which the claimant is able or available to work considering his or her disability, that claimant is not considered "partially unemployed."

## Michigan

*Coverage.* Service performed in an Americorps program is excluded from coverage if the individual:

- performed the service under a contract or agreement providing for a guaranteed stipend opportunity; and
- received the full amount of the stipend before the ending date of the contract or agreement.

## Missouri

*Administration.* A Missouri State Unemployment Council is created consisting of nine appointed voting and two appointed nonvoting members that will meet at least four times yearly; the Council will advise the Missouri Division of Employment Security in carrying out the Missouri Employment Security Law and submit annually recommendations to the Governor and general assembly regarding amendments, status of unemployment insurance, solvency maintenance, and the adequacy of unemployment compensation; the Council is authorized, unless prohibited, to commission an out-

side study of the solvency, adequacy, and staffing and operational efficiency of the Missouri unemployment system every 5 years beginning in fiscal year 2005.

The Division must cross-check Missouri unemployment compensation recipients and applicants against the Federal new hire database, Social Security Administration data, drivers license databases (effective January 1, 2007), and other federally maintained databases containing wage information.

The Board of Unemployment Fund Financing is created and authorized to issue, sell, and deliver interest-bearing credit instruments (bonds) to provide funds for unemployment benefits or maintain an adequate fund balance in the unemployment compensation fund.

The Division may contract with consumer reporting agencies to provide secure electronic access to information in the quarterly wage report; requires the Division to establish standards to safeguard the confidentiality of the information; requires the agency to require any user of such information to obtain written consent from the individual to whom the information pertains; requires the agency to require that the released information be used only to verify wage or employment information accuracy provided by the individual for a specific transaction.

The Missouri State Unemployment Council is created to advise the Division and submit recommendations concerning the unemployment compensation program.

*Coverage.* "Temporary help firm" is defined as a firm that hires its own employees and assigns them to clients to support or supplement the clients' workforce and "temporary employee" as an employee assigned to work for the clients of a temporary help firm.

*Financing.* The State taxable wage base increases from \$8,000 in 2004 to \$11,000 in 2005, 2006, and 2007; to \$12,000 in 2008 and thereafter subject to the following:

- the taxable wage base increases by \$1,000 (instead of \$500) if the unemployment compensation trust fund balance is less than or equal to \$350 million on September 30;
- the taxable wage decreases by \$500 the subsequent year if the unemployment compensation trust fund balance equals or exceeds \$650 million (instead of \$450 million) on September 30;

- for 2008, the taxable wage base is limited to \$7,000–\$12,000;
- for 2009, the taxable wage base is \$12,500; and
- for 2010 and thereafter, the taxable wage base is limited to \$7,000–\$13,000.

The fund-balance amounts decrease, which trigger 10 percent, 20 percent, and 30 percent rate increases, effectively increasing employer tax rates.

The rate increase for employers at the maximum rate is raised from 30 percent to 40 percent for 2005 through 2007.

The fund balance amounts increase, which trigger 7-percent and 12-percent rate decreases, effectively increasing employer tax rates.

A credit instrument (bond) and financing agreement repayment surcharge are assessed on each employer if the fund is using moneys from credit instrument proceeds or from the moneys advanced financial agreements or from a combination of both; provides a formula for calculating the surcharge and for calculating each employer's proportionate share.

A surcharge of 0.25 percent will be added to employers' contribution rates if they have been taxed at the maximum rate for 2 consecutive years or more; an additional annual surcharge of 0.25 percent will be added if employers remain at the maximum rate for 3 or more years with total surcharges not to exceed 1.0 percent; a 0.5-percent surcharge will be added if employers are still at the maximum rate; the maximum surcharge is limited to 1.5 percent in a year.

Employers are charged a temporary debt indebtedness assessment beginning in 2005 and expiring the last day of the 4th quarter of 2007.

A surcharge is assessed when the State has outstanding Federal loans or credit instruments (bonds).

The Board of Unemployment Fund Financing is authorized to sell interest-bearing bonds in an amount not to exceed \$450 million less the principal and that mature no later than 3 years after issuance; all bonds must be paid off by January 15, 2008; the proceeds must be deposited in the State unemployment compensation fund.

*Monetary entitlement.* The wages needed to qualify increase from \$1,000 in a quarter to \$1,200 in 2005; \$1,300 in 2006; \$1,400 in 2007; and \$1,500 thereafter; base period wages must equal 1.5 times high quarter wages, or wages in two quarters and base



period wages equaling 1.5 times the maximum taxable wage base.

Effective 2007, “partially unemployed” is defined as any week of less than full-time work if wages payable are less than the greater of the individual’s weekly benefit amount plus \$20 or the weekly benefit amount plus 20 percent of the weekly benefit amount.

Effective 2007, modifies the earnings disregard from \$20 to the greater of \$20 or 20 percent of the weekly benefit amount.

The computation of, and the maximum, weekly benefit are modified as follows:

- 3 ¾ percent of high quarter wages up to \$270 in 2006 and \$280 in 2007;
- 4 percent of average two highest quarters up to \$300 in 2008, \$310 in 2009, and \$320 in 2010 and thereafter.

Beginning in 2008, the 1-week waiting period will become compensable once remaining balance on the claim is less than or equal to the compensable amount for the waiting week, rather than after 9 weeks.

*Nonmonetary eligibility.* The terms “temporary help firm” and “temporary employee” are defined and a temporary employee of a temporary help firm will be deemed to have voluntarily quit for failure to contact the firm for reassignment prior to filing for unemployment benefits; failure to contact the firm will not be deemed a voluntary quit unless the claimant was advised of the obligation to contact the firm upon completion of assignments and that unemployment benefits may be denied for failure to do so.

“Misconduct” is defined as:

- an act of wanton or willful disregard of the employer’s interest;
- a deliberate violation of the employer’s rules;
- a disregard of standards of behavior that the employer has the right to expect of his or her employee; and
- negligence in such a degree or recurrence as to manifest culpability, wrongful intent or evil design, or show an intentional and substantial disregard of the employer’s interest or of the employee’s duties and obligations to the employer.

The 8-week extension for definite recall dates is limited to a total of 16 weeks.

Suspensions from work for 4 weeks or more will be treated as discharges.

Misconduct is committed if a claimant is at work with a detectible amount of alcohol or controlled substance in the claimant’s system, in violation of employer’s policy, and certain conditions are met; claimant’s wage credits are subject to cancellation if found to be in violation of such policy.

A temporary employee is deemed to have voluntarily quit employment for failing to contact the temporary help firm for reassignment before filing for benefits unless the employee was not informed of the obligation to contact the firm upon completion of the assignment; employee will be disqualified for benefits if found to have voluntarily quit until wages are earned in insured work equal to 10 times the claimant’s weekly benefit amount.

An employer’s written notification of an offer of work sent via certified mail to claimant’s last known address constitutes an offer of work, and failure to accept the offer of work will disqualify the claimant for benefits until wages are earned in insured work equal to 10 times the claimant’s weekly benefit amount.

The disqualification for misconduct is modified from 4-16 weeks and wages equal to 8 times the weekly benefit amount to wages equal to 6 times the weekly benefit amount.

Absenteeism or tardiness is considered misconduct if it violates an employer’s attendance policy and the claimant knew about the policy in advance.

*Overpayments.* Any employer or individual who receives or denies unemployment benefits by intentionally misstating, misrepresenting, or failing to disclose material facts has committed fraud; improperly paid benefits must be repaid; penalties are assessed; if the employer or individual fails to repay the benefits, the division may offset from any future unemployment benefits or take other steps necessary to recover the overpayment; future benefits may not be used to offset penalties.

Any person or entity perpetrating a fraud or misrepresentation for which a penalty has not been provided is guilty of a class A misdemeanor and will be liable for a civil penalty not to exceed the value of the fraud, and any person or entity who previously pled or was found guilty of perpetrating a fraud or misrepresentation and subsequently violates such provision is guilty of a class D felony.

## Nebraska

*Administrative.* Employers, when reporting new hire information, must report the employee’s date of hire or rehire to the Nebraska Department of Labor and transmit a copy of the employee’s Federal W-4 with the date of hire or rehire inscribed on it, beginning January 1, 2005.

## New Jersey

*Financing.* The fund reserve ratio of the tax table effectively reducing individual employer tax rates for tax years beginning on or after July 1, 2004, has been modified; the rates in each schedule remain the same.

The factor on which the overall 10-percent rate increase is based, if applicable, has been reduced from a fund reserve ratio of 1.0 percent to 0.5 percent for rate years beginning after July 1, 2004.

The overall rate reduction decreased from 15 percent to 7 percent from July 1, 2004, until June 30, 2005, except that if an employer has a deficit reserve ratio of negative 35 percent or under, the employer’s rate of contribution will not be reduced to less than 5.4 percent.

The requirement that each employer contributes to the healthcare subsidy fund an amount equal to the amount that the employer’s contribution to the unemployment compensation fund is decreased is extended until June 30, 2005.

For fiscal year 2005, all contributions to the healthcare subsidy fund exceeding \$100 million for this fiscal year must be deposited in the unemployment compensation fund.

*Extensions and special programs.* The conditions under which new claims for additional benefits are taken in a year has been modified: new claims cease for the year when total benefits paid under the program are greater than 2.0 percent of the sum of December 31st fund balances since the program was enacted; formerly new claims ceased when benefits paid in a single year were greater than 1.5 percent of the December 31st fund balance for the preceding year.

## New York

*Nonmonetary eligibility.* The pension offset provision provides that unemployment benefits will not be reduced by rollover distribution payments.

## North Carolina

*Coverage.* In general statutes, sets forth the requirements and responsibilities of professional employer organizations (PEOs); those applicable to the unemployment insurance program include:

- provides that a licensed PEO is the employer of an assigned employee for unemployment insurance purposes, and that the levy and collection of unemployment insurance contributions, or the assignment of discrete employer numbers and the definition of the terms employing unit, employer, or employment have the effect as provided under the State unemployment insurance law; and
- requires a licensed PEO to establish the terms of a PEO agreement by a written contract between the PEO and the client company, and that such contract specify that the PEO assumes responsibility for the payment of wages to and for the payment and collection of payroll taxes on assigned employees.

## Oklahoma

*Appeals.* Telephone appeals to the Appeal Tribunal through the Oklahoma Employment Security Commission's interactive voice response system or by speaking with one of the Commission's claim representatives are permitted.

The provision providing that if a party is represented by an attorney, the hearing officer may approve a fee for legal services on a quantum merit basis, provided the fee is commensurate with the fee set by the board of review has been revoked.

*Nonmonetary eligibility.* The severance pay provision provides for the deduction of severance pay in the week severance pay is received.

Separation from employment to escape domestic violence or abuse is considered good cause and benefits are allowed, provided that a victim's protection order was on file with the appropriate authorities and the order was effective on the date the claimant separated from employment.

The employer must produce certain specific documentation to establish that the drug or alcohol test of a claimant was conducted in accordance with the Standards for Workplace Drug and Alcohol Testing Act.

## Rhode Island

*Coverage.* A person engaged in the business of providing professional employer services must be registered; registration requirements are established.

The client company must be considered an employer of its covered employees under any agreement with a professional employer organization (PEO) for purposes of unemployment compensation and temporary disability insurance; a client will have the sole right to direct and control the professional or licensed activities of covered employees of a client's business, unless otherwise expressly agreed to by the client in the professional employer agreement.

*Financing.* The PEO must report and pay all required unemployment contributions using the client company's State employer account number at the client company's experience rate or at the new employer rate if the client company does not qualify for an experience rate; the PEO is responsible for paying wages to covered employees, to withhold, collect, report, and remit payroll-related and unemployment taxes; the client company and PEO must be jointly and severally liable for all contributions, fines, interest, penalties, and withholdings due.

## South Carolina

*Coverage.* With respect to Indian tribes, clarifies that failure to make timely payments by any tribal unit results in the entire tribe being denied the reimbursement option.

*Financing.* An employing unit must be assigned all or a portion of the employment benefit record of an existing employing unit when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise; the employing unit must be assigned the same rate as the predecessor, or the predecessor who has the highest base rate if there is more than one predecessor employing unit with different base rates.

Assigning an employing unit any portion of the employment benefit record of an existing employing unit upon the acquisition of that established business or of an identifiable and segregable part thereof is prohibited if the:

- acquiring person was not otherwise an employer at the time of the acquisition;

- person has no substantial commonality of interest, including ownership or management, in the business acquired; and
- South Carolina Employment Security Commission finds that the person acquired the business or an identifiable and segregable part thereof solely or primarily for the purpose of obtaining a lower rate of contributions.

If the experience rating account of the predecessor employer contains a debit balance, defined as an excess of total benefits charged over total contributions paid, the experience rating account of the predecessor employer in any event must be transferred to the successor employer.

A penalty is assessed equal to the greater of \$1,000 or 10 percent of the tax determined by the commission to be due for each report submitted in violation of an employing unit that willfully attempts to violate these provisions; provides that this penalty may be recovered in the same manner as for the collection of other penalties; provides that officers and directors of the enterprise comprising the employing unit are individually liable for the penalties assessed.

A contribution tax return preparer who violates these provisions or provides advice to an employing unit that results in a willful violation of these provisions is liable to a penalty of not less than \$1,000 nor more than \$10,000 for each report submitted in violation; this penalty may be recovered by the commission in an appropriate civil action in any court of competent jurisdiction.

## Tennessee

*Appeals.* Appeals to the court for review of tax liability must be filed in the chancery court of Davidson County.

An appeal must be filed within 20 calendar days after the date the written notification of the redetermination is given or mailed to the last known address of the interested party or the redetermination becomes final and not subject to further review.

*Coverage.* If:

- a person, corporation, or business entity maintains a personnel registry or referral service for companion-sitters seeking employment opportunities;
- the sitters do not provide services for hire to nonprofit organizations, Indian tribes, or State or local governments; and

- pursuant to applicable Federal legislation, the Internal Revenue Service (IRS) determines that a companion-sitter is not an employee of the person, corporation or business entity under the typical registry/referral arrangements of such person, corporation, or business entity;

then companion-sitters who receive referral under the registry/referral arrangements substantially similar to those in the IRS determination will not be classified as employees of such person, corporation, or business entity pursuant to the Tennessee unemployment law.

*Financing.* The provision containing procedures for making payments under protest for employers challenging a determination of liability for premiums required to be paid has been deleted.

The Tennessee Department of Labor and Workforce Development Commissioner is permitted to extend, under certain conditions, the notification period for the transferring/successor employer to provide notification of acquisition of a business transfer and written consent to the Department; any modification of premium rates resulting from any such extension will take effect on, and apply prospectively from, the date on which such transfer is accepted by the department; there is no forgiveness or refund of any premiums, fees, or other related costs duly imposed prior to the effective date of July 1, 2004.

The calculation of the industry reserve ratio for new employer rate determination has been modified.

New employer rates will be assigned from the table in effect when the employer's industry reserve ratio is 0.0 percent or less (formerly minus 4.0 percent or less); depending on the table in effect, rates range from 5.0 percent to 10.0 percent (formerly 6.0 percent to 10.0 percent).

A staff leasing company will not be considered a successor employer to any client and will not acquire the experience rating of any client with whom the staff leasing company has contracted; the client, upon terminating its relationship with the staff leasing company, will not be considered a successor employer to the staff leasing company and will not acquire any portion of the experience history of the aggregate reserve account of the staff leasing company.

A client of a staff leasing company will be jointly and severally liable with the staff

leasing company for State unemployment premiums unless such client is relieved of such joint and several liability under the Tennessee Employee Leasing Act.

## Utah

*Coverage.* The provision allowing termination of coverage by the employer when there was no calendar quarter in the preceding calendar year during which an employing unit paid wages of \$140 or more has been deleted; the requirement of \$140 or more in a quarter with respect to the Division of Workforce Information and Payment Services' authority to terminate coverage of an employing unit has been eliminated.

*Financing.* The \$50 late payment penalty is applicable if the filing of quarterly wage information and requested reports of base period earnings is not more than 15 days late; there is a penalty of \$50 for each 15 days or a fraction of the 15 days that the filing is late, but not to exceed \$250 per filing, if the filing is more than 15 days late.

Employers liable for payments in lieu of contributions must file quarterly Reimbursable Employment and Wage Reports on the last day of the month that follows the end of each calendar quarter, and the same late payment penalty applies to contributing employers for untimely filing quarterly Reimbursable Employment and Wage Reports.

The social contribution rate is .003 for the rate year beginning January 1, 2004.

On or after January 1, 2005, the social contribution rate will be calculated by dividing all social costs applicable to the preceding 4 fiscal years by the total taxable wages of all employers subject to contributions for the same period.

The social contribution rate for only the rate year beginning January 1, 2005, may not exceed 0.004.

Reed Act moneys made available to the State that are received on or after January 1, 2004, may not be considered in establishing the reserve factor for the rate year 2005 or any subsequent rate year.

The maximum employer contribution rate increased from 8.0 percent plus the social contribution rate to 9.0 percent plus the social contribution rate, effective January 1, 2004.

The maximum weekly benefit amount reduced from 65 percent to 62 percent of the insured average fiscal year weekly wage during the preceding fiscal year for claims filed on or after July 4, 2004.

*Monetary entitlement.* A levy on unemployment benefits is prohibited by creditors enforcing a claim for alimony, support, maintenance, certain unpaid earnings, or State or local taxes.

Deductions of child-support obligations or an uncollected over-issuance of food-stamp benefits are the only deductions that can be withheld from unemployment benefits.

*Nonmonetary eligibility.* The offset for receipt of Social Security benefits against unemployment compensation is reduced from 100 percent to 50 percent for 3 years for benefit years beginning after July 1, 2004 and ending on or before July 1, 2007.

*Overpayments.* With respect to benefit fraud, overpayment is the amount of benefits the claimant received by direct reason of fraud.

If the fraud determination is based solely on unreported or underreported work or earnings, or both, and the claimant would have been eligible for benefits if the work or earnings, or both, had been correctly reported, the individual does not lose eligibility because of the misreporting but is liable for the overpayment and penalties.

## Vermont

*Financing.* The new employer rate changed from a rate not less than the average tax rate for the industry to which the employer is assigned to 1.0 percent, except that certain foreign corporations will be assigned a rate equal to the average rate as of the most recent computation date paid by all employers so classified.

## Virginia

*Coverage.* The definition of "employment" excludes services performed by an inmate for a penal or custodial institution or while participating in the Diversion Center Incarceration Program.

*Financing.* The penalty increased from \$30 to \$75 for any employer who had wages payable for a calendar quarter and fails without good cause to file any required report with respect to wages or taxes; increases the penalty from \$30 to \$75 for a newly covered employer who fails to file a timely quarterly report without good cause. Penalties will be paid into the special Unemployment Compensation Administration Fund.

An employer's account is not charged for benefits paid to an individual who was unable to work at his regular employment due to a disaster for which the Governor, by executive order, has declared a state of emergency, if such disaster forced the closure of the employer's business, and if the individual returned to his regular full-time employment once the business reopened. The noncharging is limited to 4 weeks.

*Nonmonetary eligibility.* The definition of the term "misconduct" includes a willful and deliberate violation of a standard or regulation of the Commonwealth by an employee of an employer licensed or certified by the Commonwealth, which violation would cause the employer to be sanctioned or have its license or certification suspended by the Commonwealth. The Virginia Employment Commission is allowed to consider evidence of mitigating circumstances in determining whether misconduct occurred.

An individual is disqualified from benefits upon separation from the last employ-

ing unit from whom he or she has worked 30 days or 240 hours or from any subsequent employing unit if such separation arose as a condition of the individual's parole or release from a custodial or penal institution and such individual was participating in the Diversion Center Incarceration Program.

## Washington

*Administration.* Information and records may be released by the employment security department to a county clerk for purposes of verifying employment or income, seeking assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

*Financing.* The penalty provision related to evading the successorship provisions has been amended by:

- adding to the penalty assessment the solvency surcharge (if any) and 2 percent; and

- changing the effective period for the penalty assessment from five quarters to 1 year.

## Wyoming

*Coverage.* Childcare workers contracted to provide daycare services by the Wyoming Department of Employment are self-employed for profit entities and are not employees of the Department and not eligible for employee benefits (including unemployment insurance) as a result of receiving contract payments from the State. The Department is authorized to appeal any decision of any State administrative body inconsistent with this determination.

*Financing.* Employers' accounts are not charged for benefits paid for unemployment resulting directly from the reinstatement of another employee upon that employee's completion of service in the uniformed services. □