

INFO LINK

Your link to information regarding North Dakota Unemployment Insurance

June 2001



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***Employer's
Contribution and Wage
Reports for the quarter
ending June 30, 2001,
are due and must be
submitted by July 31, 2001***

Reminder ...



***To avoid possible
penalties, each employee's
Social Security Number
must be reported on all
Contribution and Wage
Reports .***

LEGISLATION CHANGES AFFECTING UNEMPLOYMENT INSURANCE —



Reporting Wages for Limited Liability Company Managers and Members

Managers of limited liability companies (LLCs) who perform services for the LLC and receive remuneration for such service are considered employees and their wages are subject to state unemployment insurance tax.

Effective July 1, 2001, only managers of certain LLCs will be covered for North Dakota unemployment insurance:



- If your LLC is federally taxed as a corporation or if any manager is not a member (owner), you must continue to cover them for unemployment insurance.
- If you are taxed as a partnership or a disregarded entity, discontinue coverage for all managers who are also members (owners).

This exclusion from employment does not apply to LLCs owned by or operated as an Indian tribe, state or local government, or nonprofit organization. This change is in North Dakota Century Code (NDCC) 52-01-01, 14 and 52-01-01, 17 (2).

Exempting Corporate Officers and LLC Managers from Coverage

Prior to 2001 legislative changes, corporations and limited liability companies (LLCs), with concurrence of the officers or managers, could exclude officers of corporations and LLC managers from coverage as of the first of January of any calendar year if the application for exclusion was made in January of that year. (See article about Corporate Officer and/or Limited Liability Company Manager Exemption in the December 2000 Info Link for more details or online at www.state.nd.us/jsnd/docs/uidec2000.pdf)

Effective July 1, 2001, corporations and LLCs will be able to exclude officers of corporations and certain LLC managers from coverage as of the first day of January of any calendar year as before; or as of the date of formation of the entity if the application for exclusion is made within 60 days of the formation of the corporation or LLC. This law change is NDCC 52-01-01, 17(1) and (2).

Reemployment Exception from Disqualification for Unemployment Insurance Benefits

NDCC 52-06-02 (the voluntary leaving disqualification provision) changes with an effective date retroactive to January 1, 2001. The change reads as follows:

“This subsection does not apply if the individual voluntarily leaves most recent employment to accept a bona fide job offer with a base period employer who laid off the individual and with whom the individual has a demonstrated job attachment. For the purposes of this exception, ‘demonstrated job attachment’ requires earnings in each of six months during the five calendar quarters before the calendar quarter in which the individual files the claim for benefits.”

Subsection 1 of Section 52-06-02 currently provides for a disqualification for individuals who leave their most recent employment voluntarily and without good cause attributable to the employer. This disqualification is in effect until the claimant has earned wages equivalent to eight times their weekly benefit amount.

This provision creates a barrier in reemployment efforts, especially for those individuals who are laid off on a temporary or seasonal basis and plan to return to their former employer when work is available. These individuals jeopardize their potential eligibility for unemployment insurance benefits if they accept temporary or intermittent work and then quit that work to return to their former employer.



For example, a seasonal employee of a road construction firm is laid off in November and files for benefits. In February, the individual starts work with an employer at a lower rate of pay and fewer hours of work. In April, the individual is called back to his/her former employer. The individual works one week and then the project is shut down for two weeks because of a snowstorm or rain.

This individual would not be eligible to receive unemployment insurance benefits for those two weeks because he/she quit the “fill-in” employment. A co-worker who had not accepted other employment could be eligible to receive benefits for the two weeks if that individual had benefits available.

Providing an exception to the voluntary leaving disqualification will remove a barrier to reemployment and will positively impact the unemployment insurance trust fund by creating options allowing claimants to accept work during periods of layoff without affecting their potential eligibility for benefits when needed.

Indian Tribes and the Unemployment Insurance Program

Recent changes in how American Indian tribes are treated under the Federal Unemployment Tax Act (FUTA) required changes in state unemployment insurance law. These changes must be included in state law in order for the state to be in compliance with FUTA requirements. These changes are effective retroactive to December 21, 2000. Some of the major points are:

- Indian tribes are now treated similarly to state and local governments.
- Indian tribes are no longer liable to pay FUTA tax.
- Services performed in the employ of Indian tribes are, with specified exceptions, covered under state unemployment insurance law. Prior to these changes, coverage was at the option of the state. North Dakota has been providing unemployment insurance coverage prior to this change in FUTA.
- Indian tribes are offered the reimbursement option for payments (in lieu of contributions) in addition to the contributing (tax-rated) method.
- Indian tribes will be required to execute and file a surety bond if they choose the reimbursable method to finance unemployment insurance.

Contractors: Risk Protection for the Unemployment Insurance Trust Fund

Legislation passed in 2001 requires the general or prime contractor, or the owner, of a major construction project to post a surety bond or irrevocable letter of credit with Job Service North Dakota **before commencement of work on the project**. The bond or irrevocable letter of credit is intended to guarantee that the general or prime contractor, or the owner, involved in these large construction projects cover the cost of benefits paid to employees who worked on the projects. The purpose of this legislation is to ensure that dollars in the Unemployment Insurance Trust Fund are not exhausted as workers on these projects are laid off and begin to draw unemployment insurance benefits.



The law applies to construction projects that meet the criteria listed below:

1. Bids are let after August 1, 2001, **and**
2. Construction costs are \$50 million or more, **and**
3. The project is planned to be completed or discontinued within a period of seven years.

Significant Increases in Your Taxable Payroll May Affect Your Experience Rate

A legislative change to North Dakota Century Code 52-04-06, Subsection 6 will become effective July 1, 2001.

- If an employer's quarterly taxable payroll is in excess of \$50,000, **and**
- The employer's quarterly taxable payroll is at least three times its established average annual taxable payroll or zero,
THEN
- If the cumulative lifetime reserve of the employer is positive (total contributions paid exceed total benefits charged), the tax rate for that employer is the same as a new employer in a non-construction industry (currently 2.08%).
- If the cumulative lifetime reserve of the employer is negative (total benefit charges exceed total contributions), then the tax rate for the employer is the negative employer maximum rate for that year. For 2001, the negative employer maximum rate is 10.09%.

The risk adjustment rate is in effect for the employers from the beginning of the first day of the calendar quarter in which the above conditions are met and for the remainder of the calendar year.

Prior to this legislative change, all employer accounts that met the criteria were required to be assigned the negative maximum rate regardless of the positive or negative balance of the employers account.

Your Opinions and Questions Wanted

Your opinion counts. We have been providing this newsletter to employers for a year, and we would like your opinions as to what you like or dislike about the newsletter. We would also like to know what information and articles you want in future newsletters.



Send us an e-mail at jsuits@state.nd.us or call us at 701-328-2814 or 1-800-472-2952 .

OTHER NON-LEGISLATIVE NEWS —

Responding to a Notice of Claim for Job Insurance Benefits

How an employer responds to a Notice of Claim for Job Insurance Benefits can determine the impact on the claimant's eligibility and also the employer's unemployment insurance tax rate.

An employer's account may not be charged for benefits paid if the individual left employment voluntarily without good cause, or with good cause not involving fault on the part of the employer, or was discharged from employment by the employer for misconduct. This does not apply to employers who choose the reimbursement method of financing their contributions.



When responding to a Notice of Claim for Job Insurance Benefits, an employer needs to provide Job Service with as much information as possible regarding the separation. The employer's statement should specifically define the events that led to the separation including the final incident. **YOU NEED TO PROVIDE COMPLETE AND DETAILED INFORMATION.** Types of separations may include:

- An employee quit - The employer may not have any information as to why the employee quit. However, the employer's response needs to reflect whatever information is available concerning the separation or the events that led to it.
- An employer released (fired) an employee - The employer needs to provide as much detail as possible concerning all the events that led to the final incident resulting in the discharge.
- An employee has been laid off due to lack of work - The notice states: "If you agree that the separation was due to lack of work, then no response to this notice is required." No response is necessary, however, additional information may be submitted.

It is important to remember that employer responses to a Notice of Claim for Job Insurance Benefits must be delivered or postmarked not later than ten days from the mailing date of the Notice of Claim for Job Insurance Benefits.

Employer responses to Notices of Claim for Job Insurance Benefits are necessary for fair and equitable decisions and appropriate charging of employer accounts.

Upcoming Articles for the September Issue:

These are some of the articles we will be including in the September 2001 issue of the Info Link.

- Small Business Tax Workshops — the Small Business Development Center along with several state agencies will be presenting these workshops across the state
- Tax Rating Process for 2002

CUSTOMER SERVICE CONSULTANTS

Our staff are available to answer your questions at any of the following locations:

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