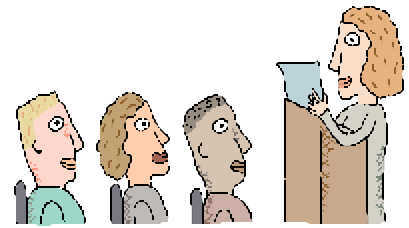


Anti-SUTA Dumping Legislation

North Dakota's 2005 Legislature considered the risk to the Unemployment Insurance Trust Fund posed by the practice of SUTA dumping. SUTA (State Unemployment Tax Act) dumping occurs when an employer takes steps to manipulate a situation so that the employer pays UI taxes, directly or indirectly, at a tax rate lower than the employer's assigned experience rate. The Legislature enacted House Bill 1195, which is effective August 1, 2005 and applicable to all employers that have North Dakota UI tax accounts, including Professional Employer Organizations (PEOs). For full text of House Bill 1195, go online: <http://www.state.nd.us/lr/assembly/59-2005/bill-text/FASP0400.pdf>.



The general provisions of HB 1195, applicable to all employers, include:

1. If an employer acquires all or part of the business or workforce of another employer, and continues the same business as the transferring employer, the receiving employer may request the predecessor's UI experience rate, unless JSND finds that the transaction was solely or primarily for SUTA dumping.
2. If an employer acquires all or part of the business or workforce of another employer and, at the time of acquisition, there was common ownership, management, or control, JSND must transfer the predecessor's UI experience to the successor.
3. If a person who is not an employer acquires the business or workforce of an employer, the experience rate of the acquired business may not be transferred to the receiving person if JSND finds that the acquisition occurred solely or primarily for the purpose of SUTA dumping.
4. If a person knowingly acts to circumvent the requirements listed in 1-3 above, that person is subject to assignment of a penalty UI tax rate at least 2% higher than the currently assigned rate for the remainder of the current rate year and for three following rate years. If a person advised a business to SUTA dump, that person is subject to a civil penalty of up to \$25,000.
5. In addition to the civil penalties, a person who knowingly violates, or attempts to violate the section containing the federally-required SUTA dumping prohibitions will be guilty of a Class C Felony.

PEO's must furnish JSND a copy of their contracts with clients within 15 days after execution, and must report and pay UI taxes at their clients' rates with some exceptions.

Finally, the bill proposes a Legislative Council study of licensure or registration of PEOs.

If you would like additional information about this bill, please contact Larry Anderson at (701) 328-2843, or by email at landerso@state.nd.us.

Your Opinions and Questions Wanted

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