


Employer's Handbook  
on the  
Unemployment Insurance Program  
in  
North Dakota

A stylized, light gray illustration of an open book, showing the pages and the spine. The book is positioned centrally, with the word 'in' placed over the pages and 'North Dakota' below it.

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## *Our Mission*

*Job Service North Dakota provides customer-focused services to meet the current and emerging workforce needs of the state.*

*This handbook has been prepared to provide a simplified explanation of the taxing and benefit provisions of North Dakota Unemployment Compensation Law, and is not meant to be the sole source of Unemployment Insurance information, nor is it a legal document. This manual does not take precedence over the Unemployment Insurance law or regulations.*

# **TO EMPLOYERS**



The efficient administration of North Dakota's Unemployment Compensation Law depends to a large extent on the cooperation between Job Service North Dakota and you, the employer.

To administer the program, Job Service North Dakota requires certain information from you periodically (such as quarterly contribution and wage reports) and upon request.

This handbook is designed to help you more clearly understand the basic provisions of North Dakota Unemployment Compensation Law, and your rights and responsibilities under that law. By reading this publication carefully, and using it as a reference, you may save yourself time, effort and money. For example, if you file your contribution and wage reports on time, you will avoid penalties and interest. If you exercise your right to protest the payment of Unemployment Insurance benefits to a former employee, you may be able to protect your account from benefit charges that affect your tax rate.

This handbook contains a variety of information addressing tax provisions, claims for benefits, payment of benefits, and forms for the Unemployment Insurance program. It is designed to provide information of a general nature, and is not intended to replace laws or regulations that govern the Unemployment Insurance program or other programs. This handbook is subject to change at any time as a result of law revisions, administrative review decisions, court decisions, federal requirements and department procedural changes.

If your question is not answered in this handbook, contact the Local Unemployment Insurance Customer Service Consultant in your area. A complete listing of Job Service Local Customer Service offices, forms, and pertinent information regarding the Unemployment Insurance program can be found on our website at [www.jobsnd.com](http://www.jobsnd.com).

Thank you for requesting, reading and using this handbook as a reference. We look forward to a mutually beneficial relationship with you, a North Dakota employer.



# OVERVIEW

## WHAT IS THE PURPOSE OF THE UNEMPLOYMENT INSURANCE PROGRAM?

The Unemployment Insurance program is beneficial to both employers and employees.

The program provides benefits to eligible workers who become unemployed through no fault of their own. It is designed to assist the short-term unemployed worker by providing funds with which to purchase necessities, and by lessening the fear of joblessness, while allowing the out-of-work individual an opportunity to make a deliberate search for employment reflective of his/her skills and prior earning power. Employers benefit because Unemployment Insurance helps to conserve a labor force involuntarily laid off for a temporary period, and also helps to slow the downward spiral of business activity at the onset of a downturn in the economy.

Unemployment Insurance taxes are paid by employers under two tax systems, federal and state. Taxes are paid to the federal government under the Federal Unemployment Tax Act (FUTA). These taxes are used to fund the administrative costs of the federal and state programs, to finance a variety of services provided through the network of state employment security agencies, and the federal costs involved in extended benefits. All state premiums go into the North Dakota Unemployment Insurance Trust Fund. The Trust Fund is used solely to pay Unemployment Insurance benefits to unemployed workers who have become unemployed through no fault of their own.

The basis of North Dakota's tax program is simple: the more benefits that are paid to an employer's ex-employees, or the greater the employer's exposure to the risk of unemployment, the more taxes the employer will pay. Unemployment Insurance tax payments are placed into the Unemployment Insurance Trust Fund, and are used only for the purpose of benefit payments to qualified unemployed individuals. Each year, Job Service North Dakota analyzes each employer's experience in the program (each employer's separate account) and assigns the tax rate set by law for that level of experience.

Job Service North Dakota maintains Customer Service Offices throughout the state. These offices are one-stop shops for all of your workforce, training, labor market information, and employment needs.

**PLANNING OPPORTUNITY:** Refer to the section of this handbook beginning on page 45 for unique ideas and opportunities to manage and control your Unemployment Insurance costs and stabilize employment.





## DEFINITIONS

**Account Number:** An identification number assigned by Job Service North Dakota to each employer liable under North Dakota Unemployment Compensation Law.

**Appeal:** A request for review of a determination or decision issued by Job Service North Dakota.

**Appeal Referee:** The officer at a hearing resulting from an appeal of a determination or decision.

**Average Annual (Taxable) Payroll:** Average Annual Payroll means:

- a) The annual payroll for the twelve-month period immediately preceding the computation date for an employer who has been liable for at least twelve but less than twenty-four months.
- b) The average of the annual payrolls for the last two twelve-month periods immediately preceding the computation date for an employer who has been liable for at least twenty-four but less than thirty-six months.
- c) The average of the annual payrolls for the last three twelve-month periods immediately preceding the computation date for an employer who has been liable for thirty-six months or more.

**Base Period:** The first four of the last five completed calendar quarters immediately preceding the effective date of an Unemployment Insurance benefit claim.

**Benefit Charges:** The amount of benefits paid to claimants that are “charged” to an employer’s account. For tax rate computation purposes, benefit charges include those charged between October 1 and September 30 of each year.

**Benefit Year:** A period of 52 consecutive weeks that begins with the Sunday preceding the date a claim for Unemployment Insurance benefits is filed.

**Benefits:** The money payable to an individual as compensation of wages lost due to unemployment.

**Calendar Quarter (or Quarter):** The period of three consecutive calendar months ending on March 31, June 30, September 30, and December 31.

**Claimant:** An individual who files a claim for Unemployment Insurance benefits.

**Computation Date:** September 30 of each calendar year with respect to rates of contribution applicable to the calendar year beginning with the following January 1. (Computation Date does not refer to the date that rates are actually calculated for employer accounts.)

**Contributing Employer:** Any employer, other than a reimbursing employer, who pays contributions each quarter based upon a contribution rate and a taxable wage base as determined in the law.

**Contributions:** Quarterly tax payments made by contributing employers. For tax rate calculation purposes, contributions include those paid between November 1 and October 31 of each year.

**Employee:** An individual who performs services for an employer in employment, including an officer of a corporation and certain managers of limited liability companies.

**Employer:** Employing unit that has become liable to the taxing provisions of North Dakota Unemployment Compensation Law either because of the number of its workers and the duration of their employment, the nature of its employment, or through voluntary election.

**Employment:** All work done by persons (regardless of age), whom you pay, whether permanently or temporarily employed, unless the work is specifically exempted from coverage by provisions of the Law. Employment includes services performed by officers of a corporation, including “S” corporations, and by certain managers of limited liability companies.

**Employing Unit:** Any individual, the legal representative of a deceased individual, or any type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, corporation, limited liability company, employee leasing company, common paymaster or the receiver or trustee in bankruptcy, trustee or successor thereof which has had in its employ one or more individuals performing services for it within this state.

**Experience Rated Employer:** Those employers with sufficient time in the Unemployment Insurance program to be eligible for a tax rate based on their experience with the Unemployment Insurance Program.

**Experience Rating:** A method by which an employer’s tax rate is varied according to the employer’s experience with unemployment.

**Fiscal Year:** For state Unemployment Insurance tax purposes, October 1 through September 30.

**Ineligible Employers:** Employers who have not had sufficient time in the Unemployment Insurance program to qualify for an experience rating. Also known as “new employers”.

**Maximum Benefit Amount:** The total amount of benefits available to a claimant in any benefit year. The amount is determined by the base period earnings and is computed each benefit year.

**Negative Account Employer:** An employer whose cumulative lifetime benefits charged have exceeded cumulative lifetime contributions paid.

**Positive Account Employer:** An employer whose cumulative lifetime contributions paid exceed cumulative lifetime benefits charged.

**Predecessor:** An employer that transfers during any calendar year, its organization, trade, business, or assets, or the assets of a separate unit of its trade or business, to another employer, whether by sale, lease, gift, or legal process.

**Reimbursable Employer:** A governmental unit, a non-profit organization described in section 501(c)(3) of the Internal Revenue Code, an Indian tribe or any wholly-owned entity of an Indian tribe that elects to reimburse the Unemployment Insurance Trust Fund for any benefits paid to its former workers.

**Successor:** An employing unit that acquires the organization, trade, business, or assets of the employer, or of a separate unit of an employer's trade or business, whether by purchase, lease, gift, or legal process, and continues, without interruption, substantially the same business activity as the predecessor.

**PLANNING OPPORTUNITY:** As a successor, investigate the possibility of assuming the Unemployment Insurance experience rating history of the predecessor, and whether that would be beneficial for your business.

**Tax Year:** The time frame for a tax year is the same as a calendar year. However, the data used to calculate the rates for a tax year is from the previous fiscal year(s).

**Trust Fund (or UI Trust Fund):** North Dakota's reserve account within the Federal Unemployment Trust Fund, financed by the state's covered employers, and used only to pay Unemployment Insurance benefits to eligible workers of North Dakota employers.

**Voluntary Contribution:** A voluntary payment an employer may make to their Unemployment Insurance account in order to improve their contributions-to-benefits ratio, and thereby decrease their assigned tax rate.

**Weekly Benefit Amount:** The amount that a person may receive as weekly Unemployment Insurance benefits.

# RESPONSIBILITIES OF CENTRALIZED SERVICES, JOB SERVICE NORTH DAKOTA

Centralized Services/Business Services, Job Service North Dakota, is primarily responsible for providing assistance and information to employers concerning the Unemployment Insurance (UI) tax, for determination of employer liability, and for the collection of UI taxes. The basic activities of Centralized Services/Business Services are to:

- Educate employers about:
  - ✓ Employee/employer relationships
  - ✓ Multi-state employment
  - ✓ Contract labor issues
  - ✓ North Dakota Unemployment Compensation Law

**WARNING:** A misunderstanding of independent contractor vs. employee laws and regulations may cost you money in federal/state payroll taxes, penalty and interest.

- Identify employers subject to UI tax laws, including:
  - ✓ New employers
  - ✓ Non-profit organizations
  - ✓ Political subdivisions
  - ✓ Successor employers
- Assist and inform employers on how to:
  - ✓ Establish an account
  - ✓ Properly report wages
  - ✓ Compute taxable wages
  - ✓ Calculate contributions (taxes)
- Determine the tax rate for each regular contributory employer under the experience rating system, based on the reserve ratio formula, and inform all employers of their tax rate.
- Assist government, non-profit 501(c)(3) employers, and Indian tribes, or wholly-owned entities of Indian tribes in choosing between the contributory and the reimbursable payment methods.
- Review contribution reports, wage details and related documents submitted to identify potential problems, and complete any necessary corrections.
- Conduct audits of employer records as required by federal guidelines. The audit also provides an opportunity for Unemployment Insurance staff to meet and form working relationships with employers.
- Apply penalties and statutory tax collection remedies in order to enforce compliance with the law.



# **UNEMPLOYMENT INSURANCE TAX**

## **WHO IS SUBJECT TO NORTH DAKOTA UNEMPLOYMENT COMPENSATION LAW?**

An “employing unit” is any individual, legal representative of a deceased individual, or any type of organization that has had in its employ one or more individuals performing services for it within the state.

Each employing unit is required to submit to Job Service North Dakota a [Report to Determine Liability \(SFN 41216\)](#) within 20 days after hiring workers in North Dakota, or succeeding to the business of another employing unit in this state. The Report to Determine Liability provides information on the business operation and ownership, worker employment, and wage payments.

From the information shown on the Report to Determine Liability, Job Service North Dakota determines whether the employing unit is a liable employer as defined in North Dakota Unemployment Compensation Law, and thus, liable for payments of contributions (or, for a political subdivision, government agency, 501(c)(3) non-profit organization, Indian tribe or wholly-owned entity of an Indian tribe that so elects, liable for the reimbursement of benefit payments).

An employing unit becomes an “employer” when it meets certain criteria and conditions as specified in the Law. In general, an employer becomes liable under North Dakota Unemployment Compensation Law by any of the following means:

- Acquiring all or part of a business of an employer already covered under the Law.
- Being liable under the Federal Unemployment Tax Act (FUTA). An employer liable for FUTA becomes immediately liable to North Dakota Unemployment Compensation Law when they hire a worker in North Dakota.
- Having paid gross wages of \$1,500 or more (to one or more employees) in any calendar quarter in the current or preceding calendar year.
- Having one or more persons in employment for any part of a day in 20 different weeks in a calendar year. The weeks of employment need not be consecutive.
- Having paid cash wages of \$1,000 or more in a calendar quarter in the current or preceding year to a worker who performs domestic service (domestic labor in private home, local college club, or local chapter of a college fraternity or sorority).

- Having paid cash wages of \$20,000 or more for agricultural labor in a calendar quarter, or having ten or more employees in agricultural labor in 20 different weeks during a calendar year.
- Non-profit organizations with 501(c)(3) exempt status (i.e., certain educational or charitable organizations classified as non-profit under Section 501(c)(3) of the Internal Revenue Code) will become liable by employing four or more individuals for some portion of a day in 20 different weeks of a calendar year.
- Political subdivisions, governmental entities, Indian tribes and wholly-owned entities of Indian tribes are automatically liable upon employing any non-excluded workers.
- By choosing to make a voluntary application for coverage, and the application is accepted by Job Service North Dakota.

## **EMPLOYER ACCOUNT NUMBER**

Each liable North Dakota employer is assigned an employer account number. The employer should include this number on all correspondence with Job Service North Dakota.

## **COVERED WAGES**

Any year that an employer is liable under North Dakota Unemployment Compensation Law, the employer must report all wages paid regardless of the amount. This includes all payments made to employees for services rendered for part-time and temporary, as well as full-time work. This includes, but is not limited to:



- Commissions and bonuses.
- Payments to corporate officers (and all other employees of the corporation), and payments to certain managers of limited liability companies.
- Non-cash payments such as gifts and merchandise (report the actual value).
- Tips and gratuities.
- Severance pay.
- Vacation pay.
- Back pay awards.
- Deferred compensation, cafeteria plans and IRA payments (any portion deducted from employee's gross wages).
- Holiday pay.
- Personal use of a company car.
- Education assistance under a qualified Educational Assistance Program.

The term “wages paid” includes wages actually received by the worker. An employer must report the wages for the quarter in which the wages are actually paid.

## **PAYMENTS NOT CONSIDERED WAGES**

The following list includes the more common types of payments that are not considered wages, and which should not be reported to Job Service North Dakota.

- Reimbursement by the employer of actual employee business expenses.
- Payments made by the employer for retirement, medical or death benefits for the employee.
- Payments made by the employer for health insurance for the employee.

## **EXCLUDED EMPLOYMENT**

All services of employees are included under North Dakota Unemployment Compensation Law unless their services are specifically excluded.



The services of some workers are excluded from coverage and their earnings are not taxable under the Law. The following services are excluded from coverage. (This is not a complete list. If you have questions, contact your Unemployment Insurance Customer Service Consultant or the Centralized Services/Business Services Section of Job Service North Dakota.)

- Sole proprietors and partners are not considered employees; their income is not subject to Unemployment tax and should not be reported.
- Managers, who are also members (owners), of a limited liability company that is taxed as a partnership or a disregarded entity.
- Services performed for a son, daughter, or spouse, or services performed by a child under the age of 18 for a parent while residing in the parent’s home. This exclusion does not apply if it is a corporation. It applies to partnerships, or certain limited liability companies treated as partnerships or disregarded entities for federal income tax purposes, only if the worker has a shared exempt relationship with each partner.
- Service by a licensed insurance, securities, or real estate agent, if such service is performed for remuneration solely by way of commission.



- Services performed for a church or an organization operated for religious purposes and controlled by a church.
- Services in the performance of duties as an elected official for a political subdivision or Indian tribe.
- Railroad employment.
- Activities undertaken as a member of the State Army or Air National Guard.
- Services performed for a school by students enrolled in the school or performing services in a work-study program. (This exemption may apply to a student's spouse under certain conditions.)
- Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers.

## **CORPORATE OFFICER / LLC MANAGER EXEMPTION**

Remuneration to corporate officers and managers of limited liability companies (LLCs) that are treated as corporations for purposes of federal income taxation, AND managers of any LLC who are not members, for services performed are considered wages under State law and must be reported. *(Prior to July 1, 2001, all managers of limited liability companies who received remuneration for service were considered employees.)* However, remuneration to corporate officers or limited liability company managers owning 25% or more of the corporation or LLC may be exempted; the corporation or LLC, with the consent of the officer/manager, and within 60 days of formation of the corporation or LLC, or during January of any calendar year, must file an application to exempt their services from coverage. This exemption does not apply to any limited liability company that is wholly-owned by or operated as an Indian tribe, state or local government, or non-profit organization with respect to services performed for those entities that are required by federal law to be covered under the North Dakota Unemployment Compensation Law.

**CORPORATIONS AND LIMITED LIABILITY COMPANIES MAY WANT TO INVESTIGATE THE EFFECT OF THE EXEMPTION ON THEIR FUTA TAX CREDIT.**

<p><b>PLANNING OPPORTUNITY:</b> Exemption of corporate officers from Unemployment Insurance coverage is most beneficial to those employers with a high state Unemployment Insurance tax rate and few, if any, other employees.</p>
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An [Application to Exempt Corporate Officers or Limited Liability Company Managers From Job Insurance Coverage \(SFN 18411\)](#) must be received by Job Service North Dakota by January 31 of any calendar year, or within 60 days of formation of the corporation or LLC.

After review of the Application, Job Service will notify the employer, in writing, of the acceptance or denial of the application. Once approved, an exemption remains in effect until an application is filed to void the exemption. Under State law, a corporation or LLC does not have to be liable before they can exclude corporate officers' or limited liability company managers' service from employment.

## CHART OF COVERED AND EXEMPT WAGES

TYPE OF PAYMENT	COVERED WAGES	EXEMPT WAGES
<b><i>Wages for Owners &amp; Family Members</i></b>		
Sole Proprietor (sole owner) of Business		X
Spouse of Sole Proprietor		X
Children of Sole Proprietor	Included as wages if over 18, or not living at home.	Exempt if under 18 and living at home.
Parents of a Sole Proprietor		X
Partners of a Business Partnership		X
Children of a Husband/Wife Partnership	Included as wages if over 18, or not living at home.	Exempt if under 18 and living at home.
Dependents of a Partnership Other Than Husband/Wife	Exempt <u>only</u> if an exempting relationship applies to all partners.	
Officers of a Corporation	X <sup>1</sup>	
Members of Limited Liability Company	X <sup>1</sup>	
<b><i>Other Payments</i></b>		
Award and Prize Money	X	
Cafeteria Plans (Section 125)	X	
Deferred Compensation Plans	Amount paid by employee.	Amount paid by employer.
Dismissal Payments	X	
Salary Bonuses	X	
Sick Pay	Until the expiration of six continuous months (includes third party payments).	
Vacation Pay	X	

(1) Remuneration to, (a) Corporate officers and, (b) Managers of limited liability companies that are treated as corporations for purposes of federal income taxation AND managers (of any LLC) who are not members, for services performed are considered wages under State law, and must be reported. (Prior to July 1, 2001, all managers of limited liability companies who received remuneration for service were considered employees.) However, remuneration to corporate officers or limited liability company managers owning 25% or more of the corporation or LLC may be exempted, if with the consent of the officer/manager, and within 60 days of formation of the corporation or LLC, or during January of any calendar year, the corporation/LLC files an application to exempt their services from coverage.

# LOCALIZED AND MULTI-STATE EMPLOYMENT

An individual whose services are not localized in any one state, but who performs at least some service in North Dakota, is referred to as a multi-state worker. The following criteria are used to determine to which state a multi-state worker should be reported. Consider only the worker's primary duties. Do not include attending periodic meetings, commuting, or other incidental, temporary, or transitory duties. The parts of the criteria should be applied on a calendar quarter basis, and in the order shown. If a worker satisfies any part of the criteria, no subsequent parts should be applied.

## 1. LOCALIZED WORKERS

An individual who performs all of his or her work within North Dakota for an employer is a localized North Dakota worker. Wages paid to workers localized in North Dakota must be reported to North Dakota, regardless of where the worker lives. Localized North Dakota workers could include occasional temporary work outside this state, which is incidental to the individual's regular work in North Dakota.

## 2. BASE OF OPERATIONS

If test one does not apply, an employee's services are covered in North Dakota if some services are performed in North Dakota and the employee's base of operation is in North Dakota. "Base of operation" means the place, usually permanent in nature, from which the employee starts working and to which he or she customarily returns to perform the terms of employment. It can also be the place to which the employee returns to receive instructions or messages.

## 3. PLACE OF DIRECTION AND CONTROL

If tests one and two do not apply, an employee's services are covered in North Dakota if some services are performed in North Dakota and the place from which you direct and control the employee is in North Dakota. Generally, your headquarters would be the place from which you direct and control the employee.

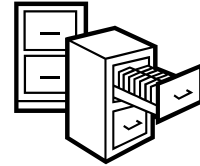
## 4. PLACE OF EMPLOYEE'S RESIDENCE

If a person resides in North Dakota and performs some services in another state, and the state of coverage cannot be determined by the above criteria, the person's wages are reportable to North Dakota, the state in which the person resides.

## 5. IF TESTS ONE THROUGH FOUR DO NOT APPLY

If tests one through four do not apply, and the individual's services are not covered under the laws of any other state or Canada, the services are covered in North Dakota if you direct and control the individual from North Dakota.

## REPORTING AND RECORDS



### RECORDS TO BE KEPT BY AN EMPLOYING UNIT

North Dakota Unemployment Compensation Law requires every employing unit to maintain certain records for each individual employed. These records must be retained for a period of not less than five years from the due date of the contributions for the period to which they relate.

The law requires that records of an employing unit be open for inspection by Job Service North Dakota or its authorized representatives at any reasonable time, and as often as may be necessary. All Job Service North Dakota Customer Service Consultants carry identification documents issued by Job Service North Dakota. Do not hesitate to ask for proper identification.

**PLANNING OPPORTUNITY:** Adequate and accurate record-keeping will promote business profitability. Lack of records may inhibit your ability to adequately manage your company.

At a minimum, employing units should keep a record of:

- Check stubs and cancelled checks for all payments.
- Cash receipts and disbursement records.
- Payroll records.
- Copies of tax reports filed with all federal and state agencies.
- Copies of W-2s and W-3s.
- Other accounting records as may be required.
- Articles issued by the Secretary of State.

For each payroll period, the:

- Beginning and ending dates of each pay period.
- Total amount of remuneration paid for all services, whether paid in cash, by check or in any other manner, and the date of each such payment.
- The number of employees on 12<sup>th</sup> of each month and total number of employees each quarter.

For each worker, the:

- First and last name.
- Social Security number.
- Date hired, rehired, or returned to work.
- Date employment ended and the reason(s) for separation from work.
- Amount of remuneration paid in each calendar quarter.
- Employee expense reimbursements.
- Amount of remuneration paid each pay period, including the value of any remuneration in a form other than cash.
- Amount and rate of any special payment such as a bonus, gift, or prize.
- The place where services were performed.

## **POSTER TO BE DISPLAYED BY EMPLOYER**

Liable employers are required by law to post and maintain in a conspicuous place in their business establishment printed notices to their employees, informing employees that the employer is liable for contributions under the North Dakota Unemployment Compensation Law. Such notices also include information as to the workers' rights and responsibilities under the Law.

The poster is provided to employers when they first become liable for Unemployment Insurance taxes. (Additional copies of the poster may be obtained by contacting your local Unemployment Insurance Customer Service Consultant.)

## **COMPLETION OF QUARTERLY REPORTS**

A liable employer must file quarterly reports and pay tax on the wages reported. Once an employer is registered with and assigned an account number by Job Service North Dakota, the employer is mailed a quarterly report form around the tenth day of the last month of each quarter. The mailing consists of the appropriate [Employer's Contribution and Wage Report](#) form and a return envelope. The employer's account number, name and address, quarter being reported, and the contribution rate are preprinted on the form. Failure to receive the reporting form does not relieve an employer of the responsibility for filing the quarterly report.

Each quarter, all employers are required to report total wages paid for employment during the quarter.

## TAXABLE WAGES

While all covered wages are reportable by employers each quarter, there is a limit on the amount of each employee's wages that is taxable. This limit is called the Taxable Wage Base. The maximum amount of each worker's wages subject to taxation each year is 70% of the statewide Average Annual Payroll, rounded to the nearest one hundred dollars. Each year the taxable wage base is recalculated for the next calendar year.

## EXCESS WAGES

Excess wages are those wages paid to an employee during the current quarter that are over the taxable wage base for the year. On the quarterly report form, an employer should only report excess wages for that quarter.

## EXAMPLE SHOWING CALCULATION OF TOTAL, TAXABLE & EXCESS WAGES

For this example, we will assume that the Taxable Wage Base for the calendar year is \$17,400.00.

Joe Worker, an employee of ABC Company, Inc., earns a salary of \$7,000 each quarter of the year. The table below shows the calculation of excess wages.

1 <sup>st</sup> Quarter		2 <sup>nd</sup> Quarter		3 <sup>rd</sup> Quarter		4 <sup>th</sup> Quarter	
Total Wages	Excess Wages	Total Wages	Excess Wages	Total Wages	Excess Wages	Total Wages	Excess Wages
\$ 7,000.00	\$ 0	\$ 7,000.00	\$ 0	\$ 7,000.00	\$ 3,600.00	\$ 7,000.00	\$ 7,000.00

## QUARTERLY REPORTING FORMS AND DUE DATES

The employer's method of financing Unemployment benefit costs to the Unemployment Insurance Trust Fund determines the appropriate quarterly reporting form that will be used. (For information on the financing options, see page 30 in this handbook.)

[SFN 41263](#)  
[SFN 52307](#)  
[SFN 19622](#)

**for Contributing/Tax-rated Employers**  
**for Advanced Reimbursable Employers**  
**for Direct Reimbursable Employers**

Quarterly reports must be completed and returned with the taxes due by the end of the month following the quarter; that is, contributions and the Employer's Contribution and Wage Reports, are due as follows:

<u>Quarter</u>	<u>Report Covering</u>	<u>Due By</u>
First Quarter	January 1 through March 31	April 30
Second Quarter	April 1 through June 30	July 31
Third Quarter	July 1 through September 30	October 31
Fourth Quarter	October 1 through December 31	January 31

If the due date falls on a weekend or a holiday, the due date is moved forward to the next business day following the weekend or holiday.

Forms are also available on our website at: [www.jobsnd.com](http://www.jobsnd.com), then click on "Forms" under the Unemployment Insurance heading. An employer may also contact its local Unemployment Insurance Customer Service Consultant.

**PLANNING OPPORTUNITY:** To avoid penalty, file quarterly reports timely even if full payment cannot be made on time.

## ELECTRONIC REPORTING OF QUARTERLY WAGE DATA

Job Service North Dakota (JSND) strongly encourages electronic reporting via the Internet (file transfer), diskette, and magnetic tape. Job Service North Dakota has adopted the ICESA format for these filing methods. While JSND does not yet offer interactive on-line reporting as such, we highly encourage all employers and employer agents to file via the automated methods we have available.

**PLANNING OPPORTUNITY:** Electronic filing is accurate, efficient, and cost-effective.

Several private software companies have software available for purchase, at minimal cost, which would satisfy the electronic reporting requirements of Job Service North Dakota.

Job Service North Dakota's Electronic Reporting Guide is available on our website at: <http://www.state.nd.us/jsnd/docs/ji/elecrtpt.pdf>.

**PLANNING OPPORTUNITY:** Automation of repetitive facts may be profitable for your business, and should be investigated.



## QUARTERLY REPORTS ON SUBSTITUTE FORMS

Employers are encouraged to file quarterly [Employer's Contribution and Wage Reports](#) on the correct reporting forms. However, if necessary, substitute forms may be used if they contain the same information, in the same format, as the formal [Employer's Contribution and Wage Report](#) forms.

## SEPARATE CONTRIBUTION REPORTS FROM DIFFERENT LOCATIONS

If an employer has more than one business or location, and desires to report each business or location separately for Unemployment Compensation purposes, Job Service North Dakota will create a Master account and Unit accounts. The sum of payroll, contribution and benefit charges for the Unit accounts are included in the Master account balances. A reserve ratio and tax rate are calculated for the Master account and are then used by its Unit accounts.

## CORRECTION OF QUARTERLY REPORTS

PLEASE DO NOT MAKE ADJUSTMENTS FOR PREVIOUS QUARTERS ON THE CURRENT QUARTERLY REPORT. If an employer submitted an erroneous report of employee wages, or erroneously reported the amount of total, nontaxable, or taxable wages for a previous quarter, the employer **MUST NOT** make adjustments by increasing or decreasing these amounts on the current quarterly report. The employer should prepare/complete a separate form, [Statement to Correct Employer's Contribution and Wage Report \(SFN 41270\)](#), showing the quarter in which the error occurred; the correct name, Social Security number and wages of individual employees (if the error was in the reporting of employee wages); and the difference between the original reported amounts and the corrected amounts. This form is available on our website at [www.jobsnd.com](http://www.jobsnd.com). If an error reflects an underpayment of contributions, the employer should submit the contribution due, plus any applicable interest, with the [Statement to Correct Employer's Contribution and Wage Report](#).

**PLANNING OPPORTUNITY:** Minimal time and effort are required to locate a mistake and correct a quarterly report. Filing of correct reports may help to negate an audit exception.

## PAYING UNEMPLOYMENT TAX ELECTRONICALLY

Job Service North Dakota has developed a program to accept Unemployment Insurance tax payments through electronic funds transfer (EFT). EFT reduces both the time and expense involved in generating and handling paper checks and allows for quicker application of tax payments.

The Job Service North Dakota EFT program employs the Automated Clearing House (ACH) credit transaction method, which is a national standard for the electronic transfer of funds using the ACH network. (Job Service North Dakota plans on making the ACH Debit transaction method available to employers in the future.



Employers must register for the EFT program by completing the Application for ACH Credit Transfer, which is included in our ACH Credit Guide. This guide is available on our website at: <http://www.state.nd.us/jsnd/docs/ji/achcredit.pdf>. This guide may be accessed from our home page at [www.jobsnd.com](http://www.jobsnd.com); then click on “Businesses” under the Unemployment Insurance heading.

## LATE REPORTS / INCOMPLETE REPORTS / ILLEGIBLE REPORTS – PENALTY AND INTEREST

Quarterly reports are due for each quarter as long as the account is active, even if no wages were paid in the quarter, or if all wages are excess wages with no tax due, because wage information is necessary to process benefit claims. If an employer has paid no wages during the quarter, the employer should indicate “no wages” on the report, and sign and submit the report on time.

An employer must file the required Contribution and Wage Reports by the established due date even if the total contribution payment cannot be submitted with the report.

### PENALTY FOR LATE, INCOMPLETE, OR ILLEGIBLE REPORTS

If an employer does not submit a Contribution and Wage Report by the due date, or submits an incomplete report for a quarter, the employer will be assessed a penalty of five percent (5%) of the contributions/taxes due for each month or a portion of a month until the report is submitted.

The penalty for the first month may not be less than twenty-five dollars (\$25.00). The penalty for subsequent months may not exceed twenty percent of the contributions due. An employer may be assessed a penalty, even if no wages were paid in a quarter, for failure to submit a complete Contribution and Wage Report by the due date.



**PENALTY**

**PLANNING OPPORTUNITY:** To avoid penalty, file your quarterly reports on time even if full payment cannot be made at the time the reports are filed.

## INTEREST

If contributions/taxes are not paid when due, the unpaid contributions will bear interest at the rate of one and one-half percent per month, or fraction of a month, from the due date.

## DELINQUENT REPORTS – EFFECT ON TAXES

The tax rate for any calendar year is based on the employer's experience as of September 30 of the previous year.

North Dakota Century Code 52-04-09 requires that Job Service North Dakota notify an employer by certified mail, when tax rates are being determined, if an employer has failed to file a required report or has filed an insufficient report for any quarter. The Past Due Report Notice for the third quarter of the year serves this purpose. In addition to informing the employer of the quarters for which a report has not been received, it informs the employer that unless the employer files the delinquent reports within fifteen days after the mailing of the past due report notice, the employer's rate for the upcoming year may not be less than the **negative employer maximum** rate.



These notices are mailed to delinquent employers via certified mail.

## COLLECTION OF DELINQUENT REPORTS / TAXES

Taxes not paid by the employer from whom they are due requires other employers to have to make up the shortfall. For this reason, Job Service North Dakota maintains a rigorous collection program to obtain delinquent reports and taxes. If there is a balance due on an account, the employer will receive a debit notice. If an Employer's Contribution and Wage Report is not received timely, the account will be sent to a local Unemployment Insurance Customer Service Consultant for collection of the report and taxes due. If a Customer Service Consultant is not successful in obtaining the reports and taxes due from the employer, stronger action is taken.

Methods of collection available to Job Service North Dakota include, but are not limited to, property liens, garnishments, judgments, and other court action.

## NOTIFYING JOB SERVICE NORTH DAKOTA OF CHANGES

Employers are required to submit the following information to Job Service North Dakota as soon as applicable. Contact your local Unemployment Insurance Customer Service Consultant. Forms are also available on our web site at [www.jobsnd.com](http://www.jobsnd.com).

- [Report to Determine Liability \(SFN 41216\)](#) within 20 days after first employing workers in this state, or if you change your organizational structure (e.g., incorporate your business).
- [Employer's Contribution and Wage Reports](#) – each quarter.
- [Statement to Correct Employer's Contribution and Wage Report \(SFN 41270\)](#) to correct errors on a quarterly report.
- Report the following changes in your business:
  - ✓ Sale of business.
  - ✓ Discontinuance of business.
  - ✓ Change in business location or mailing address.
  - ✓ Change of business name.
  - ✓ Change of business ownership.
  - ✓ Change of business structure.
  - ✓ Incorporation of business.
  - ✓ Acquisition of business.
  - ✓ Assignment of a new Federal Employer Identification Number (FEIN) by the Internal Revenue Service (IRS).

**PLANNING OPPORTUNITY:** Notifying Job Service North Dakota of changes in your business status and/or structure in a timely manner may lessen the probability of penalty and interest charges.

# DETERMINING YOUR TAX RATE

## NEW EMPLOYER CONTRIBUTION (TAX) RATES

When employers first become liable for unemployment taxes, they are classified as “new employers” and are assigned a new employer tax rate (unless their account goes into a negative status). New employers are those that have not had sufficient time in the Unemployment Insurance program to qualify for an experience rating.

Construction industry employers are “new” if their account has not been covered for ten quarters by the end of the most recent completed fiscal year.

Non-construction industry employers are “new” if their account has not been covered for six quarters by the end of the most recent completed fiscal year.

## EXPERIENCE RATED EMPLOYER CONTRIBUTION (TAX) RATES

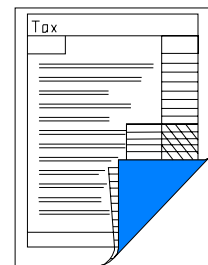
Experience-rated employers are those employers with sufficient time in the Unemployment Insurance program to meet the liable and chargeable criteria as described above. Experience-rated employers are assigned rates based on their own individual experience with and their potential risk of unemployment.

## EXPERIENCE RATING PROCESS

Experience rating, a variable taxation system, is a procedure for varying employer rates and allocating costs of the UI program in relation to the employer’s actual and potential risk with unemployment. This is accomplished by an individual experience rating account for each employer account. This account is a record of the accumulated contributions paid by an employer, accumulated benefit payments charged to the employer’s account, and the employer’s average taxable payroll.

## TAX RATE CALCULATION PROCESS

Tax rates are determined for the following tax year during the latter part of each November. The process of rating employers includes the determination of the Tax Rate Schedules for the year, and the determination of each employer’s tax rate.



## **DETERMINATION OF THE TAXABLE WAGE BASE**

While all covered wages are reportable by employers each quarter, there is a limit on the amount of each employee's wages that is taxable. This limit is called the Taxable Wage Base, and it is recalculated by Job Service North Dakota each year. The maximum amount of each worker's wages subject to taxation each year is 70% of the statewide Average Annual Payroll, rounded to the nearest one hundred dollars.

## **DETERMINATION OF THE TAX RATE SCHEDULES**

Separate tax rate schedules for positive or negative account employers are determined by Job Service North Dakota's Labor Market Information (LMI) Division.

A positive account employer is one whose cumulative lifetime contributions paid exceed cumulative lifetime benefits charged. A negative account employer is one whose cumulative lifetime benefits charged have exceeded cumulative lifetime contributions paid.

**PLANNING OPPORTUNITY:** To accurately understand the tax rate calculation process, refer to the "Definitions" section of this handbook beginning on page 4.

## **DETERMINATION OF AN EMPLOYER'S RATE**

Each November, the computation of tax rates for the following calendar year are made based on the employer's history as of the preceding October. An employer's rate is determined by:

- the cumulative lifetime reserve balance to determine which tax rate schedule (positive or negative) applies;
- the six-year reserve balance; and
- the employer's average taxable payroll.

Several factors may influence an employer's tax rate, some of which include:

- A change in the average taxable payroll.
- Benefits charged against your account(s).
- A change in the rates in the tax rate schedule.

Rate determinations and taxable wage base notices are mailed to all employers on December 1 of each year.

## **CUMULATIVE LIFETIME RESERVE**

The cumulative lifetime reserve balance of an employer's account is used to determine if the employer is positive or negative. If the employer has a positive cumulative reserve balance, then the positive rate schedule is applied. If the employer has a negative cumulative reserve balance, then the negative rate schedule applies.

## **THE SIX-YEAR RESERVE**

The employer's six-year reserve is calculated as the most recent six fiscal year contributions minus the most recent six-year benefits. The calculation uses contributions and benefits during the six fiscal years preceding the current tax year. Contributions include those paid between November 1 and October 31 of each year. Benefits are those charged between October 1 and September 30 of each year.

## **THE SIX-YEAR RESERVE RATIO**

A six-year reserve ratio is calculated by dividing the six-year cumulative reserve by the last three years' average taxable payroll. This reserve ratio determines the significance of the employer's account balance in relation to the employer's potential liability for benefits. The higher an employer's reserve ratio, the lower the employer's rate. The reserve ratio determines which rate within the respective rate schedule will be assigned to the employer's account(s).

## HOLD HARMLESS PROVISIONS (FOR 2000, 2001, AND 2002 RATES ONLY)

For tax years 2000, 2001, and 2002, an employer's tax rate cannot decrease more than 10%, nor increase more than 30% of the account's previous year's rate. (Some exceptions exist.) The hold harmless limits do not apply to accounts with the following status:

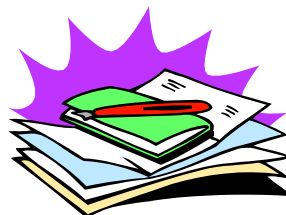
Status in Current Year	Status Last Year
Experience-rated this year	New Employer last year
Negative Account this year	Positive Account (Cumulative)
Positive Account	Negative Account (Cumulative)
Delinquent	N/A
New Employer	N/A
Reimbursable Accounts	N/A

## VOLUNTARY CONTRIBUTIONS

Employers may make voluntary contributions to their Unemployment Insurance account to improve their contributions-to-benefits ratio, and thereby decrease their assigned tax rate.

Voluntary contributions are applied to the cumulative lifetime and six-year reserves for recalculation of current year rates, and are considered as contributions of the fiscal year in which paid. A voluntary contribution will only affect the current year's tax rate if made by April 30 of a tax year.

For guidelines and restrictions regarding voluntary contributions, assistance in determining if you would benefit from a voluntary contribution payment, and the amount of payment that would be necessary, please contact your local Unemployment Insurance Customer Service Consultant.





# TRANSFER OF EMPLOYER'S EXPERIENCE RATING HISTORY TO A SUCCEEDING EMPLOYER

When you acquire all or part of a business that was required to pay Unemployment taxes in this state, you are a "successor" for Unemployment tax purposes. As a successor you are immediately liable for Unemployment taxes regardless of the amount of wages you pay or the number of workers you employ.

## MANDATORY TRANSFER

The transfer of a predecessor employer's experience rating history to the successor is required whenever the successor employer is substantially owned or controlled by the same interests. Some examples of when mandatory transfer applies are:

- Individual owner incorporates the business and the individual is the only controlling officer.
- A partnership incorporates and the partners are the corporate officers.
- One corporation is acquired by another having the same corporate officers.

## ACQUISITION OF THE ENTIRE BUSINESS

When you acquire an entire business and continue substantially the same business as the predecessor, without interruption, you may have the option of acquiring the experience rating history of the former owner, if a mandatory successorship does not apply. *(The acquisition of a liable employer's business should be indicated on question #11 of a [Report to Determine Liability](#).)* The experience rating history includes the history of payroll, contributions, and benefit charges. Therefore, when you acquire the experience rating history, any Unemployment benefits awarded based on wages paid by the former owner may be charged to your account (the successor). A predecessor may refuse to transfer its experience rating history.

## ACQUISITION OF PART OF A BUSINESS

If you acquire a portion of a business, you are not automatically assigned the tax rate and experience rating history account of the former owner. You may apply to succeed to the portion of the experience rating history of the predecessor's account, which applies to that portion of the business acquired. A predecessor must provide written authorization to Job Service North Dakota authorizing the appropriate percentage of transfer to the successor. A predecessor may refuse to transfer a portion of its experience rating. *(The acquisition of a portion of a liable employer's business should be indicated on question #11 of a [Report to Determine Liability](#).)*

In a partial succession, the predecessor's contributions, benefits and payroll amounts included in the successor's record are those up to the percent of history acquired. The percentage of the account to be transferred must be the same ratio as the average annual payroll transferred to the total average annual payroll of the predecessor.

## **MERGED ACCOUNTS**

A merged account may occur when an existing business acquired another existing business. A merged account may also occur when two (or more) existing businesses/accounts combine to form a new business/account.

### **WHEN SUCCESSOR IS AN EXISTING EMPLOYER**

When an existing business is merged into another existing business, the surviving account retains its current, existing tax rate applicable immediately preceding the date of transfer. After the next tax rate run, the rate will be calculated based on the combined experience of the transferring and acquiring employers.

### **WHEN A NEW EMPLOYER ACQUIRES TWO OR MORE EXISTING EMPLOYERS**

When two (or more) existing businesses merge into a new business, the experience of the two or more existing accounts would be combined, and a new rate would be calculated for the current tax year.

When two or more new employers combine to form a new business, the employer is assigned the tax rate for new construction or non-construction industry employers.

**PLANNING OPPORTUNITY:** Review options for assuming the Unemployment Insurance experience rating history of a predecessor, and whether that would be beneficial for your business.

# UNEMPLOYMENT INSURANCE FINANCING OPTIONS

There are three options available for financing unemployment benefits for workers: Contributing Method (also known as Tax-rated); Direct Reimbursement Method; Advanced Reimbursement Method. Political subdivisions, non-profit organizations with 501(c) (3) income tax exemptions, Indian tribes and wholly-owned entities of Indian tribes have the option of financing their benefits by the Direct Reimbursement Method or Advanced Reimbursement Method, rather than the Tax-rated Method.



Because the Reimbursable (Advanced and Direct) Methods of financing operate differently than the Contributing Method (Tax-rated Method), it is necessary to understand the differences between them.

## CONTRIBUTING METHOD (TAX-RATED METHOD)

Under this method, the employer makes quarterly contributions to the Unemployment Compensation Trust Fund, the amount of which is determined by the employer's assigned tax rate and taxable employee wages. Initially, an employer is charged a "new employer" tax rate. After a specified length of time in the Unemployment Insurance program, the employer is assigned an experience-based rate.

Under the Contributing Method, benefits are not charged to an employer's account for rate computation purposes if the employee left employment without good cause, was discharged for misconduct, or the employee received benefits which were later determined improperly paid.

## SPECIAL FINANCING OPTIONS FOR GOVERNMENT ENTITIES, NON-PROFIT ORGANIZATIONS, AND INDIAN TRIBES

### DIRECT REIMBURSEMENT METHOD

Under this method, an employer files quarterly wage reports but makes no tax payments. The employer receives a billing at the end of any calendar quarter in which benefits have been paid to any claimant, which are attributable to wages paid by the employer.

Unlike the Contributing Method, under the Direct Reimbursement Method the employer may *not* be relieved of benefit charges paid after voluntary quit and discharge separations, or improperly paid benefits. The employer is responsible for reimbursing the Fund for the full cost of all benefits paid attributable to wages paid to its employees.

**PLANNING OPPORTUNITY:** The Direct Reimbursement Method is generally more advantageous for employers with a large number of employees and stable employment.

Reimbursement payments will vary depending on the number of former employees who are receiving Unemployment benefits. With this method, it is difficult to estimate costs. In contrast, tax-rated employers can more accurately estimate unemployment costs because their tax rates remain constant for a complete calendar year.

Employers who have elected the Reimbursement payment option may *not* be relieved of benefit charge payments for any reason. The employer's account will always be charged for any benefit Job Service pays to that employer's former workers, if those employees earned wages from the employer during the base period.

#### How does the Direct Reimbursement Payment Option Work?

Each quarter an employer must complete their [\*Employer's Contribution and Wage Report\*](#), listing all employees' names, Social Security numbers, and total gross wages. No tax payment is included when this report is submitted to Job Service North Dakota.

If the employer is the claimant's last employer, the employer is notified when former employees file for benefits, and will be provided the opportunity to protest the employees' receipt of benefits based on the reason for separation.

Whenever benefits are paid to former employees in a calendar quarter, the employer will receive a *Notice of Reimbursement Due* during the first month of the following quarter, specifying the amount due. That amount is the employer's proportionate share of benefit payments made that quarter. An employer has 30 days from the date of the billing to remit payment. After that time, interest will be calculated and accrued on the unpaid contributions due, at the rate of one and one-half percent per month, or fraction of a month.

#### **ADVANCED REIMBURSEMENT METHOD (A/K/A FLAT-RATE METHOD)**

Under the Advanced Reimbursement Method, the employer pays a fixed percentage of its total payroll each quarter to create a reserve from which the quarterly billings are paid. Initially, each quarter the employer pays one percent of its total payroll. Each year thereafter, the quarterly percentage is adjusted to maintain a reserve balance equal to one percent of the previous fiscal year's total payroll. This rate is calculated by subtracting the account's cumulative lifetime reserve from the calculation of one percent of the previous year's taxable payroll.

Like a Direct Reimbursable employer, the Advanced Reimbursable employer may *not* be relieved of benefit charges paid after voluntary quit or discharge separations, or improperly paid benefits.

## CHANGING METHOD OF PAYMENT

An employer may change from one financing option to another at the beginning of the calendar year by filing a written notice with Job Service North Dakota not later than 30 days prior to the beginning of the year. An employer must submit a [Report to Determine Liability](#) and indicate the change of financing options on question #17.

An employer that changes from the Contributing Method to the Direct or Advanced Reimbursement Method may not change back to the Contributing Method for two years.

Employers that switch from the Direct Reimbursement or Advanced Reimbursement Method to the Contributing Method remain liable for reimbursements to the Fund for benefits attributable to wages paid prior to the change.

Employers that change from the Advanced Reimbursement Method to the Contributing Method or the Direct Reimbursement Method may have any accumulated reserves refunded to them after the possibility of any additional benefits being charged to their account has expired (minimum of two and one-half years). Reserves accumulated under the Contributing Method are not refundable.

## INACTIVATION OF ACCOUNT

An employer may request inactivation of their Unemployment Insurance account if the employer remains in business, but has not paid wages since the date of requested inactivation, and does not plan to pay wages in the foreseeable future. However, that does not relieve an employer from liability under North Dakota Unemployment Compensation Law.

While an account is inactive, an employer will not receive quarterly Contribution and Wage reporting forms. ***However, the employer remains liable for Unemployment insurance coverage and payment of taxes for all covered wages paid, for submittal of contribution and wage reports for those quarters where wages are paid, and for any penalty and interest that may apply.***

It is the employer's responsibility to notify Job Service North Dakota if they hire individuals or pay any wages, or plan to hire individuals or pay wages in the near future.

## TERMINATION OF LIABILITY

Termination of coverage under the North Dakota Unemployment Compensation Law is not automatic. Once an employing unit becomes liable, it remains liable until officially terminated by Job Service North Dakota. A business termination can be approved only if the employing unit met none of the liability criteria in the immediately preceding calendar year, and is not meeting the criteria in the current year.

An employer who remains in business must file a [\*Business Termination Notice \(SFN 51704\)\*](#) on or before January 31 of the year for which termination is sought. An out-of-business employer can file for termination of their UI account at any time. An account will also be terminated if the entire experience rating history of the account is transferred to a successor employer. *(An employer that has elected voluntary coverage is liable for at least two calendar years – the year coverage is elected and the following year.)*

Job Service North Dakota, on its own motion, may file an application for termination of coverage on behalf of any employer who during the preceding year was liable for contributions, but who:

- Has moved from the state;
- Has discontinued the business conducted by it at the time it became liable under the terms of the North Dakota Unemployment Compensation Law.
- Has been adjudged bankrupt or has become insolvent.

## FEDERAL UNEMPLOYMENT TAX CREDIT

Most employers who are liable to pay North Dakota Unemployment Tax are required to pay the Federal Unemployment Tax (FUTA).

The FUTA tax rate is currently 6.2% on the first \$7,000 in wages paid to each employee in a calendar year. When an employer is current in the payment of their state unemployment insurance taxes, the employer may receive a tax credit of 5.4% against the federal tax on their Federal Form 940, regardless of their North Dakota Unemployment tax rate. This means that North Dakota employers who pay their state taxes timely will pay a net FUTA tax of 0.8%

In order to receive the full federal tax credit, an employer must pay state taxes on time. If an employer pays their state taxes late, they will not receive the full FUTA tax credit.

## AUDITS OF EMPLOYER RECORDS

In order to insure compliance with the taxing provisions of the law, and to promote the employer's knowledge and understanding of their requirements under the law, audits are conducted on employer's records periodically. Employer accounts may be randomly selected or individually selected for audit.

**PLANNING OPPORTUNITY:** It is in your best interests, and the best interests of your employees, to comply with the requirements of North Dakota Unemployment Compensation Law. Seek compliance to benefit from understanding these requirements.

Audits may be conducted at the employer's place of business, or at an accountant's office. Employers may be contacted by letter or phone, or both, to schedule an audit appointment that is convenient to both the employer and the Unemployment Insurance Customer Service Consultant.

Before examining the records, the Unemployment Insurance Customer Service Consultant will interview the owner or representative of the business. The purpose of the interview is to determine the nature of the business, the types of services being performed, and to verify the ownership of the business. This pre-audit interview will also help the Unemployment Insurance Customer Service Consultant to better understand the financial records that he or she will be examining.

Audits may result in an increase or decrease, or no change in taxes. In cases of underpayment, the Customer Service Consultant will collect additional taxes, penalty and interest due. In cases involving an overpayment, the Customer Service Consultant will assist the employer in applying for the credit adjustment or for a tax refund.



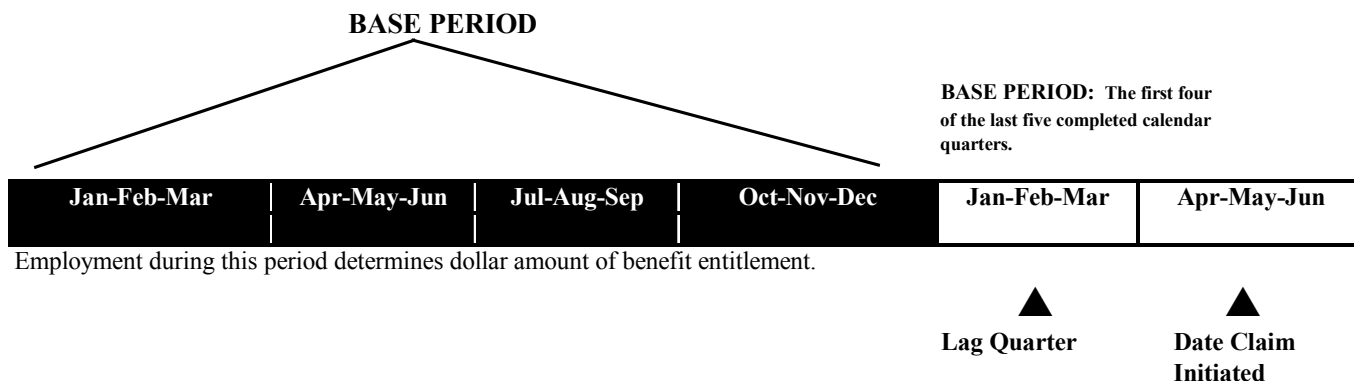
# UNEMPLOYMENT INSURANCE BENEFITS

## DETERMINATION OF ELIGIBILITY

When an individual files a claim for Unemployment Insurance benefits, the reason for the claimant's unemployment is carefully reviewed by Job Service North Dakota. All employers with wages in the base period, plus the last or most recent employer, will be asked to provide details regarding the reasons for separation. Both parties will also be asked to provide information regarding any separation payments received after the individual's last day of work. After all available facts are gathered and assessed, an eligibility determination, either awarding or denying benefits, will be issued. All interested parties have the right to appeal an eligibility determination that awards or denies benefits.

## AMOUNT OF UNEMPLOYMENT INSURANCE BENEFITS

The amount of Unemployment Insurance benefits that an individual can receive is based on wages paid during the individual's "base period". Base period means a twelve-month period consisting of the first four of the last five completed calendar quarters preceding the date the individual filed a claim. Below is a sample chart that illustrates how a base period is established.



An individual's weekly benefit amount will be the total of their highest two and one-half quarters of base period earnings divided by 65. The maximum and minimum benefit amounts are determined by law and are subject to change each July.



An individual's benefit year begins the Sunday prior to the day the individual filed their claim for Job Insurance benefits. An individual has a 52-week period called "benefit year" to collect the maximum amount entitled. If the individual collects all benefits before that year has ended, a new North Dakota claim cannot be started. If the individual has earnings in another state, the individual may be eligible to file a claim against that state.

The number of weeks an individual may be allowed to receive benefits can range from 12 to 26 weeks.

## **BASIC ELIGIBILITY REQUIREMENTS**

In order to establish a valid claim for benefits, a claimant must be registered with Job Service North Dakota and must meet specified earnings requirements in the base period.

The reason for separation from the "most recent employer" determines if an individual can qualify for Unemployment Insurance benefits. Many factors are considered when determining eligibility for benefits; consequently, each determination is made on a case-by-case basis. However, in general terms, workers are eligible for Unemployment Insurance benefits if they are out of work through no fault of their own. It is possible to quit employment and still be eligible for benefits if the claimant can show that the reason for quitting is attributable to the employer. Some factors considered are the degree of risk to the employee's health, safety, and morals, or whether there was a substantial change in the conditions of employment such as driving distance, wages, hours, etc.

It may also be possible for an individual who has been discharged to receive benefits. The employer, in this case, has the burden of proof to show that misconduct occurred. Again, because each case is unique, determination of an individual's eligibility is made on a case-by-case basis. Some factors to consider are whether there was negligence on the part of the individual, whether the individual acted willfully, if company policy was violated, or if the individual's actions represent a substantial disregard of the employer's interests. Generally speaking, a worker who was discharged for incompetence, in the absence of misconduct, will not be disqualified from receiving benefits.

Certain requirements, explained below, are imposed on recipients to ensure that payments are made only to those persons entitled to Unemployment Insurance benefits.

## **UNEMPLOYED**

Workers must be unemployed. The definition of unemployed is a week during which an individual is substantially unemployed and the gross wages earned during the week are less than the individual's weekly benefit amount. "Substantially unemployed" means that the individual has worked less than customary full-time hours. A worker may receive Unemployment Insurance benefits if they work part-time and earn less than their weekly benefit amount.

## **REGISTRATION AND REPORTING**

Individuals must register for work with their local Job Service office and report in person to that office as required. Failure to report may result in the loss of benefits.

## **ABLE TO WORK**

Individuals must be physically able to work at the time they file a claim. In some cases, benefit payments may continue if an individual becomes ill or disabled after filing a claim.

## **AVAILABLE FOR WORK**

Individuals must be available to accept any suitable work within their training, experience, and capabilities.

Availability for work is a very important condition. Individuals must not place unreasonable restrictions on such things as the hours they will work, the jobs they will accept, and the wages they will accept. They must be willing to accept employment for which they are qualified during the time period it is offered.

## **ACTIVELY LOOKING FOR WORK**

Individuals must be actively looking for work.

They must let employers in their occupation know they are able to immediately accept comparable work. They must follow work search guidelines provided by Job Service North Dakota and apply for jobs to which they are referred.



## **REEMPLOYMENT PLAN**

To help an individual find employment, the claimant and a Job Service representative will prepare a reemployment plan. The plan includes how the individual will develop job leads, what type of employers the individual will contact, how the individual will contact those employers, and the type of job the individual will search for.

The individual will be contacted by Job Service North Dakota periodically to review the reemployment plan. At that time, Job Service North Dakota will update the plan, and may verify employer contacts.

If the individual does not follow the reemployment plan, benefits may be denied. The individual may also have to repay benefits already received.

## NOTIFICATION TO EMPLOYER / PROMPT APPEAL

When an employee, or a former employee, files for Unemployment Insurance benefits, Job Service North Dakota must obtain information from that individual, as well as from employer(s) for which he or she worked. If the claimant has sufficient prior earnings, the claimant's most recent employer and all employers who paid wages on which the claim is based are notified that a claim has been filed through a Notice of Claim. If the claimant has been separated from your employment for any reason other than lack of work, you should provide full details about the separation.



**PLANNING OPPORTUNITY:** Be specific in providing reasons for separation to Job Service North Dakota. A decision as to a claimant's eligibility for benefits is based on statements from both you and the former employee. State facts; do not give conclusions.

To protect your appeal rights, you should return the notice with a detailed explanation regarding the separation from work. Prompt and accurate information from employers is essential to a sound determination and the timely payment or denial of benefits. The information provided should be accurate, complete, and factual – never based on hearsay or guesswork.

**PLANNING OPPORTUNITY:** Take the time to appeal if you disagree with a determination. Mail all appeals within the time period provided by law.

## ASSIGNING BENEFIT CHARGES

Benefit charges are the amount of benefits paid to claimants that are charged to an employer's account. Benefit payments are charged to an employer's account proportionately, comparing the wages paid by the employer to the total amount of the employee's wages from all of his/her employers during the base period.

## **CHARGE/NO-CHARGE EMPLOYER'S ACCOUNT**

Whether an employer's account is charged for benefits depends on several factors.

### **REIMBURSABLE EMPLOYER (DIRECT OR ADVANCED REIMBURSEMENT METHOD)**

If an employer finances their Unemployment Insurance costs on a reimbursable (Direct or Advanced Reimbursement) basis, the employer's account will always be charged for any Unemployment Insurance benefits paid to that employer's former employees, if those employees earned wages from that employer during the base period.

### **TAX-RATED EMPLOYERS**

A tax-rated employer's account may or may not be charged for benefits depending upon the circumstances. Reasons for "no-charging" may include:

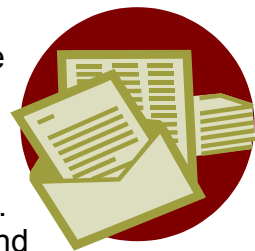
- The employee quit voluntarily; the employee was fired for misconduct;
- The employee was working part-time and continues to do so under the same working agreement;
- The employee is being trained under an approved training program.

Benefits are not charged if paid because of a natural disaster.

In a no-charge situation, the wages from the employer are used in determining the claimant's benefit amount and duration, but the employer's account is not charged for any (proportionate) benefit amounts. In these cases, any benefits paid to claimants are a shared cost to all employers, and are paid from the Unemployment Insurance Trust Fund.

## **STATEMENT OF BENEFITS PAID**

In an effort to provide employers with timely information for the management of their Unemployment Insurance accounts, Job Service North Dakota mails quarterly notices to employers (except certain government and non-profit entities) whose accounts had any benefit payment activity in the past quarter. These notices are generally mailed at the beginning of the second week following the end of the quarter.



Entitled Statement of Benefits Paid, the notice details the name and Social Security number of each person who received Unemployment Insurance benefits during the quarter, which were based on wages earned in employment from this employer. The Statement also lists the amount of benefits that were paid to the claimant and the amount of those benefits that have been charged to the employer's account.

This notice is not a bill, nor a request for payment; however, employers should use the information contained in the Statements to monitor the status of their Unemployment Insurance account.

**PLANNING OPPORTUNITY:** The information contained in the Statement of Benefits Paid should be reviewed carefully, as all benefit charges are a factor in the calculation of an employer's Unemployment Insurance tax rate for the following year.

## **DISQUALIFICATIONS**

Under North Dakota Unemployment Compensation Law, there are some situations in which a person is not allowed to collect Unemployment Insurance benefits. Some of these situations are described below.

### **VOLUNTARY QUIT**

If an individual voluntarily quits work without good cause attributable to an employer, he/she will be disqualified from benefits until he/she obtains subsequent employment and earns wages equal to or greater than eight times his/her current weekly benefit amount.

### **MISCONDUCT**

If an individual is fired for misconduct connected with his/her work, the individual will be disqualified from benefits until the individual obtains subsequent employment and earns wages equal to or greater than ten times his/her weekly benefit amount.

Grounds for being disqualified for misconduct include, but are not limited to:

- Violation of posted or known company rules.
- Insubordination.
- Theft.
- Destruction of company property.
- Unexcused absences.

The law also provides that if an individual is discharged because of gross misconduct, the individual will be disqualified from receiving benefits for a period of one year. Misconduct has been defined as conduct demonstrating such willful or wanton disregard of an employer's interest, as is found in deliberate violations or disregard of standards of behavior that the employer has a right to expect of an employee; or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent, or evil design; or to show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations.

## **LABOR DISPUTE**

An individual may be disqualified from receiving benefits if his/her unemployment is related to a labor dispute. There are exceptions to this law. Job Service North Dakota will make a formal decision on an individual's eligibility.

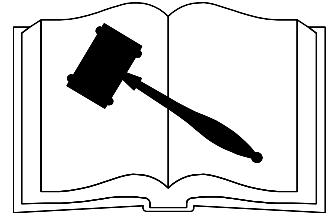
## **REFUSAL TO ACCEPT SUITABLE WORK**

If an individual fails to accept suitable work when it is offered, or if an individual fails to apply for a job when directed, the individual will be disqualified until such time as the individual has obtained subsequent employment and earns wages equal to or greater than ten times his/her current weekly benefit amount.



# APPEALS

In order that the rights of employers and claimants may be protected, North Dakota Unemployment Compensation Law provides that determinations and decisions be subject to appeal. In general, any determination that:



- Relates to an employing unit's or employer's status or liability under North Dakota Unemployment Compensation Law,
- Assigns a tax rate,
- Allows or denies Unemployment Insurance benefits,
- Assigns benefit charges to an employer's account

May be appealed by any and all parties affected by the determination or decision.

## TIME LIMIT

Each determination and decision issued by Job Service North Dakota contains information relating to appeal rights. An appeal must be in writing, detailing the reason for the appeal, and must be filed with Job Service North Dakota within the specified time limits. If the appeal is not made within the time limits, the determination or decision becomes final and binding on all parties.

**PLANNING OPPORTUNITY:** Take the time to appeal if you disagree with a determination. Mail all appeals within the time period provided by law.

## HEARING

When an employer or claimant submits a written appeal to Job Service North Dakota within the appropriate time frames, a hearing is scheduled with a Centralized Services appeals referee. Appeals hearings are usually conducted by telephone conference call, unless an in-person hearing is specifically requested. During the hearing, the appeals referee receives testimony and evidence from the interested parties. After the hearing, the appeals referee issues a written decision based on the testimony.

If a party disagrees with an appeals referee's decision, the party may request a Bureau Review. All information in the record is then reviewed by the Executive Director of Job Service North Dakota. The Executive Director, in a written decision, will either affirm, amend, or reverse the decision of the appeals referee. If a party is dissatisfied with the Executive Director's decision, the party may seek further review by filing a timely petition with the District Court.





# **CONTROLLING UNEMPLOYMENT INSURANCE COSTS**

North Dakota's "reserve ratio" system provides employers with unique opportunities to manage and control their Unemployment Insurance costs. Unemployment Insurance benefits paid to former employees are a factor in the calculation of an employer's Unemployment Insurance tax rate for subsequent years. It is to an employer's advantage to monitor benefit charges to ensure they are correct, and to manage personnel practices to reduce layoffs wherever possible. These practices will enhance your business profitability.



We care that your business does well. To manage Unemployment Insurance costs, consider the following:

## **STABILIZE EMPLOYMENT**

- Screen prospective employees carefully before hiring.
- Hire the right person for the job. Identify hard and soft skill competencies required for the job. Screen job applicants. Evaluate skills, training, and experience before hiring the individual for the job.
- Check out job references.
- Have in place sound, written policy statements concerning employee conduct at work.
- Transfer employees to other job sites when feasible.
- Offer job openings to laid-off employees, if possible, or contact other employers to find work for them. Report to Job Service North Dakota any refusals to accept work.
- Use regular employees for repairs and maintenance during slack periods.

## **MINIMIZE CHARGES TO ACCOUNT**

- Keep accurate records of employment agreements, employee performance, dates and details of warnings and other disciplinary measures.
- Monitor new employees' progress carefully, especially during their probationary period. Benefit costs will increase proportionately to the length of time an individual is employed.

- Be specific in providing reasons for separation to Job Service North Dakota. A decision as to a claimant's eligibility for benefits is based on statements received from both you and the former employee. List facts; do not give conclusions.
- Carefully read and reply to all notices concerning benefit claims and requests for information received from Job Service North Dakota.
- Take the time to appeal if you disagree with a determination.
- Mail all appeals within the appeal period provided by law.

## **MAINTAIN A GOOD TAX RATE**

- Submit quarterly wage reports timely to avoid penalties.
- Pay taxes promptly to obtain the maximum Federal Unemployment Tax credit.
- Promptly report all changes to your business status/structure.
- If feasible, consider a voluntary payment to lower your tax rate.
- Notify Job Service North Dakota of job refusals by individuals who you know or believe to be currently collecting Unemployment Insurance benefits.
- Review options for assuming an experience rating history account when acquiring a business.
- Use electronic filing options for filing quarterly Unemployment Insurance tax reports, and paying taxes due.
- Provide early notification to Job Service North Dakota when planning staff layoff. (Individuals may be placed in temporary or full-time employment prior to drawing Unemployment Insurance benefits.)

# **OBTAINING INFORMATION, FORMS, AND ASSISTANCE**

Pertinent information, forms, and Job Service local office directories may be obtained from our web site at:

**[www.jobsnd.com](http://www.jobsnd.com)**

You may contact your local Unemployment Insurance Customer Service Consultant. A listing of Unemployment Insurance Customer Service Consultants is included on the following page.

You may also contact:

Centralized Services/Business Services  
Job Service North Dakota  
PO Box 5507  
1000 East Divide Avenue  
Bismarck, ND 58506-5507

Telephone: (701) 328-2814      Toll-free 1-800-472-2952

Fax: (701) 328-1882

Email: [jsuits@state.nd.us](mailto:jsuits@state.nd.us)



# **DIRECTORY - UNEMPLOYMENT INSURANCE** **CUSTOMER SERVICE CONSULTANTS**

## **BISMARCK**

Bob Arnold  
PO Box 5507  
1000 E Divide Ave  
Bismarck ND 58506-5507  
Phone (701) 328-3016  
Toll-free 1-800-472-2952  
Fax (701) 328-1882  
[rarnold@statend.us](mailto:rarnold@statend.us)

## **FARGO**

Lonnie Wangen  
1350 32<sup>nd</sup> St S  
Fargo ND 58106  
Phone (701) 239-7310  
Toll-free 1-800-472-2952  
Fax (701) 239-7350  
[llwangen@state.nd.us](mailto:llwangen@state.nd.us)

## **MINOT**

Mary Schaefer  
PO Box 1727  
3416 N Broadway  
Minot ND 58702  
Phone (701) 857-7554  
Toll-free 1-800-482-0017  
Fax (701) 857-7550  
[mschaefer@state.nd.us](mailto:mschaefer@state.nd.us)

## **DEVILS LAKE**

Donald Ripplinger  
301 S College Dr  
Devils Lake ND 58301  
Phone (701) 662-9334  
Toll-free 1-800-247-0982  
Fax (701) 662-9310  
[driplin@state.nd.us](mailto:driplin@state.nd.us)

## **GRAND FORKS**

Mike Endres  
1501 28<sup>th</sup> Ave S  
Grand Forks ND 58208-3637  
Phone (701) 795-3731  
Toll-free 1-800-247-0986  
Fax (701) 795-2331  
[mendres@state.nd.us](mailto:mendres@state.nd.us)

## **WILLISTON**

Elwood Adams  
PO Box 1599  
422 1<sup>st</sup> Ave W  
Williston ND 58802-1599  
Phone (701) 774-7903  
Toll-free 1-800-247-0989  
Fax (701) 774-7925  
[eadams@state.nd.us](mailto:eadams@state.nd.us)

## **DICKINSON / MANDAN**

Lora Hill  
PO Box 5507  
1000 E Divide Ave  
Bismarck ND 58506-5507  
Phone (701) 328-2389  
Toll-free 1-800-472-2952  
Fax (701) 328-1882  
[lkhill@state.nd.us](mailto:lkhill@state.nd.us)

## **GRAND FORKS**

Keith Reitmeier  
1501 28<sup>th</sup> Ave S  
Grand Forks ND 58208-3637  
Phone (701) 795-3750  
Toll-free 1-800-247-0986  
Fax (701) 795-2330  
[kreitmei@state.nd.us](mailto:kreitmei@state.nd.us)

## **FARGO**

Michael F. Misialek  
1350 32<sup>nd</sup> St S  
Fargo ND 58106  
Phone (701) 261-9949  
Toll-free 1-800-247-0985  
Fax (701) 239-7342  
[mmisiale@state.nd.us](mailto:mmisiale@state.nd.us)

## **JAMESTOWN**

Julius Gange  
PO Box 780  
429 2<sup>nd</sup> St SW  
Jamestown ND 58402  
Phone (701) 253-6215  
Toll-free 1-800-247-0988  
Fax (701) 253-6222  
[jgange@state.nd.us](mailto:jgange@state.nd.us)

**JOB SERVICE NORTH DAKOTA**

CS/Business Services—Employer’s Handbook on UI

PO Box 5507

1000 East Divide Avenue

Bismarck ND 58506-5507



JSND 4036 (R 10-02)

Job Service North Dakota is a Proud Member of America’s Workforce Program.<sup>SM</sup> Job Service is an equal opportunity employer/program provider. Auxiliary aids and services are available upon request.