

Employers' Rights and Responsibilities

*Under the
Missouri Employment Security Law*



DIVISION OF EMPLOYMENT SECURITY



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Foreword

The Missouri Division of Employment Security (Division) is the state agency responsible for administering the unemployment insurance benefit and tax programs. The Division has responsibility to both workers and employers.

The agency strives to administer the employer tax provisions of the law equitably in accordance with the intent of the General Assembly of the state of Missouri. An effort is made to tax employers as little as possible, while at the same time provide essential benefits to workers who are unemployed through no fault of their own, and who are able, available and actively seeking work.

The State Unemployment Insurance Laws must conform to certain standards in the Federal Unemployment Tax Law administered by the U.S. Department of Labor. By conforming to these laws, Missouri employers are allowed to take a credit on federal unemployment tax returns, if state unemployment taxes are paid timely. This credit is allowed regardless of an employer's state unemployment tax rate.

In Missouri, unemployment insurance benefits are paid entirely by employers who are liable under the Missouri Employment Security Law. No deductions are made from the workers' wages.

Wage information and other confidential unemployment insurance information may be requested and utilized for other governmental purposes including, but not limited to, verification of an individual's eligibility for other governmental programs.

This handbook should be retained as a reference guide to an employer's rights and responsibilities under the Missouri Employment Security Law. For further information relating to unemployment tax liability and/or unemployment insurance benefits, write to: P.O. Box 59, Jefferson City, MO 65104-0059, call 573-751-3215, or visit our Web sites at:

www.mouitax.com

www.mocclaim.mo.gov

www.labor.mo.gov/es

Definitions of Law Terms

Deputy - A representative of the Division of Employment Security designated to make investigations and administrative determinations on claims or matters of employer liability, or to perform related work.

Director - The administrative head of the Division of Employment Security.

Division - The Division of Employment Security, the state agency charged with the administration of the Missouri Employment Security Laws set out in Chapter 288 of the Missouri Revised Statutes.

Employer - Any employing unit that has had sufficient employment or paid sufficient wages to become liable to cover workers for unemployment insurance benefits and pay unemployment taxes.

Employing Unit - Any individual, organization, partnership, corporation, common paymaster or other legal entity, including the legal representatives thereof, which has or, subsequent to June 17, 1937, had in its employ one or more individuals performing services for it within Missouri.

Employment - Service performed for wages under any contract of hire.

Governmental Entity - The state, any political subdivision thereof, any instrumentality of any one or more of the foregoing that is wholly owned by this state and one or more other states or political subdivisions, and any instrumentality of this state or any political subdivision thereof and one or more other states or political subdivisions.

Insured Work - Employment in the service of an employer.

Referee - A representative of the Division of Employment Security who is designated to serve on an appeals tribunal, conduct hearings and make impartial decisions on appeals from administrative determinations, petitions for reassessment and claims for unemployment insurance benefits.

Temporary Employee - An employee assigned to work for the clients of a temporary help firm.

Temporary Help Firm - A firm that hires its own employees and assigns them to clients to support or supplement the clients' workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

Wages - Cash payments or cash value of remuneration in any other form that is given to an individual for personal services.

Introduction to Unemployment Insurance

Unemployment insurance has been an important factor in stopping cycles leading to economic recession and depression. The Unemployment Insurance Program began in Missouri in 1939. Since that time, many changes have occurred that have improved the program.

The problems of unemployment originated in the United States during the early 1900s after the frontier disappeared and the Industrial Revolution had begun. The Great Depression of the 1930s made it evident that a solution to the problems created by unemployment would have to be found.

The first Unemployment Insurance Act in the United States was enacted by the state of Wisconsin in 1932. The Federal Unemployment Tax Act was passed in 1937 and levied a tax equally against employers in all states. The first federal tax was 3 percent of wages paid to workers. However, this law permitted employers in states that adopted an acceptable Unemployment Insurance Act a tax credit of 2.7 percent of wages as an offset against the federal tax of 3 percent. This left a federal tax of 0.3 percent to administer the program and a state tax of 2.7 percent to pay unemployment insurance benefits.

The federal and state unemployment tax rates and employer coverage requirements have changed over the years. The federal tax rate for 1983 and 1984 was set at 3.5 percent. The rate was increased to 6.2 percent beginning in 1985.

There was no change until January 1, 1985, in the 2.7 percent offset credit allowed on federal unemployment tax returns to employers that paid their state unemployment insurance taxes timely. Since January 1, 1985, if state unemployment taxes are paid timely, a credit of 5.4 percent of taxable wages is allowed employers against the federal unemployment tax of 6.2 percent. This still leaves federal unemployment taxes due at the same rate of 0.8 percent of taxable wages paid since January 1, 1983, by employers subject to the federal unemployment tax. The offset credit is allowed on federal unemployment taxes, regardless of an employ-

er's state unemployment tax rate as long as state unemployment taxes are paid timely.

Missouri Law States Public Policy

The declaration of public policy of the state of Missouri incorporated into the Missouri Employment Security Law reads:

“As a guide to the interpretation and application of this law, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state resulting in a public calamity. The Legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. This law shall be liberally construed to accomplish its purpose to promote employment security both by increasing opportunities for jobs through the maintenance of a system of public employment offices and by providing for the payment of compensation to individuals in respect to their unemployment.”

Online Business Registration

The Missouri Department of Labor and Industrial Relations — Division of Employment Security and the Missouri Department of Revenue have developed a combined Internet registration process allowing individuals and companies that conduct business or employ workers in Missouri to register with both agencies at once.

One application can be completed online to register taxpayers for the following:

- unemployment tax
- withholding tax
- corporate/franchise tax
- retail sales tax
- consumer's use tax
- vendor's use tax

Register at www.mouitax.com

Tax Liability

Who is a Liable Employer?

The term “liable employer” refers to an employing unit that has become liable to cover workers for unemployment insurance benefits and to pay unemployment taxes on workers’ wages.

The Division uses the form Report to Determine Liability Status (MODES-2699) and the Online Business Registration to gather information for determining if an entity is liable for state unemployment tax. An entity that employs workers is required to complete and return this form.

If liable for state unemployment tax, the Division will mail an official written determination of liability and quarterly contribution and wage reports on which to report the wages of employees. The employer is liable for the whole calendar year in which it incurs liability. As an employer, an entity must file contribution and wage reports each calendar quarter. (*See Contribution and Wage Report.*)

The employer will continue to be liable during following years until liability is terminated. (*See Termination of Liability.*)

Multiple businesses under the same ownership are considered a single employer regardless of the number of locations within the state; however, under certain conditions separate reports may be filed for each location. (*See Special Reporting Situations.*)

How is Liability Established?

To establish liability an employing unit must meet one or more of the following criteria:

1. General Business Employer

- Have a total payroll of \$1,500 or more in a calendar quarter during either the current or preceding calendar year;
- Employ a worker (not necessarily the same worker) for some portion of a day in each of 20 different weeks in either the current or preceding calendar year;

- Be determined a successor to a liable Missouri employer; (Applies to all types of employers.)
- Be liable under the Federal Unemployment Tax Act (FUTA) and employing a worker in Missouri. (Applies also to agricultural and domestic employment.) The reporting requirements of the FUTA are similar to those of Missouri unemployment tax, but are not identical. Federal unemployment tax is administered by the Internal Revenue Service (IRS). Contact the IRS for information on your liabilities for federal unemployment tax.

2. Domestic Employer

- Pay \$1,000 or more in cash wages in a calendar quarter during the current or preceding calendar year to a domestic or household worker in a private home, college sorority or fraternity.

3. Agricultural Employer

- In all states combined have 10 or more workers (not necessarily the same 10 workers) in 20 different weeks, or pay \$20,000 or more in cash wages in a calendar quarter, during the current or preceding year.

4. Nonprofit Organization 501(c)(3)

- Be a nonprofit organization described in Section 501(c)(3) of the Internal Revenue Code and employ four or more workers for some portion of a day in 20 different weeks during the current or preceding calendar year. The workers employed do not have to be the same four workers and they do not have to work at the same time of the day.

5. Governmental Employer

- Employ a worker regardless of the amount of wages paid or number of weeks the worker is employed.

Voluntary Election

If an employing unit does not have sufficient employment or wages to become liable under any of the above conditions, or if it wants to provide unemployment insurance coverage for its workers who would be exempt under some provision in the law, the employing unit may request approval from the Division to become a liable employer. The voluntary election of coverage would go into effect on the first day of the quarter in which the election is made and must continue in effect for at least two complete calendar years.

Special Reporting Situations

Common Paymaster

The Missouri Revised Statutes, Section 288.090.11, sets out certain conditions for a Division-approved common paymaster arrangement. Two or more related corporations or limited liability companies (classified as corporations) that meet all the criteria listed may be approved for a common paymaster arrangement. A request for a common paymaster arrangement must be received by the Division at least 30 days prior to the beginning of the quarter in which the common reporting is to be effective. Approval of this common paymaster arrangement allows the corporation or limited liability company designated as the common paymaster to report the wages of its employees and concurrently employed individuals of the related corporation(s) on one quarterly contribution and wage report.

Leased Employees

A “lessor employing unit” is an entity that leases employees to another business entity, referred to as a “client lessee”. The lessor employing unit is liable for contributions, or payments in lieu of contributions, on wages paid to the leased employees. The “client lessee” is jointly and severally liable for any unpaid contributions, or payments in lieu of contributions, interest, and penalties to the Unemployment Trust Fund unless the lessor employing unit financially guarantees payment. To financially guarantee payment, the lessor

employing unit posts a surety bond, deposits securities, pledges certificate of deposit, or provides an irrevocable letter of credit in the amount equivalent to the lessor employing unit’s last yearly contributions (taxes) to the trust fund or \$100,000, whichever is greater. If the lessor employing unit does not financially guarantee payment, a separate quarterly contribution and wage report must be filed for the lessor employing unit AND each of its client lessees.

Multiple Reporting Unit Numbers

An employer with more than one business establishment may request multiple reporting unit numbers for its establishments. Such employer would be furnished separate quarterly forms to report wages of workers for each establishment. Taxable wages reported and contributions paid by each establishment would be combined by the Division into one experience rating account.

Quarterly contribution and wage reports for each additional reporting number would be mailed to the address furnished by the employer. Notice of benefit claims also are mailed to such address with respect to an individual whose wages were reported on the quarterly reports under an additional reporting number. All other reports and statements would be mailed to the employer’s headquarters or principal mailing address. An employer may request separate charge sheets for charges applicable to wages reported under multiple reporting unit numbers.

Joint Account

Any employer with one or more other employers may apply to the Division to participate in a joint common experience rating account. The application contains the regulations for the formation and maintenance of joint accounts.

All joint accounts will be maintained only on a calendar year basis. Joint accounts must be maintained for a minimum period of two calendar years unless terminated sooner by action of the Division.

Employment

Covered Employment

A general definition of “covered employment” means any services performed by an individual for remuneration under any contract of hire, unless otherwise specifically excluded under the law. Covered employment includes: (1) services of part-time, temporary, and casual workers, as well as regular workers; (2) officers or stockholders who perform services for a corporation and receive remuneration; (3) services of agent or commission drivers who personally distribute food and beverage products (other than milk) or who distribute laundry or dry cleaning for another person; (4) services of traveling or city salespersons engaged on a full-time basis soliciting orders on behalf of an employer of merchandise for resale or supplies for use in a business operation; (5) services performed in a foreign country by a U.S. citizen for an employer located in Missouri.

Excluded Employment

1. General Business

Employment excluded from coverage under the law includes:

1. The **delivery and/or sale of newspapers** when one of the following applies:
 - a. Wages to persons under the age of 18 who deliver newspapers or shopping news are not reportable or taxable for state and federal unemployment taxes. This exemption applies to the typical house-to-house newspaper delivery or sale, and also extends to passing out handbills and other similar types of advertising material on the street. The exemption also covers remuneration for services incidental to the delivery of the newspapers, such as assembling the sections into complete papers. This exemption does not include the distribution of magazines or house-to-house distribution of merchandise samples for advertising purposes.
 - b. Wages paid to an individual of any age for services performed as a direct seller

in the trade or business of delivering or distribution of newspapers or shopping news are not reportable for state or federal unemployment taxes.

- c. Newspaper or magazine vendors of any age are excluded from state and federal unemployment taxes for services performed at the time of sale of the papers or magazines to the ultimate consumer. This is true even if the person is guaranteed a minimum amount of compensation and/or can sell back all unsold newspapers or magazines.
2. Services performed as a **direct seller** who is engaged in the trade or business of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business or services, or services of a direct seller who is engaged in the business or trade of selling or soliciting sales of consumer products in a home, or otherwise than in or affiliated with a permanent fixed retail establishment, if 80 percent of remuneration received is directly related to such sales rather than the number of hours worked and sales are performed under a written contract that provides the seller will not be treated as an employee for federal tax purposes;
3. Services performed in the employ of a son, daughter, spouse, or by a child under the age of 21 in the employ of the child’s father or mother. This includes legally adopted, step, and foster children and parents. If the business is a partnership, an exempt family relationship must exist between the worker and each partner in order for this exemption to apply. The exemption for **family employment** does not apply to the family of the officers or stockholders of a corporation;
4. Services as a **licensed insurance agent or an insurance solicitor** remunerated solely by commissions;
5. Services for which academic credits are given performed by an individual who is a **student** enrolled in a public or nonprofit school;

6. Services performed in the employ of a **foreign government**;
7. Services of a **licensed real estate salesperson or broker**, provided at least 80 percent of remuneration for services are directly related to sales performed rather than the number of hours worked, and the services are performed under a written contract that provides the individual will not be treated as an employee for federal tax purposes;
8. Services performed by an individual in a **barber or beauty shop** who pays rent or other payments to the owner or operator for use of the facilities;
9. A **motor carrier** whose operations are confined to a commercial zone or who is regulated by the Missouri Department of Transportation or by the U.S. Department of Transportation or any of its sub-agencies shall not be considered the employer of a lessor or of a truck driver paid by a lessor. Also excluded are services performed by owners who drive their own trucks for a contract or common carrier;
10. Workers covered by a federal unemployment insurance system (railroad workers and federal employees); or
11. Full-time student working less than 13 weeks for an organized summer camp.

2. Churches and Religious Orders

1. Services performed in the employ of a church, or convention or association of churches;
2. Services performed in the employ of an organization that is operated primarily for religious purposes, and is operated, supervised, controlled or principally supported by a church, or convention or association of churches;
3. Services performed by a duly ordained, commissioned or licensed minister of a church in the exercise of the ministry; and
4. Services performed by a member of a religious order in the exercise of duties required by such order.

3. 501(c)(3) Organizations and Governmental Entities

1. Services performed by individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, if performed in a facility conducted for carrying out a program for rehabilitation of such individuals;
2. Services performed by individuals who, because of injury, physical or mental capacity cannot be readily absorbed in the competitive labor market, if performed in a facility whose purpose is to carry out a program of providing work for such individuals;
3. Services performed by an individual receiving work-relief or work-training if the program is assisted or financed in whole or in part by a federal agency, or by an agency of the state or any of its political subdivisions;
4. Services performed in the employ of a nonprofit school, college or university by a student who is enrolled and regularly attends classes at such school, college or university;
5. Services performed by a student's spouse in the employ of a nonprofit school, college or university at which the student is enrolled and regularly attends classes provided the spouse is advised at the beginning of such services that:
 - a. The employment is provided under a student-assistance program; and
 - b. The employee is not covered by any program of unemployment insurance.
6. Services performed by an inmate of a custodial or penal institution; and
7. In the employ of a governmental entity if such service is performed by an individual in the exercise of duties:
 - a. As an elected official;
 - b. As a member of a legislative body or a member of the judiciary of a state or political subdivision;
 - c. As a member of the state national guard or air national guard;

- d. As a temporary employee due to fire, storm, snow, earthquake, flood or similar emergency;
- e. In a position designated by the laws of this state as a major nontenured policy-making or advisory position;
- f. In a position designated by the laws of this state as a policymaking or advisory position in which the duties ordinarily do not require more than eight hours per week;
- g. As an election judge appointed by the election authority.

Required Notice to Non-Covered Workers

If an employee of a church, religious order or 501(c)(3) (nonprofit) organization is exempt from unemployment insurance coverage as defined under Employment Security law, Missouri Revised Statutes, Section 288.041, requires a written notice from the employer to the exempted worker. The notice must state that wages earned by the individual will not be used to determine insured worker status for unemployment insurance benefits. The notice must be provided to each exempt individual at the time of initial employment or upon a change in the employing unit's status regarding liability for unemployment insurance coverage.

Employee or Independent Contractor?

The determination of whether an individual is an employee or independent contractor for Missouri unemployment tax purposes is important for several reasons. Wages paid to employees generally are subject to unemployment taxes imposed under Missouri law, and only wages paid to employees are used to calculate unemployment insurance benefits. Any agreement by an individual to waive rights to unemployment insurance coverage is void under the Missouri Employment Security Law.

Service performed by an individual for payment is employment unless an employer can show to the satisfaction of the Division that the employer/employee relationship does not exist. In determining the existence of the independent contractor relationship, the common law standard shall be applied. The common law, a major

part of the justice system in the United States, flows primarily from court decisions. When considering the employee/independent contractor issue, the Division does not recognize "Section 530 Safe Harbor" of the Internal Revenue Service.

Following the common law standard, the employment tax regulations provide that an employer/employee relationship exists when the business for which the services are performed has the right to direct and control the worker who performs the services. This control refers not only to the result to be accomplished by the worker but also the means and details by which that result is accomplished. In other words, a worker is subject to the will and control of the business not only as to what work shall be done but also how it shall be done. It is not necessary that the business actually direct or control the manner in which the services are performed, it is sufficient if the business has the right to do so.

To determine whether the control test is satisfied in a particular case, the facts and circumstances must be examined. Questions about the relationship between the worker and the business are asked to ascertain the degree of control.

Facts that provide evidence of the degree of control and independence fall into three categories: behavioral control, financial control, and the type of relationship of the parties, as shown below.

Behavioral control. Facts that show whether the business has a right to direct and control how the worker does the task for which the worker is hired include the type and degree of:

- Instructions the worker receives concerning the work. An employee is generally subject to the employer's instructions about when, where and how to work. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved.
- Training the worker is given. An employee may be trained to perform services in a

particular manner. Independent contractors ordinarily use their own methods.

Financial control. Facts that show whether the business has a right to control the business aspects of the worker's job include:

- The extent to which the worker has unreimbursed business expenses. Employees may incur unreimbursed expenses in connection with the services they perform for the business; however, independent contractors are more likely to have unreimbursed expenses than employees. Fixed, ongoing costs that are incurred regardless of whether work is currently being performed are especially important;
- The extent of the worker's investment. An independent contractor often has a significant investment in the facilities he or she uses in performing services for someone else. However, a significant investment is not required;
- The extent to which the worker makes services available to the relevant market;
- How the business pays the worker. An employee is generally paid by the hour, week or month. An independent contractor is usually paid by the job. However, it is common in some professions, such as law, to pay independent contractors hourly;
- The extent to which the worker can realize a profit or incur a loss. An independent contractor can make a profit or loss; an employee usually is paid for the time worked.

Type of relationship. Facts that show the parties' type of relationship include:

- Written contracts describing the relationship the parties intended to create;
- Whether the business provides the worker with employee-type benefits such as insurance, a pension plan, vacation pay or sick pay;
- The permanency of the relationship. If a worker is engaged with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evi-

dence that the intent was to create an employer/employee relationship;

- The extent to which services performed by the worker are a key aspect of the regular business of the company. If a worker provides services that are a key aspect of regular business activity, it is more likely that the employer will have the right to direct and control his/her activities. For example, if a law firm hires an attorney, it is likely that it will present the attorney's work as its own and would have the right to control or direct that work. This would indicate an employer/employee relationship.

Experience Rate Account

Account Number

The Division is required to establish and maintain a separate experience rate account for each employer. The account number contains 14 digits as follows, 000000-0-000-0000. The first six digits identify the account. The seventh digit is changed when an ownership change occurs.

Beginning Tax Rate

Each employer that becomes liable to report workers' wages and pay unemployment taxes is assigned to an industry classification sector. Until eligible for an experience rate, regular employers (not including governmental entities and certain nonprofit organizations) are assigned an annual tax rate that is the average tax rate computed during the preceding year of all employers within the industry classification sector to which assigned, or 2.7 percent, whichever is the highest. Nonprofit organizations described under Section 501(c)(3) of the Internal Revenue Code and governmental entities are assigned an annual tax rate of 1 percent until eligible for an experience rate. **Based on the average cash balance of the Unemployment Trust Fund there may be an increase or decrease to the annual rates (see Contribution Rate Adjustment). Employers participating in the Shared Work Program would be assigned a rate of 9 percent (see Shared Work Program), plus any applicable**

increases or decreases to the rate. (See *Maximum Rate Surcharge, Contribution Rate Adjustment and/or Rate Reduction/Automation Surcharge.*)

Experience Rate

The law includes a merit or experience rating provision as an incentive for employers to maintain stable employment, review claims and reduce unemployment.

The Division keeps a record of experience for each employer's account. The experience includes taxable wages reported, contributions (taxes) paid and benefits charged. Contributions (taxes) paid are credited to an employer's account and unemployment insurance benefits paid to eligible claimants are charged to the accounts of the claimant's employers during the base period of the claim. These factors that are recorded in the employer's account through the preceding July 31st are used to compute annual tax rates after the employer becomes eligible for an experience rate.

The amount of unemployment insurance benefits paid on a worker's claim is charged to the employer's account; the employer does not pay the actual amount of the claim unless it is a reimbursable employer. (See *Reimbursable Employer.*)

The employer's account is maintained for experience rating only. No employer or individual in his/her service has any claims or rights to amounts paid into the fund. All contributions (taxes) are deposited into the Missouri Unemployment Compensation Fund and can only be used to pay unemployment insurance benefits to eligible individuals.

Eligibility and Computation

An employer generally becomes eligible for an experience rate after two full calendar years of liability under the law. An experience rate is based on a ratio arrived at by dividing an employer's account balance by its average annual taxable payroll. Rates could range from 0.0 percent to 6.0 percent, **not including any increases or decreases applicable to the rate.** (See *Maximum Rate Surcharge, Contribution*

Rate Adjustment and/or Rate Reduction/Automation Surcharge.) Rates for employers participating in the Shared Work Program could range from 0 percent to 9 percent, not including any increases or decreases applicable to the rate. (See *Shared Work Program.*)

An employer's account balance is the difference between total unemployment insurance benefits charged and debited, and contributions (taxes) paid and credited, plus any unassigned surplus, through the preceding July 31.

Depending on how long an employer was subject to the law and reported quarterly wages prior to the last July 1, the computation of an employer's average annual taxable payroll is based on one of the following:

1. One-third of the total taxable wages paid during the 36-month period prior to the last July 1;
2. If no wages for employment were paid during any one calendar half year in the 36-month period prior to the last July 1, the average annual payroll is twice the amount of taxable wages paid during the calendar half year in this period wherein the taxable payroll was highest;
3. The average annual payroll is the total taxable wages paid during the 12-month period prior to the last July 1; or
4. If no wages for employment were paid during any one calendar half year in the 12-month period prior to the last July 1, the average annual payroll is twice the amount of taxable wages paid during the calendar half year in the 24-month period prior to the last July 1 wherein the taxable payroll was highest.

A determination of the annual tax rate for the following year is mailed to all employers each year during November. Such determinations are subject to appeal and a hearing by an Appeals Tribunal, provided a protest is made in writing or by fax within 30 days of the mailing date of the rate determination. (See *Appeal Rights.*)

Maximum Contribution Rate Surcharge

If an employer has been at the maximum contribution rate for two consecutive years, a sur-

charge of one-quarter percent is added to the contribution rate. In the event that an employer remains at the maximum contribution rate for a third or subsequent year, an additional surcharge of one-quarter percent (1/4%) shall be added each year to the annual rate calculation up to 1 percent. If an employer continues to remain at the maximum contribution rate, an additional surcharge of one-half percent (1/2%) shall be added. In no case shall the surcharge exceed one and one-half percent in any given year.

Contribution Rate Adjustment (CRA)

A Contribution Rate Adjustment is an increase or decrease to the contribution rate based on the average cash balance of the Unemployment Trust Fund. Depending on the balance, the contribution rate can be increased by 10 percent, 20 percent or 30 percent or can be reduced by 7 percent or 12 percent.

Rate Reduction/Automation Surcharge

During the 2008 Legislative Session, the Unemployment Automation Fund was created. This fund is to be used solely for updating the Division's automated systems to improve the administration of the state's Unemployment Insurance Program. The fund will be financed by an automation surcharge paid by established employers for calendar years 2009, 2010, and 2011. The automation surcharge will be five one-hundredths of 1 percent (0.05%), *or less*. Any employer subject to this automation surcharge will have its unemployment insurance contribution rate *reduced* by five one-hundredths of 1 percent (0.05%). The automation surcharge will be based on the employer's total taxable wages for twelve month period ending on June 30th of the previous year. Each employer subject to the automation surcharge will be notified of its surcharge amount on the first quarter contribution and wage report (excluding employers with a zero contribution rate). Payments received for the automation surcharge will not be included in an employer's experience account for future rate calculations.

Voluntary Payments

Any employer that is eligible for a rate calculation may submit voluntary payments for the purpose of reducing its contribution rates under the provisions of Section 288.125 of the Missouri Employment Security Law. This provision reads as follows: "Any employer may make voluntary payments in addition to the contributions required under this law, which shall be credited to his account, in accordance with regulations established by the division. Such payments shall be included in the employer's account as of the preceding calculation date if they are made on or before January 15. Such voluntary payments when accepted from an employer will not be refunded in whole or in part." The voluntary payment may not be used in payment of subsequent contributions that may become due.

The Division mails a "Voluntary Payment Work Sheet" with each employer's annual rate notification to those employers who are eligible to submit a voluntary payment for the purpose of reducing their new tax rate. The worksheet has simple formulas to show whether it would be advantageous for an employer to make a voluntary payment. The deadline for making a voluntary payment is January 15 of the year which the payment will affect.

Reimbursable Employer

All governmental entities and nonprofit organizations with a federal exemption under Section 501(c)(3) of the Internal Revenue Code have the option to elect to reimburse the Missouri Unemployment Compensation Fund for the amount of unemployment insurance benefits paid that were attributable to services in its employ.

Such an election must be made in writing either:

1. Within 30 days of the date the original notice of liability is mailed; or,
2. At least 30 days prior to January 1 of a calendar year for which such election shall be effective. Any election to change to reimbursable after an employer was contribut-

ing cannot be terminated for two calendar years.

Upon approval of an election to reimburse the fund, the employer will remain in that status until a request for termination of the election is filed at least 30 days prior to the calendar year of termination.

SUTA Dumping

State Unemployment Tax Act (SUTA) dumping refers to attempts by employers to pay lower state unemployment taxes than their experience allows. SUTA dumping practices include shifting payroll from an account with a higher contribution rate to an account with a lower contribution rate and various restructuring schemes to obtain beginning or lower tax rates. The Missouri Employment Security Law bans these practices by mandating transfer of experience in certain situations and prohibiting transfer of experience in others. The law requires the Division to impose substantial penalties on those who knowingly engage in SUTA dumping activities.

Wage Reporting and Tax Payments

Records

Employers must keep records for at least three calendar years, as well as the current incomplete calendar year. The records must show the following information for each worker:

1. Worker's name and Social Security Number;
2. Dates a worker was hired and separated;
3. Dates on which a worker performed some services;
4. The location where services were performed;
5. The amount of remuneration paid each worker;
6. The hours of each day in each pay period an individual worked in noncovered employment, and nature of work; and
7. Wages, including commissions, bonuses, prizes and gifts. Also, tips received by a worker from persons other than employer,

if such tips are reported to the employer for Social Security purposes.

Wages

Reportable wages are gross cash payments, which include bonuses, commissions, vacation pay, holiday pay and termination pay. Tips are wages to the extent required to be reported under the Federal Unemployment Tax Act.

Reportable wages include the reasonable cash value of any goods or services that the employee receives for work performed in lieu of money. The value of non-cash considerations is reportable for all types of employment except domestic or agricultural.

1. Medical/Hospitalization

The law exempts from wages those payments made by an employer to or on behalf of a worker for medical or hospitalization expense or death, including payments made into a fund, annuity or for insurance for these purposes, provided such payments are made under a plan that applies to all workers or a class of workers. Payments made to an employee for income replacement due to sickness or disability would be wages unless made under a workers' compensation law. Such payments made by a third party should be reported as wages by such third party if no accounting of payments are made to the employer.

The law further exempts from wages any payments on account of sickness, accident, disability, or medical or hospitalization expenses that are made by an employer to or on behalf of an individual after the expiration of six calendar months following the date the individual last worked, regardless if such payments were made under a plan or a workers' compensation law.

2. Cafeteria Plan

Contributions paid by an employee and/or employer for qualified benefits to a cafeteria plan under Internal Revenue Code Section 125 are not reportable. Qualified benefits can be payments to an accident and health plan, group term life insurance premiums, and dependent care assistance benefits up to the limits set by the Federal Unemployment Tax Act.

3. Meals

Wages do not include meals if provided by the employer to the worker for the employer's convenience and on the employer's premise, unless they are required to be reported under the Federal Unemployment Tax Act 26 U.S.C., Section 3306.

4. Retirement Plans

Any type of employer may establish such trusts or annuity plans, as described in the Internal Revenue Code, for the purpose of providing a pension, stock bonus, or profit sharing plan for the benefit of employees.

Wages do not include payments made by an employer to or on behalf of an individual to a qualified retirement plan. Elective salary reduction contributions made by an employee to a retirement plan are reportable and taxable.

Taxable Wage Base

There is a limit on the amount of wages paid to an individual worker in a calendar year on which each employer must pay state unemployment tax. The yearly taxable wage limitations are as follows:

Calendar Year	Taxable Wage Limitations
2007	\$11,000
2008	\$12,000
2009	\$12,500
2010	\$13,000

After 2009 the taxable wage base can be increased by \$1,000, or decreased by \$500 for any year, depending on the average balance of the Unemployment Compensation Trust Fund of the four preceding calendar quarters. In no event shall the state taxable wage base increase beyond \$13,000, or decrease to less than \$7,000.

Contribution and Wage Report

Each liable employer is required to file a quarterly contribution and wage report. The most efficient way to file this report is via the Internet. (*See Internet Reporting.*) Wages earned by the worker and reported by the employer are used to determine a worker's unemployment insurance benefit entitlement and amount of

benefits if the worker becomes unemployed and meets the eligibility requirements for an unemployment insurance claim. For this reason, it is important for the employer to file timely quarterly contribution and wage reports even if the employer has a 0 percent rate, paid no wages or is a reimbursable employer.

The quarterly contribution and wage report must show the worker's name, Social Security Number and the amount of wages paid to each wage earner during a calendar quarter. Wages are reported when paid by the employer to the worker. Work separation dates and the beginning and ending dates of probationary employment should be included in the wage detail section of the quarterly contribution and wage report. (*See Probationary Employment.*)

The report also is used to summarize total and taxable wages paid during the calendar quarter and to compute the amount of contributions due on the taxable wage total. Complete instructions for preparing this report are furnished with the report.

Quarterly contribution and wage report forms are furnished by the Division and are mailed to all established employers near the end of each calendar quarter. These reports should be filed and contributions (taxes) paid during the month following the end of each calendar quarter.

No part of the contributions (taxes) due can be deducted from a worker's pay.

Internet Reporting

The Division encourages required quarterly contribution and wage reports be filed over the Internet via the Unemployment State Tax Automated Reporting (USTAR) System. This system automatically calculates total and taxable wages and the contributions (taxes) due on quarterly contribution and wage reports. Electronic funds [Automated Clearing House (ACH) debit] transfer is available to submit a payment, or print a voucher to mail a payment. Employers using magnetic media, or having a file in an electronic format, also may submit their file on USTAR using the file transfer option.

In addition to filing quarterly contribution and wage reports, an employer may review and amend reports previously filed; download a report form to mail in; review outstanding amounts, and submit payment or request refund; request 940 certification for the IRS; submit change to contact information; and report an employment or ownership change.

Access USTAR at www.ustar.labor.mo.gov. First-time users will need to register with a password that is printed on the contribution and wage report form mailed to the employer at the end of the calendar quarter. Other users (such as accountants or bookkeepers) can be authorized to file reports for the employer on USTAR. A user may have authority to access multiple accounts.

Payroll services may electronically transmit a file with multiple employer account numbers in the National Association of State Workforce Agencies/Interstate Conference of Employment Security Agencies (NASWA/ICESA) standardized record format and pay by ACH debit. Contact the Division at 573-751-3422 to register as a payroll service on USTAR.

Electronic File Transfer and Magnetic Media Reporting

The Division promotes the reporting of quarterly wage data on the Internet or by magnetic media. (*See Internet Reporting.*)

Missouri accepts a number of electronic file formats that allow quarterly wage data to be submitted on the Internet or magnetic media. If submitting magnetically, test data is required and the media must meet specifications established by the Division. If submitting on the Internet, test data is not required. The Internet system will edit the file and display errors if there are problems. The user will be able to correct the problems and upload the file again.

All employers required to report the Wage and Tax Statement (Form W-2, Copy A) information electronically to the Social Security Administration also are required to report quarterly wage data electronically to the Division.

Currently, this requirement applies to employers with 250 or more employees.

For information and specifications on electronic reporting, please visit our Web site at www.labor.mo.gov/es/ui-tax/m368.htm, or call 573-751-3422.

Probationary Employment

An individual hired on a trial basis to fill a regular job should be reported as a probationary worker if such worker's period of employment did not exceed 28 consecutive days. If filing a paper report, the letter "P" and the beginning and ending dates of employment should be entered on the quarterly contribution and wage report. Probationary employment also can be reported via the Internet or magnetic media. The wages should be included in total and taxable wages. **No charges** will be made to a contributing employer's account for any unemployment insurance benefit payments that are attributable to such wages.

Workers hired for temporary employment should not be listed as probationary.

Reimbursable employers are liable for all unemployment insurance benefit payments. (*See Benefit Charges.*)

Interest Charges

Interest accrues at a variable rate, as established by the Internal Revenue Service, on contributions (taxes) that are not timely paid. The Division grants newly subject employers a 30-day extension from date of liability notice to file quarterly contribution and wage reports, and pay taxes. Reports are deemed filed on the date postmarked, or the date received in a Division office if personally or express delivered, or submitted via Internet. (*See Papers Deemed Filed.*)

Any employer may be granted an extension of time not to exceed three months for filing a quarterly contribution and wage report, or paying of contributions (taxes), provided a request for an extension is made on or before the due date for filing such quarterly report.

QUARTER	SUBMISSION PERIOD	DELINQUENT*	1st PENALTY*	2nd PENALTY*
Three completed calendar months.	The deadline for timely submitting quarterly reports is the last day of the month following quarter end. Paper quarterly reports can be filed anytime during that month or you can file on USTAR beginning the second business day after the quarter ends.	Quarterly report is delinquent on	One month delinquent. An additional 10 percent of tax due or \$100, whichever is greater, for each month delinquent. Maximum penalty per report is 20 percent or \$200.	Two months delinquent.
1st January, February, March	April 1 - April 30	May 1	June 1	July 1
2nd April, May, June	July 1 - July 31	August 1	September 1	October 1
3rd July, August, September	October 1 - October 31	November 1	December 1	January 1
4th October, November, December	January 1 - January 31	February 1	March 1	April 1
<i>*When the date falls on a Saturday, Sunday or holiday, the first working date following is considered timely.</i>				

Penalties

Because it is very important for an employer to file all quarterly contribution and wage reports timely, a penalty will be imposed if an employer fails to file any required report by the last day of the month following the date the report became delinquent. The penalty will be 10 percent of the contributions (taxes) due or \$100, whichever is greater, for each quarterly contribution and wage report not filed timely. This penalty will continue to be imposed each month or fraction of a month the report is not filed. The maximum penalty per quarter is 20 percent of the contributions (taxes) due or \$200, whichever is greater. This penalty will be applied to all delinquent reports even if the employer's rate is 0 percent or the employer is reimbursable and no tax or interest is due.

An employer that cannot pay all the contributions (taxes) due at the end of the quarter should file the contribution and wage report and make arrangements for payment with the Division's central office Collections Unit.

An employer that has an appeal pending should continue to file quarterly contribution and wage reports, and include all wages (even those wages in dispute) to avoid penalties.

The law also provides for an additional 25 percent penalty if fraud or evasion is discovered.

Assessments

Failure to file quarterly contribution and wage reports or pay state unemployment taxes when due may result in an assessment against the employer for contributions (taxes), interest and penalties, actual or estimated. When final, this assessment may be filed in circuit court as a tax lien. Once filed, it has the effect of a judgment subject to execution and levy of any real or personal property of the employer.

Audits

All employing units in Missouri are subject to having their records examined by an authorized representative of the Division. Audits of employers' records are conducted periodically to ascertain proper reporting of workers and wages. Failure or refusal by an employer or employing unit to make records available may result in the issuance of a subpoena to compel production of books and records.

Contribution (Tax) Adjustments

The Division will make adjustments to an employer's account with respect to contributions (taxes) erroneously paid within the last three years from date due, provided the contributions were not paid on wages used on a claim for unemployment insurance benefits. A refund check or a credit against future taxes will be issued on such contributions, without interest. A debit is issued for underpayment of contributions (taxes) due for any periods. Interest accrues from due dates on such debits.

State to Which Workers are to be Reported

All states subscribe to these same tests to determine the correct state of coverage. The tests must be applied in the order listed.

1. Localized Workers

An individual who performs all of his/her work within Missouri is a localized Missouri worker. Localized Missouri work could include occasional temporary work outside of the state that is incidental to an individual's regular work in Missouri. Wages paid to localized workers must be reported to the state where the individual works, regardless of where the worker lives.

2. Multi-State Workers

An individual whose services are not localized in any one state is referred to as a multi-state worker. A person who customarily performs service both in Missouri and one or more other states would be reported to Missouri if: (a) the worker's base of operations is in Missouri; (b) the person had no fixed base of operations in any state where services are performed, but the employer directed and controlled the person's services from Missouri; or, (c) the person lived in Missouri and performed some services in Missouri, and the state of coverage cannot be determined by either of the first two tests.

A base of operations is a fixed place where a person receives work instructions, makes reports and normally departs to begin a tour of duty and returns when the tour is ended. It could be a worker's home or an employer's

place of business where a worker reports with some regularity. It is not the place from where an employer directs, controls and generally transmits instruction and information to a worker by mail or telephone. Some multi-state workers have no fixed base of operations.

3. Interstate Reciprocal Coverage Arrangement

When an employee's service is not localized in any one state and none of the tests for multi-state workers apply, an employer can usually elect to cover the entire service of the worker in:

- any state in which the person works;
- any state in which the employer maintains a place of business; or
- the state in which a worker lives.

The election must be filed with the state unemployment insurance agency to which the employer wants to report wages. Elections must be approved by all interested state agencies. Most states can enter into the Interstate Reciprocal Coverage Arrangement. Application forms are available for employers wishing to elect to cover services of multi-state workers with the Missouri Division of Employment Security.

4. Maritime Interstate Reciprocal Agreement

The purpose of the Maritime Agreement is to establish that services of officers and members of a vessel's crew engaged in interstate operations are covered for unemployment insurance purposes, and to identify the state that will assume jurisdiction over such services.

The state of coverage is the state that is designated as the home port of the vessel on which the individual worked. That state is responsible for collection of contributions (taxes) and payment of unemployment insurance benefits.

5. Foreign Services

Services performed outside the United States (except Canada) by a U.S. citizen for an American employer would be covered under the Missouri Employment Security Law if:

- a. The employer's principal place of business in the United States is located in Missouri; or
- b. The employer has no place of business in the United States, but
 1. The employer is an individual who is a resident of Missouri;
 2. The employer is a corporation that is organized under the laws of Missouri;
 3. The employer is a partnership or trust and the number of partners or trustees who are residents of Missouri is greater than the number who are residents of any other state; or
 4. The employer has elected coverage of the foreign workers in Missouri and none of the above criteria is met.

Account Status Changes

Transfer of Experience Account to a Successor

An employer should inform the Division immediately when a change in ownership of business occurs by completing the Report on Change of Business Operations (MODES-9). This form is furnished with each quarterly contribution and wage report. It also may be downloaded from the Division Web site, submitted via USTAR (see Internet Reporting) or requested from the Division.

An employer's experience rating account is transferred to one or more successors who, at the same time, acquire and continue without interruption substantially all the business of such predecessor. In addition, if an employer transfers its trade or business, or a portion thereof, to another employer and at the time of the transfer there is substantially common ownership, management or control of the two employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. In the event that any successor was an employer prior to an acquisition, the Division shall make a recalculation of the contribution rate for any successor employer on the date of the acquisition if the

date of the acquisition is on the first day of the calendar quarter. If the acquisition date is other than the first day of the calendar quarter, the Division shall make the recalculation on the first day of the next calendar quarter and the successor employer shall use its rate (before recalculation) for the calendar quarter in which the acquisition was made.

A successor shall stand in the position of the predecessor employer in all respects, including the predecessor's separate account, actual contribution and benefit experience, annual payrolls and liability for current or delinquent contributions (taxes), interest, and penalties.

If a change in ownership occurs and the Division determines there is no successorship, the new owner is responsible for contributions (taxes) and unemployment insurance benefit charges on the wages earned by employees after the acquisition. Contributions (taxes) and unemployment insurance benefit charges on any wages earned by employees prior to the date of acquisition are the responsibility of the previous owner.

Exemption from Filing Quarterly Contribution and Wage Reports

An employer that ceases to have employment without a successor to its business may be exempted from filing quarterly contribution and wage reports beginning with the first day of a calendar quarter following the last date it paid any wages, provided it files an application for such exemption. The application must show the reason the employer discontinued having employment and that no employment is anticipated in the foreseeable future. An employer may request exemption from filing quarterly contribution and wage reports by completing the Report On Change of Business Operations (MODES-9). This form is furnished with each quarterly contribution and wage report. It also may be downloaded from the Division Web site, submitted via USTAR (see Internet Reporting), or requested from the Division.

An employer that is exempted from filing quarterly contribution and wage reports continues to be liable for reporting any wages it may later pay for employment subject to the

Missouri Employment Security Law until or unless its liability is terminated. The employer should promptly notify the Division if it resumes employment.

Termination of Liability

An employer may file an application to terminate liability as of January 1 of any calendar year. The application must be filed by February 10 of such year, and must show that the employer and any predecessor combined had less employment and wages during the preceding calendar year than was necessary to become liable under the law. Criteria for terminating coverage during the preceding calendar year is as follows:

General Business Employer - Did not pay as much as \$1,500 in total wages during any calendar quarter and had less than 20 weeks in which it employed a worker;

Employer of Domestic Worker - Did not pay as much as \$1,000 cash wages during any calendar quarter;

Agricultural Employer - Did not pay as much as \$20,000 cash wages during any calendar quarter and had less than 20 different weeks in which 10 or more workers were employed in all states;

Nonprofit Organizations - 501(c)(3) - Did not employ four or more workers in 20 weeks;

Governmental Entities - Did not pay any wages.

The Division will mail an application at the end of a calendar year to any employer that requests termination of coverage during the calendar year.

In addition, any employer not having knowledge of liability for prior years may file an application to terminate coverage beginning any January 1 following the first year of liability if the employer files such application within 90 days from the date of receiving a notice of liability, and employment or wages during any preceding calendar year met the criteria set out above.

Benefit Charges

Charges to Account of Contributing Employer

Each employer's account is charged in ratio to the amount of wages paid by such employer to a claimant during the base period of a claim.

The maximum amount of regular unemployment insurance benefits chargeable on a claim within a benefit year is 26 times the weekly benefit amount. Chargeable extended benefits would be one-half of regular unemployment insurance benefits. (See "Extended Benefits", "Base Period" and "Benefit Year" in this booklet.)

Reimbursable Debits

Reimbursing employers are charged for unemployment insurance benefits in the same ratio as the amount of wages paid to a claimant by such employer during the base period of the claim. Reimbursing employers are billed directly for the entire amount of regular unemployment insurance benefits and one-half of extended benefits paid attributable to the base period wages, except that reimbursing governmental entities must pay the entire amount of extended benefits paid. Reimbursable debits are not charged or credited to an employer's experience rating account. This method of financing unemployment insurance benefits begins with respect to benefits paid for weeks of unemployment that occur after the effective date of an election to change to the reimbursing method.

Account Charge Protection for Contributing Employer

Unemployment insurance benefit payments would not be charged to a contributing employer's experience account if:

1. It is found that the claimant quit employment to accept more remunerative work, or failed without good cause to accept suitable work offered by the employer;
2. The claimant was disqualified for being discharged due to misconduct connected with the work, or quit without good cause attributable to the work or the employer;

3. The claimant was paid \$400 or less by the employer during the entire base period of the claim;
4. The claimant was properly reported as a probationary worker whose period of employment for the employer was 28 consecutive days or less;
5. The claimant continued to work for an employer part time on a regular reoccurring basis each week during the time such claimant received unemployment insurance benefits to the same extent that such claimant previously worked for the employer, and the employer informs the Division of such part-time employment within 30 days from the date of notice of benefit charges;
6. It is found that the claimant quit temporary work from the employer to return to work for a regular employer. Any unemployment insurance benefits paid to the claimant based on wages paid by such temporary employer are charged to the claimant's regular employer;
7. The claimant quit work, which was determined not suitable, within 28 calendar days of the first day worked.
8. The claimant was discharged when the employer was required to discharge him/her because the claimant's name was placed on the Employee Disqualification List maintained by the Missouri Department of Health and Senior Services.

There is no account charge protection for reimbursable employers.

Employers are mailed a quarterly statement of unemployment insurance benefits charged to their respective accounts. Reimbursable employers are mailed a debit/credit memorandum with the Statement of Benefit Charges.

Statements of Benefit Charges are mailed to an employer's principal mailing address. Unemployment insurance benefit charges attributable to wages reported and processed under an additional reporting number, or an establishment reporting code letter, are listed on separate charge sheets attached to the quarterly Statement of Benefit Charges.

Determination and Appeal Rights

Administrative Determination

A written determination is issued by a deputy concerning employer liability, worker's eligibility for unemployment insurance benefits, unemployment insurance benefit charges to an employer, notification to an employer of rate calculation, or assessment of unpaid taxes, penalties and interest. The notice of such determination is mailed to the employer's last known address. The deputy may reconsider a determination, for good cause, within a year from the date of mailing such determination.

Appeals

The appeal process affords all interested parties a legal recourse to an administrative determination. An appeal may be filed by any interested party. An appeal must be filed in writing within 30 days from the date the determination was mailed. The appeal must be signed by the claimant, the claimant's authorized agent, any officer or employee of the employing unit, or by a licensed attorney representing either the claimant or employing unit. The appeal may be filed by mail or by fax to the office of the Division as provided in the determination.

Hearings

An impartial Referee is designated to conduct a hearing on disputed administrative determinations. A Referee will schedule a hearing to give interested parties a reasonable opportunity to present evidence. Generally, hearings are held by telephone conference; however, an in-person hearing may be requested. In-person hearings are held in St. Louis, Kansas City, Springfield or Jefferson City, whichever is most convenient for the parties. Notices of hearing are mailed at least seven days in advance of the hearing date.

All interested parties will be mailed a copy of the Referee's decision. The decision shall become final, unless an application for review of the decision is filed with the Labor and Industrial Relations Commission, within 30 days from the date of mailing of the Referee's decision.

Commission Review

Application for a review of a Referee's decision is filed with the Missouri Labor and Industrial Relations Commission (Commission). The Commission may allow or deny the application for review. If the application is allowed, the Commission may affirm, reverse, modify or set aside the appeals decision. If the appeals decision is set aside, the Commission may take additional evidence or remand the matter back to the Appeals Tribunal with instructions. A notice of the Commission's decision is mailed to all interested parties and becomes final 10 days from the date of mailing of the notice.

Any interested party may be represented by an attorney in any proceeding before the Appeals Tribunal or the Labor and Industrial Relations Commission.

Judicial Review

Application for judicial review of the Labor and Industrial Commission's (Commission) decision involving an employer's liability must be made with the appropriate appellate court within 20 days after the Commission's decision becomes final.

Papers Deemed Filed

All appeals, reports, and other papers filed with this Division are deemed filed either as of the date endorsed by the U.S. Postal Service (USPS), or if not endorsed by the USPS, the date received at the Division or the date received by fax to the Division's office. If the last date for filing of any papers falls on Saturday, Sunday or legal holiday, the filing shall be deemed timely if accomplished on the next day which is neither a Saturday, Sunday nor legal holiday.

Shared Work Program

The Shared Work Unemployment Insurance Program is designed to help employers and employees. It is an alternative for employers faced with a reduction in force. It allows an employer to divide the available work or hours

of work among a specified group of affected employees in lieu of a layoff, and it allows the employees to receive a portion of their unemployment insurance benefits while working reduced hours.

Process

An interested employer may obtain a Shared Work Plan Application by contacting the Missouri Division of Employment Security, P.O. Box 3100, Jefferson City, Missouri 65102-3100, or calling 573-751-6548. To participate, an employer must reduce the normal weekly hours of work for an employee in the affected unit by at least 20 percent (but not more than 40 percent) and the plan must apply to at least 10 percent of the employees in the affected unit who meet monetary requirements for regular unemployment insurance. If the plan is approved by the Division, workers who qualify for unemployment benefits would receive both wages and Shared Work benefits. The Shared Work benefits would be that percentage of regular unemployment insurance benefits that matches the reduction described in the employer's plan.

For example:

A firm facing a 20 percent reduction in production usually lays off one-fifth of its work force. Faced with this situation, a company could retain its total work force on a four-day-a-week basis. This reduction from 40 hours to 32 hours cuts production by the required 20 percent without reducing the number of employees. All affected employees receive their weekly wages based on four days of work and, in addition, receive a portion of unemployment insurance benefits equal to 20 percent of the unemployment insurance weekly benefit amount (WBA) payable had the employee been unemployed a full week.

An employee normally works a 40-hour week. The employer has to reduce the work schedule by 20 percent. The employer submits a plan and it is approved under the Shared Work Program. For example: If the employee qualifies for regu-

lar unemployment insurance benefits with a WBA of \$320.

20% x 40 hour work week = 8 hours

Employee works and earns wages for 32 hours

20% x \$320 WBA = \$64

In the above example, the employee would receive \$64 of unemployment insurance benefits in addition to the 32 hours of wages earned from the employer.

Conditions

The Division may approve a Shared Work Plan if;

- There is an “affected unit” of not less than three employees;
- The normal weekly hours of work and corresponding wages for a participating employee are reduced in the plan by not less than 20 percent and no more than 40 percent;
- The plan applies to at least 10 percent of the employees in the affected unit;
- The plan describes the manner in which the participating employer treats the fringe benefits of each employee in the affected unit;
- The employer certifies that the implementation of a Shared Work Plan and the resulting reduction in work hours is in lieu of a temporary layoff that would affect at least 10 percent of the employees in the affected unit and that would result in an equivalent reduction in work hours;
- The employer has filed all quarterly contribution and wage reports required to be filed for all past and current periods, and has paid all contributions (taxes) due for all past and current periods.

Conditions For Shared Work Benefits:

- An individual must accept all work offered by the participating employer for the claim period filed;
- An individual must be able to work, and be available for full-time work with the participating employer;

- An individual must be eligible for regular unemployment insurance benefits in the state of Missouri;
- No unemployment insurance benefits will be paid to an individual who works for the participating employer more than the reduced hours specified in the plan;

Application Format

Applications must contain:

- Name and Missouri account number of employer;
- Description of how fringe benefits will be affected by the plan;
- Concurrence of a bargaining representative if one exists;
- Certification that:
 1. The plan applies to at least 10 percent of employees.
 2. The reduction is in lieu of temporary layoffs.
- An attached listing of affected employees showing:
 1. Full names.
 2. Social Security Numbers.

Process once Application is Filed:

The Division shall, in writing, approve or deny a Shared Work Plan within 30 days after the day on which the plan is received.

If approved, the plan shall remain in effect for one year beginning the first day of the week in which it was approved, or at a later date as specified in the Shared Work Plan. The plan can be modified if the modification(s) conforms to the basic provisions of the plan and the modification(s) is approved by the Division. Any request for modification must be given as written notice to the Division at least seven days before the change becomes effective.

Once the plan is approved, a bi-weekly certification form will be mailed to the employer for completion. The bi-weekly certification forms will continue to be mailed to the employer for each week the plan is to be followed. A recent change to the Missouri Revised Statutes directly affects the processing of weekly claims for

unemployment insurance benefits. The law change as provided in Section 288.040.1(5), states a claimant shall be eligible for benefits for any week only if the deputy finds that a **claim for benefits is made within 14 days from the last day of the week being claimed.** The 14-day period may, for good cause, be extended to 28 days. This law change became effective October 1, 2008.

It is extremely important for employers to submit all Shared Work Plans and bi-weekly certifications on time. Any delay may result in unemployment insurance benefits being denied due to late receipt of weekly claims.

Will Participation Affect an Employer's Unemployment Tax Rate?

Unemployment insurance benefits paid under Shared Work Plans are charged back against employers' accounts for use in computing general (experience) tax rates. They affect employers' tax rates in the same manner and to the same extent as other chargebacks of unemployment insurance benefits.

- An employer eligible for a tax rate based on individual experience has the potential of paying a maximum unemployment tax rate of 9 percent, plus applicable surcharge and any increase/decrease to the annual rate.
- A new employer generally becomes eligible for an experience rate after two full calendar years of liability under the law. Until then, employers choosing to enroll in the Shared Work Program that are not eligible for an experience rate will be assigned a rate of 9 percent, plus applicable surcharge and any increase/decrease to the annual rate.
- An employer that is not eligible for an experience rate after once becoming eligible because there are not 12 consecutive months immediately preceding the calculation date throughout which the account could have been charged with unemployment insurance benefits will be assigned the maximum unemployment tax rate of 9 percent, plus applicable surcharge and any increase/decrease to the annual rate.

The potential for a 9 percent maximum unemployment tax rate remains in effect for the year the employer enrolls in the Shared Work Program and for three years following.

Posters

Each employer is required to post and maintain a placard, "Notice to Workers Concerning Unemployment Benefits" (MODES-B-2). This notice should be placed in a location that is visible to all workers. A copy of the poster can be requested from the Division or downloaded from the Web site: www.mouitax.com. If your workers do not have access to the poster, they should be notified that they are covered by unemployment insurance. A What You Need to Know About Unemployment Insurance In Missouri (MODES-INF-170-11) pamphlet is mailed to a worker upon filing a new claim for unemployment insurance benefits. This same information for a worker also is available at the Web site: www.mocclaim.mo.gov.

Benefit Claims

Filing of Benefit Claims

A claim for unemployment insurance benefits may be filed when a worker is totally or partially unemployed. If an individual files a new claim, it is effective as of the Sunday preceding the date of filing, regardless of the day of the week on which it is filed.

A worker is deemed partially unemployed in any week of less than full-time work if the wages payable for such week do not exceed a sum equal to the weekly benefit amount (WBA), plus \$20 or 20 percent of the worker's WBA, whichever is greater.

The Electronic Mass Claims Filing System is available to employers during a temporary mass layoff. Employee information provided by the employer allows the Division to quickly and efficiently file initial and renewed unemployment insurance claims on behalf of employees. This filing is available when at least 20 workers are totally unemployed. The temporary layoff cannot exceed eight consecutive weeks. For additional information, contact the Unemployment

Insurance Programs Section at 573-751-3641, or access the Internet at www.moclaim.mo.gov.

Benefit Year

When a worker files a new unemployment insurance claim and has been paid sufficient wages to qualify for benefits, an effective date for the claim is established as stated in preceding paragraphs. This effective date also establishes the claimant's benefit year as the one-year period beginning with such effective date.

Base Period

Benefits that may be payable to a claimant during a benefit year are based on wages paid in the base period, which is the first four of the last five completed calendar quarters immediately preceding the effective date of the claim. In order to qualify as an insured worker, a claimant must have wages for insured work in at least two quarters of his/her base period; must have been paid wages for insured work of \$1,500 or more in one quarter of the base period; and total wages in the base period must be at least one and one-half times his/her high quarter wages.

Claimants not meeting the above provisions may qualify under an alternate method by having been paid wages for insured work in at least two quarters of their base period with total base period wages that equal one and one-half times the maximum taxable wage base. The taxable wage base for claims filed in 2009 is \$12,500, and in 2010 is \$13,000.

Weekly and Maximum Unemployment Insurance Benefits

The weekly benefit amount (WBA) is calculated at 4 percent of the average of the two highest quarters of the base period wages, not to exceed \$320. If the average of the two highest quarters is \$8,000 or higher, the WBA will be \$320 per week.

All WBAs are rounded down to the next lower multiple of \$1.

The maximum benefit amount (MBA) is computed at one-third of the wage credits in the base period or 26 times the WBA, whichever is

less. Wage credits used in each quarter to calculate the MBA are limited to a maximum of \$8,320 (26 x \$320 = \$8,320), or 26 times the claimant's WBA, whichever is less.

The maximum number of weeks a claimant may draw the full weekly benefit amount is 26 weeks. The maximum benefit amount available in a benefit year is \$8,320.

Extended Benefits

When the rate of insured unemployment in Missouri equals or exceeds levels specified by law, an eligible claimant may be paid extended benefits. The eligibility criteria, maximum amount of extended benefits payable and the cost to the employer also are specified by law.

Claim Notices

When a new claim is filed and the claimant has sufficient wages to qualify for unemployment insurance benefits, a notice of the claim is mailed to the last employing unit for which the claimant worked and to each employer in the claimant's base period. A notice will not be mailed to a base period contributing employer who paid wages of \$400 or less during the base period. Should a claimant renew this claim for unemployment insurance benefits at any time during this benefit year, a similar notice is mailed to the last employing unit for which the claimant worked and to any base period employer who has filed a request to be notified the next time the claim is renewed. (*See Mailing Address.*)

Employer's Protest Upon Receipt of Claim Notice

If an employer has information that it believes would cause an individual to be held ineligible or disqualified from receiving unemployment insurance benefits, a protest should be filed immediately. The protest can be filed by mail or fax. Protests must be mailed to: Division of Employment Security, P.O. Box 3915, Jefferson City, MO 65102, or faxed to: 573-751-2009. A protest cannot be considered timely unless it is filed within ten days after the claim notice was mailed. If filed by mail, the U.S. postmark or private meter date is used to determine

the date of filing. If there is both a postmark date and a private meter date, the postmark is used. If there is not U.S. postmark or private meter date, the date the protest is received by the Division will be the controlling date.

Benefit Eligibility Requirements

In order to be eligible to receive unemployment insurance benefits, a claimant must be totally or partially unemployed, able to work, and available for full-time work. In order to be considered available for work, the claimant must be actively and earnestly seeking employment. A claimant may be ineligible if unemployed because of a suspension for misconduct connected with work, a stoppage of work due to a labor dispute or while the claimant is receiving other remuneration, such as vacation pay, holiday pay, Worker Adjustment and Retraining Notification (WARN) pay, or employer pension.

If the Division finds the claimant was discharged for misconduct connected with work, the disqualification can only be terminated if the claimant earns six times his/her weekly benefit amount (WBA) in insured work after the date of discharge. If a claimant is disqualified on a subsequent discharge, the claimant shall be required to earn wages in an amount equal to or in excess of six times the claimant's WBA for each disqualification.

A claimant may be disqualified until other employment is secured and at least ten times the WBA in insured work is earned if the claimant voluntarily left employment without good cause attributable to the employer or to the work. This same disqualification may apply if the claimant refused to apply for or accept suitable employment offered through the Division, designated staff of a state or state-controlled public employment office, or former employer.

Information Needed in Employer Protests

When filing a protest in response to a notice mailed by the Division, the employer must return the notice with the protest. The employer should provide all available facts regarding the case, including the date of the discharge or quit, or date the claimant refused work.

Information on payments such as holiday, vacation, Worker Adjustment and Retraining Notification (WARN) or pension also should be included in the protest. This will assure that all facts are considered by the deputy in making the determination. It also will permit the deputy to make a determination without taking up the employer's time to secure a second statement. The following summary outlines the type of facts needed by the Division's deputy:

1. Quit without good cause attributable to work:
 - a. What the former employee said or did to indicate an intention to quit. If an individual simply failed to show up for work, make a statement to that effect giving the date last worked;
 - b. Complaints made by the worker concerning the work, requests for transfer to other work, or for leave of absence;
 - c. Any statements by the former worker about the reason for leaving and future plans;
 - d. Failure to report for work when called back after a temporary layoff. Give date the claimant was to report for work;
 - e. Failure to return to work after expiration of authorized leave, such as sick leave, vacation, etc. Give date worker failed to return;
 - f. If retirement is pursuant to terms of union contract or established policy of the employer, give the terms of the retirement agreement;
 - g. If employer is a temporary help firm, did worker contact the temporary help firm after assignment ended and prior to filing for unemployment insurance benefits for reassignment? Was the worker informed of the obligation to contact the employer upon completion of the assignment and that failure to do so may result in denial of unemployment insurance benefits? If contact was made, give date of contact and result of contact.
2. Refusal of work by a claimant:

- a. Evidence to show that the work offer was bona fide and communicated to the claimant. How notified - type of work - rate of pay - hours of work - location of job - date to report;
 - b. Reason given by the claimant for refusing the offer and the date the job was refused the work offer;
 - c. Facts about the claimant that would help the deputy in deciding if the individual was justified in refusing the work offer.
 - d. If you have work available for this claimant, you may offer it at any time during the claimant's benefit year. Contact the Regional Claims Center serving your area, or indicate on the claim notice and return to the address on the notice.
 - e. Effective October 1, 2008, the employer will be an interested party to a refusal of suitable work if a written protest is filed within 10 days of the claimant's refusal of work.
3. Drug- and alcohol-related discharge:
Section 288.045 of the Missouri Employment Security Law addresses discharges due to a positive drug and/or alcohol test and what is necessary to find misconduct under this section of the law.
 4. Discharge for misconduct in connection with work:
 - a. The date employee was discharged.
 - b. All incidents of unsatisfactory conduct that played a part in the disciplinary actions, such as warnings and reprimands, gross negligence, absenteeism, willful inefficiency, dishonesty etc.
 - c. What was said to the former employee and what the employee said or did.
 - d. What is employer's policy regarding the incident that led to the discharge and how would claimant have been aware of this policy?
 5. Layoff for lack of work:
You should not protest a claim based on a separation for this reason.
 6. Ability to work and availability for work:
 - a. One of the primary provisions in the law that distinguishes the Unemployment Insurance Program from a public assistance program is that for each week of unemployment for which benefits are paid, the deputy must find that the claimant is able to work, available for work, and actively and earnestly seeking work.
 - b. The requirement of making an active and earnest search for work may be waived for those claimants who are unemployed through no fault of their own and have a definite recall date within eight weeks of the first day of their unemployment. Employers may request in writing to extend the work search waiver for recall dates beyond eight weeks but not to exceed 16 weeks. These requests will be granted at the discretion of the Division of Employment Security Director.
 - c. Claimants are required to register as job applicants with the Division of Workforce Development and are thereby exposed to job orders that employers file.
 7. Payments for holiday, vacation, WARN, or pension.

Holiday or vacation pay:

 - a. Number of hours of holiday or vacation pay and amount of pay;
 - b. Period pay will cover, if designated;
 - c. Anticipated date holiday or vacation will be paid;
 - d. Normal pay dates.

WARN:

 - a. Period of time pay will cover;
 - b. Amount of pay;
 - c. Normal weekly or hourly rate of pay;
 - d. Normal number of hours worked each week.

Pension:

 - a. Amount of pension before deductions;
 - b. When pension will start;

- c. Percentage of contribution to the pension fund by the employer;
- d. Were the wages used to establish this claim for unemployment insurance benefits (base period wages) also used in the calculation of the pension?

Deputy's Determination in Answer to Employer's Protest

When a claimant files for a week of unemployment insurance benefits and upon receipt of a timely employer protest, a deputy gathers all facts regarding the claim and issues a determination showing whether the claimant is disqualified from receiving benefits or is eligible to receive benefits. A copy of this determination is mailed to the employer filing the timely protest. In case the determination denies unemployment insurance benefits to the claimant for any reason, the employer will be notified of the date the claimant became eligible.

When the deputy's determination disqualifies a claimant as a result of separation from work or because of refusal to accept work with the employer, the account of a contributing employer will not be charged with any subsequent unemployment insurance benefits paid the claimant based on wages paid prior to the date of the separation or job refusal. There is no account charge protection for reimbursable employers. They will be liable for all unemployment insurance benefit payments.

A deputy's determination involving an eligibility issue only does not relieve any employer's account of charges for weeks outside the specific ineligible period.

Appeal from Deputy's Determination

If you do not understand any determination or notice you receive about a claim, ask a claims representative for an explanation. If you disagree with a determination, you may file an appeal. You may appeal if you believe that the law was incorrectly applied or that all the facts were not considered when the determination was made. An appeal may be filed by any employee of a corporation, partnership or other business entity authorized by law. An appeal also can be filed by a licensed attorney.

Appeal rights and time limits are explained on each determination. If an appeal is not filed within the time limit, you may lose your right to appeal. The time limits for filing can only be extended for "good cause." Generally, only circumstances beyond your reasonable control will be considered good cause for late filing. You can file the appeal by mail or fax to the address listed on the determination.

After an appeal is filed, the Appeals Section will notify you of the date, time and method of the hearing. All interested parties taking part in the hearing will be allowed to provide sworn testimony. A written decision will be mailed to all interested parties after the hearing. The decision may affirm, reverse, modify or remand the deputy's determination.

If the employer is dissatisfied with the decision of the referee, the case may be carried through subsequent appeal stages to the Missouri Labor and Industrial Relations Commission, and then to the courts for a final decision.

Benefit Payments

A claimant who is determined eligible for unemployment insurance benefits must serve a waiting week before being paid benefits. Only one waiting week is required during the benefit year. After serving the waiting week, the claimant is paid unemployment insurance benefits for subsequent weeks of total or partial unemployment if not disqualified and the deputy finds that all the eligibility requirements of the law have been met. The waiting week will be paid once the balance on the claim is equal to or less than the payable amount for the week.

If a claimant has received unemployment insurance benefits and later receives a back pay award for the same period, the claimant may be overpaid if the back pay is ordered by a governmental agency, court of competent jurisdiction or as a result of arbitration proceedings.

If an overpayment is established under these circumstances, the employer is required to withhold from the back pay award the amount of unemployment insurance benefits determined

overpaid. This amount is then paid to the Division by the employer.

In order for the employer to determine the amount of unemployment insurance benefits paid in these cases, the employer should contact the central office of the Division.

Penalties

A penalty may be assessed when an employer commits fraud by misrepresenting, misstating or failing to disclose information in order to deny unemployment insurance benefits. For a first occurrence of fraud, the amount of penalty is 25 percent of the amount of unemployment insurance benefits denied. The amount of penalty goes up to 100 percent of the amount of unemployment insurance benefits denied for subsequent occurrences of fraud.

An employer also can be found guilty of a misdemeanor and subject to a fine or imprisonment in the county jail for making a false statement or knowingly failing to disclose a material fact to prevent or reduce the payment of unemployment insurance benefits.

How to Contact a Regional Claims Center

Employers needing to speak to a claims deputy should contact the Regional Claims Center (RCC) that serves their area. The RCCs are open and accept telephone calls from 8 a.m. to 5 p.m., Central time, Monday through Friday. Employers should select option “3” when the call is answered by our Interactive Voice Response (IVR) System. Wait time on the telephone will be less if you know your employer 14-digit Missouri Unemployment Account Number, or 9-digit Federal Identification Number.

Jefferson City local: 573-751-9040

Kansas City local: 816-889-3101

Springfield local: 417-895-6851

St. Louis local: 314-340-4950

If outside the above calling areas:
800-320-2519

Mailing Address

Tax: Mailings such as quarterly contribution and wage reports, benefit charge statements, annual tax rate notifications, and tax liability determinations are sent to the employer’s principal mailing address. Multiple mailing addresses may be established if an employer has multiple locations (*see Multiple Reporting Unit Numbers*).

Benefit Claims: The notice to base period employer is sent to the employer’s principal mailing address, *unless* a separate address is established for the mailing of unemployment claim notices (*see below*). The notice to last employing unit is mailed to whatever address is provided by the claimant. (*See Claim Notices.*) Determinations will be mailed to the address shown on the employer protest, unless the employer specifies the determination be sent to another address.

Change: To request a separate claims address, or change the principal mailing address, please write to:

Division of Employment Security

Attn: Liability Unit

P.O. Box 59

Jefferson City, MO 65104-0059

Fax: 573-751-3900

E-mail:

EmployerAddressChange@labor.mo.gov

For Answers
to Common Employer Questions,
use our
Employer Resource Guide
on the Internet at
www.labor.mo.gov/documents/4466-AI.pdf

For further information relating to tax liability and/or
unemployment insurance benefits, write to:
P.O. Box 59, Jefferson City, MO 65104-0059,
call 573-751-3215 or visit our Web sites at:

www.mouitax.com

www.moclaim.mo.gov

www.labor.mo.gov/es

Relay Missouri:

If calling by home phone or cell phone, dial "711."

All other callers should dial 800-735-2966.