



INDIANA DEPARTMENT OF  
**WORKFORCE**  
DEVELOPMENT

*UNEMPLOYMENT INSURANCE*  
**EMPLOYER**  
HANDBOOK



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## DWD CONTACT INFORMATION

**General Questions:** (800) 891-6499 and select the employer tax option

**Web Address:** [unemployment.IN.gov](http://unemployment.IN.gov)

**Email:** [DWDESSCommunications@dwd.IN.gov](mailto:DWDESSCommunications@dwd.IN.gov)

## UNEMPLOYMENT INSURANCE – EMPLOYER HANDBOOK

The Unemployment Insurance (UI) program is administered by the Indiana Department of Workforce Development (DWD). This guide helps employers understand how they are affected by the law governing the UI program in Indiana. This guide explains the following:

- How DWD opens and maintains an employer account;
- An employer’s responsibilities if they cease or transfer operations;
- Employers’ premium obligations and merit ratings;
- The conditions under which former employees can collect UI benefits;
- An employer’s responsibilities when a former employee files a claim for benefits;
- DWD’s efforts to maintain program integrity and prevent fraud;
- The responsibilities of commonly owned, managed, and controlled entities;
- Special employment tax issues.

Please see the glossary for an explanation if a term is unfamiliar.

DWD is governed under Title 22, Article 4 of the Indiana Code (IC 22 - 4). Wherever the handbook references “the Act,” it is a reference to IC 22 - 4. For copies of statutes and regulations relating to DWD, visit <http://www.in.gov/legislative>.

Pursuant to 20 CFR § 603.11, please be advised that confidential claimant unemployment compensation information and employer wage information may be requested and utilized for other governmental purposes, including, but not limited to, verification of eligibility under other government programs.

For the sake of clarity and consistency, the organization, trade, or business to which the Act applies is called “the organization.” “The organization” may refer to any entity, organization, employer, or employing unit whether covered under the Act or not. “The employer” is used to refer to a specific entity that has been determined to have liability for unemployment insurance coverage for their workforce in Indiana. For compatibility with screen readers Employer Self-Service, ESS, is represented as E S S.

This guide is for general information, not to cover all phases of law or to answer all questions.

The Employer Handbook is a living document and will include changes from the US Congress and

the Indiana General Assembly as they are finalized.

**UI at a Glance**

**CLAIMANT:**

Maximum Weekly Benefit Amount: \$390

Minimum Weekly Benefit Amount: \$37

Benefit Length: 1-26 weeks (one week waiting period\* per Benefit Year)

*\*The waiting week requirement was suspended temporarily through the COVID relief and recovery period between March 4, 2020, and September 4, 2021.*

**EMPLOYER:**

**2011 to 2021**

Premiums are based on the first \$9,500 of wages per employee per calendar year.

Rate Type	Rate	Maximum cost per employee
Minimum	0.50%	\$ 47.50
Typical New Employer	2.50%	\$237.50
Maximum in good standing	7.40%	\$703.00
Maximum delinquent rate	9.40%	\$902.50

## **INTRODUCTION TO UNEMPLOYMENT INSURANCE**

### **UI – In General**

Unemployment Insurance is a collaborative federal-state program financed through mandatory employer payments into two separate trusts, one administered by the United States Department of Labor (U S D O L), and one administered by the State Workforce Agency, which in Indiana, is the Department of Workforce Development (DWD). The program is jointly regulated under the Federal Unemployment Tax Act (FUTA) and the State Unemployment Tax Act (SUTA).

The purpose of the Unemployment Insurance Program is to protect society from the deprivations caused by workers being unemployed through no fault of their own. The Unemployment Insurance program accomplishes this goal by providing short-term cash assistance to those workers who qualify for benefits.

### **Federal Unemployment Tax Act (FUTA) U.S. Code Title 26, Subtitle C, Chapter 23**

The IRS collects FUTA taxes and requires covered employers to file a Form 940 each year, no later than January 31<sup>st</sup> for the prior calendar year's covered wages.

The FUTA wage base is \$7,000, meaning that employers pay tax on the first \$7,000 in covered wages to each worker for each calendar year. If the employer has been determined to be a successor employer, the employer may take credit for wages paid by a predecessor in the same calendar year.

The FUTA tax rate is 6.0%. Part of the collaboration between the federal and state programs allows any state that is fully compliant with FUTA requirements to receive a credit for their employers of up to 5.4%. This means that most employers have an effective tax rate of 0.6%, or a maximum expense of \$42 per year per worker.

If a state is not fully compliant with FUTA requirements, the state can be penalized by losing all or part of the FUTA credit for its employers. One of the primary reasons for a state to lose all or part of the credit is having an insolvent trust fund. Indiana was a FUTA credit reduction state for 940 filing from tax year 2010 through tax year 2015 due to this reason.

### **State Unemployment Tax Act (SUTA) Indiana Code Title 22 Article 4**

Employers are required to either pay SUTA contributions or reimburse the state for benefit payments. These payments are deposited into the Indiana Unemployment Benefit Trust Fund. Money received from employers is used solely for the payment of unemployment benefits to qualifying claimants.

Many factors are used in determining the total premium rate of an employer. New employers and employers restarting Indiana employment after a break of one or more years have fixed rates by industry. Employers that have been operating for three or more years are rated based on their usage of the unemployment system and their potential liability for claim filing.

This means that an employer's rate is determined by variables such as the number of former employees receiving benefits, the employer's total payroll subject to UI contribution, voluntary payments, and the transfer of all or part of an existing Indiana business.

Premiums are paid by the employer without deduction from the wages of an employee. Employers are



not allowed to actively discourage or work to prevent former employees from applying for benefits. Employers are expected to cooperate in any request for information about the earnings or separation of their former employees promptly. Employers that routinely fail to respond to DWD can cause their rate to increase if the failure results in a former employee being awarded benefits that they are not eligible to receive.

Indiana also adds percentage points to the employer's rate for missing or inadequate reports, outstanding assessments, unpaid predecessor liabilities, and failure to report mandatory transfers under the SUTA Dumping Prevention Act. Each type of violation is explained in full detail later in this handbook.

## **Federal Certification**

The IRS requires DWD to federally certify each employer's reports and payments for a particular calendar year if the employer applies for a FUTA tax credit on their IRS form 940. This certification includes information about the timeliness of any payments.

If the wages and payments the employer reported on their annual IRS Form 940 do not align with what was reported and paid to DWD, the employer may receive a discrepancy letter from the IRS or DWD requesting an explanation.

If a discrepancy exists, the employer must either file a corrected IRS 940 or correct the wage information with DWD.

Not all potential discrepancy letters from DWD require the employer to make corrections, as DWD does not receive the full 940 filing information for multistate employers.

Wage information associated to an unemployment tax audit, wage investigation, or estimation, cannot be adjusted by the employer. If DWD has made a determination that wages needed to be increased or decreased as a result of one of these actions, the discrepancy is handled by disclosing the basis for the difference to the IRS and then following the guidance of the IRS.

Employing units where multiple employers are consolidated under a single SUTA are federally certified according to the F E I N provided to the Agency for the workers on the Quarterly Wage and Employment report. Failing to provide all required elements of the quarterly wage report can adversely affect the employer's federal certification.

## **Employer Method of Payment for State Unemployment Taxes**

The two methods of payment under SUTA are payment in lieu of contribution (reimbursement) and contribution. DWD classifies employers using these terms as reimbursable or contributory.

Only governments and qualifying not-for-profit, 501(c)(3), employers can elect to be reimbursable. Reimbursable employers make payments in lieu of contribution for each month that their account is assessed any benefit claim activity. Reimbursable employers file wage reports each quarter but pay monthly only if there is activity where contributory employers file and pay quarterly.

Very few employers are eligible to elect reimbursable payment status, and only a portion of the eligible employers make that election. Additional information on reimbursable election is covered in the section

titled Getting Started.

All employers that are not reimbursable are contributory; the majority of employers are contributory.

The merit portion of employer premium payments are defined as contributions. Contributory employers file quarterly reports and make a payment based on the wages that they self-report. Premiums must be paid on or before specific due dates, or the employer is subject to interest charges, late payment penalties, and collection costs.

As of 2019, both types of employers are required to file quarterly wage reports electronically unless they have applied for, and been granted, an electronic filing waiver.

Electronic payment is required by DWD for all unemployment liabilities and voluntary payments. Payment by electronic check is free for the employer. Credit cards are accepted, but the merchant fee must be paid by the employer in the form of a courtesy fee to DWD's payment processor. If an employer is unable to make an electronic payment, the employer is responsible for the delivery of the payment to DWD on or before the due date. The postmark date is not used to determine the timeliness of the payment where the employer has a real-time payment option available via E S S.

## GETTING STARTED



### Employer Qualifications

Entities of all types that pay covered wages in Indiana are required to open a state unemployment account with DWD. Covered wages, which are also called subject wages, are defined as wages in employment under SUTA.

In general, a business is considered an employer and is required to open a state unemployment account with DWD if it meets the criteria defined in the section titled Getting Started. Almost all entities that compensate an individual to perform services will fit under one of these criteria.

Registering new entities that are commonly owned, managed, or controlled by existing Indiana employers is subject to certain limitations and may be subject to additional reporting requirements. For additional information on commonly owned, managed, or controlled entities, please see the section titled Maintaining Integrity in the Unemployment Insurance Program.

For questions about employer qualification, please contact DWD at (800) 891-6499 and select the employer tax option.

### Definition of Employer

Entities are liable for UI premiums under SUTA and are considered an employer if ANY of the following describe the entity:

### *Regular Business Entity (Ind. Code § 22-4-7-1)*

The entity has liability to pay one dollar (\$1) or more in remuneration to a covered worker and is not an agricultural business, a 501(c)(3), or an individual employing someone to perform domestic services in a household.

If the entity is an agricultural business, a 501(c)(3), or an individual employing someone to perform domestic services in a household, please continue reading as the entity may still be an employer. These types of employers do not become an employer with the first \$1 of liability to pay wages.

### *Complete Acquirer (Ind. Code § 22-4-7-2(a))*

The entity has acquired all or some of the assets of an existing employer's organization, trade or business, and uses these assets in the continuance of a trade or business. For the purpose of employer qualification, the workforce of an existing business is considered to be an asset of the business. For purposes of SUTA, to acquire means to gain by any means; to take or to use as one's own.

### *Partial Acquirer (Ind. Code § 22-4-7-2(b))*

The entity has acquired the assets of a distinct and separate portion of an existing employer's organization, trade, or business, and uses it in the continuance of a trade or business. For the purpose of employer qualification, the workforce of an existing business is considered to be an asset of the business. For purposes of SUTA, to acquire means to gain by any means; to take or to use as one's own.

### **Acquirers - Special Consideration - Mandatory Transfer (Ind. Code § 22-4-11.5-7)**

If entities share substantial common ownership, management, or control, and all or part of the workforce moves from one entity to another entity, a mandatory transfer of experience balance has occurred and must be reported to DWD. If the receiving entity is not an employer at the time of the transfer, the receiving entity automatically becomes liable under the Act. See the section titled Maintaining Integrity in the Unemployment Insurance Program for additional information about employing units with substantial common ownership, management, or control.

### *FUTA Liable Entity (Ind. Code § 22-4-7-2(f))*

The entity is liable for any Federal UI premiums (FUTA) in another state. This makes the entity immediately liable when they have workers employed in Indiana. See the section titled Introduction to Unemployment Insurance for additional information on FUTA.

### *Exempt Entity that wants to Voluntarily Elect to extend the Act (Ind. Code § 22-4-7-2(d))*

The entity wants to elect to be subject to SUTA to the same extent as a regular employer even though they do not meet any of the other definitions of employer listed in this section.

If the work is excluded separately from the type of organization, the entity cannot extend SUTA to cover the excluded work – just an excluded type of organization.

**EXAMPLE:**

Churches are exempt because they are churches.

A church can ask to extend SUTA coverage - meaning that it wants the workers to be covered by unemployment insurance and it wants to pay taxes to get this coverage for the workers.

Voluntary election provides unemployment insurance to all of the workers – EXCEPT -

A church cannot elect to extend SUTA to cover a minister because members of the clergy are specifically excluded due to the nature of the work that they perform.

*Agricultural Entity (Ind. Code § 22-4-7-2(e))*

The entity has agricultural employees and pay \$20,000 or more in cash wages in a calendar quarter, or

The entity has 10 or more agricultural employees for some part of a day for 20 weeks during a calendar year.

**Note** – if the entity operates **both** an agricultural enterprise and a non-agricultural enterprise under the same employer identification number, they must keep separate accounting for the payroll related to the work being performed and must report any non-agricultural wages under the appropriate qualification section. Failure to keep separate records may result in all wages paid being re-classified as covered employment under Ind. Code §22-4-7-1. If this situation applies, DWD will issue two different SUTA account numbers for reporting wages correctly.

*Governmental Entity (Ind. Code § 22-4-7-2(g))\**

Service performed by an individual for any domestic (U.S.) government entity for any amount of wages, unless the nature of the work is specifically excluded, is covered employment. The State, municipality, division of a municipality, Indian Tribe, or similar entity that pays wages to a covered worker is a governmental employer. Governmental employers are required to pay UI premiums starting with the first dollar of payroll. Work for a division of the federal government is covered under a special unemployment plan called UCX, for military employers, and UCFE, for federal civilian employers.

Exclusions include:

- Elected officials;
- Members of a legislative or judiciary body;
- Members of the state National Guard or Air National Guard;
- Employees serving on a temporary, emergency basis;

- Individuals designated in major non-tenured policy-making or advisory positions.

*Not-for-Profit (501(c)(3)) Entity (Ind. Code § 22-4-7-2(h))\**

The entity is a 501(c)(3) per an IRS ruling – or has applied to the IRS for a ruling to be recognized as a 501(c)(3) – **and** employs four or more individuals in 20 different weeks during the same calendar year.

Do not count workers that are excluded because of the work that they perform, such as members of the clergy, and do not count anyone if the entity is a church, convention of churches, association of churches, or an entity that is primarily operated for religious purposes and which is supervised, managed, controlled, or principally supported by a church, or by a convention / association of churches.

There is no minimum dollar amount associated with this qualification, and the workers do not need to perform services on the same day or at the same time.

**\* If the entity is a Governmental or Not-for-Profit employer, they may opt to become a Reimbursable Employer as opposed to an employer paying quarterly premiums.**

*Individual or College Fraternal entity with persons engaged to perform domestic services (Ind. Code § 22-4-7-2(i))*

The entity hired household help of any kind and paid a total of \$1,000 or more in cash wages in any calendar quarter in any calendar year.

Some common examples of this qualification include college fraternal organizations that employ household help in a shared residence such as a fraternity or sorority house, a family that has hired the services of a nanny, and individuals paying a caregiver in a private home for a person who is elderly or disabled.

*PEO – Professional Employer Organization (Ind. Code § 22-4-6.5)*

A PEO must register with DWD specifically as a Professional Employer Organization and must make an election at the time of qualification to be treated as either a single employer for internal and client employees (PEO Level), or to be treated as multiple employers for internal and client organizations (Client Level).

If the PEO fails to make a timely election, or fails to register as a PEO with DWD, the PEO will automatically be treated as a client level PEO. If DWD finds that an entity is operating as a PEO at the PEO level and has failed to make the required election, DWD will issue a notice requiring the PEO to report at the client level and to cooperate in the administrative process necessary to separate the account into the requisite client accounts.

A PEO at the employer level qualifies on the first dollar of payroll to any internal employee or to an employee of a client.

A PEO at the client level will need a separate account for the PEO itself only if the PEO has internal employees with work localized to Indiana. Each client of the PEO reporting at the client level maintains a

separate account under the F E I N of the PEO.

Commonly owned, managed, or controlled PEO organizations must make one election for all affiliated PEO organizations and may maintain only one PEO level account. If DWD finds that commonly owned, managed, or controlled PEO organizations are reporting under more than one SUTA account in Indiana and that any of the SUTA accounts is being reported at the PEO level, DWD will issue a notice requiring the PEO to report at the client level for all accounts that are found to be in violation of this requirement. Further, the PEO will be required to cooperate in the administrative process necessary to separate the account(s) into the requisite client accounts.

Depending on the election of the PEO, the client may face serious financial ramifications when exiting a PEO if the PEO has not filed all reports as required or has failed to pay all assessments in full.

The client of a PEO that has elected PEO level reporting is treated as a predecessor employer when they enter the PEO and as a successor employer when they exit the PEO.

### Ongoing PEO reporting Requirements – SF52099

All PEO organizations are required to file SF52099, Client Addition / Deletion, by email to [ProEmployerClearance@dwd.IN.gov](mailto:ProEmployerClearance@dwd.IN.gov) within fifteen days of a change in a client's status.

For a client addition, the SF52099 must be filed within 15 days of the last day of the calendar quarter during which the client first has Indiana payroll to be reported by the PEO.

Timely filing of the addition notice to DWD will assure that the account transferred to the PEO is fully processed and the PEO account is updated as required in time for the first quarter in which the PEO will have reporting and / or payment responsibility.

Late filing an addition for a PEO level PEO can result in extremely adverse consequences such as retroactive merit rate increases and the related increase in contributions due for a prior quarter. This, in turn, creates a new assessment of penalty and interest for underpayment of contribution by the PEO. Such retroactive assessments have virtually no time limit as a PEO having elected PEO level reporting has asserted that they know the reporting requirement. There is no statute of limitations where the employer knows that they have an unfulfilled duty to report. The Agency cannot advise a PEO electing PEO level reporting strongly enough to file the SF52099 on time – or early – to avoid this unpleasant outcome.

For a client deletion, the SF52099 removes the client either from the employer's experience balance for a PEO electing PEO level reporting, or from the PEO's F E I N as the financially responsible party.

The account should be deleted from the PEO when the contractual relationship between the PEO and the client is ended. Please do not delete seasonal clients or multistate clients that intermittently employ individuals localized to Indiana where there is no current payroll, but the client / PEO relationship has not been terminated.

The removal of the client from the PEO level PEO assures that any client that subsequently leaves the PEO receives the correct amount of experience balance. If a client delete is not timely reported, all other clients that have exited the PEO are required to be re-evaluated for merit rating purposes as they will have an inaccurate experience balance transfer.

The removal of the client from the Client level PEO assures that the PEO is not responsible for filing accurate quarterly reports and making quarterly contribution payments after the relationship between the PEO and the client has been severed. As with the PEO level PEO having responsibility to understand their reporting election and the requirements, the Client level PEO cannot escape liability for reporting or paying quarterly contributions without filing the SF52099 / deletion report.

#### Employers entering or exiting a PEO level PEO – reporting requirements

When an employer enters a PEO level PEO, their existing SUTA account, if any, is partially transferred into the PEO. The original account is inactivated but is not terminated. This means that the original employer can revive the SUTA account if they exit the PEO level PEO relationship within sixteen quarters of the original partial transfer. While the PEO is responsible for the filing of the SF52099, the client can request account inactivation on entering a PEO level PEO, or account reactivation when exiting the PEO level PEO, by using the status change request option in E S S.

After the sixteenth consecutive quarter with no payroll to report, the client's SUTA account will be terminated. If the employer subsequently leaves the PEO level PEO, and they continue to operate as an employer in Indiana, they will establish a new employer account in the same way as an employer that entered a PEO before, or at the same time, as they first created liability for unemployment contributions.

When an entity that is not a current Indiana employer enters a PEO level PEO, there is no existing SUTA account to be transferred. While the PEO is required to file SF52099 to report that they have an employer / client, there is no separate SUTA account created at that time. Clients that do not have liability before entering a PEO will need to register for a new employer account when they exit the PEO level PEO. Registration is completed via E S S by creating a new user credential and then registering the employer as a partially transferred account.

#### Employers entering or exiting a Client level PEO – reporting requirements

When an employer enters a Client level PEO, their existing SUTA account, if any, is reassigned to the F E I N of the PEO when the PEO files the SF52099. The client's F E I N is added to the location screen as a worksite address. The PEO is added to the account as the DBA, or doing business as, account name and as the correspondence agent on the account. The client's original E S S credentials are not removed or modified. The client continues to have access to their account throughout the PEO relationship.

If a client does not have a SUTA account prior to entering into a co-employment contract with the PEO, a SUTA account is created for the client using a combination of the client's identification and the PEO's identification as described above. The information for the account creation comes from the SF52099 filed by the PEO. The client can establish credentials in E S S by working with the PEO to secure the required security responses. The Agency is not allowed to provide this information to clients for security reasons.

When the PEO files SF52099 deleting the client relationship, the PEO identifiers are removed, and the client resumes responsibility for reporting and compliance. To be clear, the client account is not inactivated on receipt of the SF52099. If the client no longer has employment localized to Indiana, the client will need to inform the Agency that the account needs to be inactivated. If the client has access to E S S, the most efficient mechanism is using the status change request option. If the client does not have access to E S S, the SF46800 is appropriate. A PEO specialist will attempt to contact the client to confirm the account status as a courtesy; however, responsibility for the account status belongs to the client.



## Employee Classification

An employee is an individual that performs a service for the organization in the normal course of the business and receives value in exchange for that service.

In order for this individual to be eligible for UI benefits, the individual must be an **employee**, not an **independent contractor**.

Individuals will be considered **independent contractors** for the purposes of unemployment insurance **ONLY IF ALL** of the following apply:

- The individual is free from direction and control in connection with the performance of their service, **and**
- The service is performed outside the usual course of business, and the individual's usual area of employment is not within the usual course of the business, **and**
- The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as the work they do for the organization; or is a sales agent who is paid on commission only and has complete control over their own time and effort.

Unless **EACH** of the above apply to the individual, that individual is an **employee**.

**NOTE:** Employment as defined for UI purposes is different than it is defined for IRS purposes, workers compensation, etc. If you have questions about a specific work relationship, please call (800) 891-6499 and select the employer tax option.

See the section titled Special Types of Employment and Payment for a chart listing special types of employment and payments with their status regarding UI liability.

The existence of a contract between the worker and the entity for which the work is performed does not change the nature of the test for classification. Signing a contract where the worker agrees that they will be treated as an independent contractor and then issuing the worker a 1099 instead of a W2 does not make the worker an independent contractor for Unemployment purposes.

Unintentionally treating an employee as an independent contractor is called worker misclassification and can result in the employer being assessed additional contribution, interest, and penalties.

Multiple findings of worker misclassification can result in the employer being assessed with fraud penalties and / or civil penalties. Accountants and other advisors that assist or encourage employers to engage in worker misclassification can also be subject to civil penalties.

In extreme cases, employers can be subject to criminal prosecution for intentional worker misclassification.

## Multi-State Employment

Employee wages are usually only reported to one state per year by their employer.

Unless the organization is an American employer with international locations and the worker performs no services within the United States, wages are only reported to a state where the worker performs some part of their services.

If an employee performs all duties in one state, or if any duties performed in other states are incidental to the work in the primary state, or if the duties performed outside of the primary state are temporary or transient in nature, the employee's wages are reportable to the state where they usually perform services.

EXAMPLE – The worker is part of a road construction team based in Michigan. The Michigan Company gets a contract to repair a section of a highway that is partially located in Michigan and partially located in Indiana. When the Michigan team works on the Indiana section of the highway, the work in Indiana is temporary or transient in relation to the work that they perform full time in Michigan, so the work is localized to Michigan.

Now let's look at what happens if the Michigan team starts to run behind schedule, and they add a few workers to finish the repairs in Indiana. The additional workers are not going to work in Michigan for the company. They will not be needed once the project in Indiana is completed. These workers are reported to Indiana because they performed all their work in Indiana.

The Michigan Company will have to register for an unemployment account in Indiana to report these workers localized to Indiana. Employers must follow localization rules even where it is inconvenient for them to do so.

If an employee performs duties in more than one state and the work is not incidental, temporary, or transient, the following tests are used to determine the correct state for wage reporting:

Test 1: Report wages to the state from which the employee has a base of operations if some part of the work is performed in the same state as the base of operations. The base of operations can be a home office, corporate office, regional office, legal address of a sole proprietor, etc. In general, where the worker always starts and ends in the same location, this location is the base of operations. If there is no base of operations, or work is not performed in the same state as the base of operations, go to test 2.

Test 2: Report wages to the state from which the employee is directed and controlled if some part of the work is performed in the same state as the origin of the direction and control. This is the state from which basic authority or control emanates and should not be confused with the location from which an individual directly supervises the work performed under orders from the place of basic authority. If there is no work performed in the state where direction and control originates, go to test 3.

Test 3: Report wages to the state in which the employee resides if some part of the work is performed in the state of residence. If none of these tests apply, contact DWD at 800-891-6499, and select the employer tax option.

If the organization needs additional localization examples, or wants to see the Unemployment Insurance Policy Letter (UIPL) issued to all states on localization, click [here](https://oui.doleta.gov/dmstree/uipl/uipl2k4/uipl_2004.htm) or go to [https://oui.doleta.gov/dmstree/uipl/uipl2k4/uipl\\_2004.htm](https://oui.doleta.gov/dmstree/uipl/uipl2k4/uipl_2004.htm).

## Wage Base Credits

Employers are entitled to a credit if they have paid wages to a state other than Indiana and the worker permanently relocates to Indiana during the calendar year.

Employers must apply for this credit as an adjustment to the amount assessed by DWD when the quarterly wage and employment report is filed. Please note that the assessment should be paid in full, or the employer will be considered to be delinquent. Applying for a credit does not change the amount assessed or the employer's duty to pay in full on or before the due date.

To successfully apply for a credit in E S S go to the request menu and select the Penalty/ Interest / Waiver option.

For each individual that permanently relocated and is now localized to Indiana, please provide the worker's Social Security Number, Name, Prior State Name, Prior State Reported Gross Wages, Prior State Wage base, and the reason for the request in the comments box.

In the box marked Amount, type in the Prior State Reported Gross Wages. Please do not calculate or type in the amount of the contribution credit requested as DWD is required to calculate this amount based on the information provided.

Depending on the nature and completeness of the information submitted in E S S, a DWD tax specialist may need to reach out to the employer by email or phone to clarify or confirm the information provided. Please promptly return any calls or emails to expedite the approval process.

DWD will make one of three determinations based on the information provided, the requirements of the Act, and the UIPL discussed in the prior section on localization:

1. The worker has permanently transferred to Indiana and the wage base credit has been approved. The employer will receive a credit against the original assessment which can be refunded to the employer or used by the employer as a credit against their next assessment.
2. The worker is not localized to Indiana and the employer should amend their Indiana reporting and reporting to the correct state to move the wages to the state where the worker is localized. The request for credit will be denied, but the employer will receive a credit when they amend the wage report removing the worker entirely from Indiana.
3. The worker is localized to Indiana and the employer should amend their reporting to Indiana and the reporting to the incorrect state to move the wages to Indiana. The request for credit will be denied, but the employer may be entitled to a credit from the state to which employment was reported in error.

## Employer Registration

If the organization is an employer as defined in the Act, it must register with DWD **during** the first quarter it is liable to report wages. Please note that the organization should provide both a legal address and the physical address where the work is performed in Indiana if those are not the same.

The employer's legal address is the mailing address to which any tax notices should be delivered by the USPS if the employer does not designate a correspondence agent. Do not use a third party or agent

address when asked for the legal mailing address of the employer. If an employer wants mail delivered to a third-party representative, they must use the correspondence agent option in E S S to correctly register and administer their account.

E S S has a second address used for benefit notices that is created at the time of registration using the legal address as the benefits notification address. If the employer would like benefit, i.e., worker unemployment filing, notices sent to a different address, they may edit the benefits address found using the Profile Maintenance Menu and the Locations option. An employer may have only one benefits location. If the employer uses a third party for administering unemployment claims, the third party should be identified as the benefits correspondence agent using the Profile Maintenance menu and the Correspondence Agent option. To use the SIDES electronic unemployment claims administration option, the employer must designate a third-party representative as their benefits correspondence agent in E S S.

Do not wait until the first report is due to start the registration process as interest and penalties apply if the organization does not complete and pay the report on time.

If the organization employs only teleworkers in Indiana, then the physical address where work is performed is the worker's address. DWD does not use the physical address for mailing purposes. The address information is used to verify localization as described in the prior section. The physical address where work is performed is a worksite address and can be administered by the employer using the Profile Maintenance menu and the Locations option. An employer may have multiple worksite addresses.

If the organization is not an American company, but it has workers that perform services in Indiana, it may have Indiana unemployment liability if other conditions are met. Please contact DWD for more information about foreign companies operating in Indiana.

The organization should register online using the Uplink Employer Self Service (E S S) website, at <https://uplink.in.gov/ESS/ESSLogon.htm>. Electronic report filing and payment are mandatory for SUTA reporting and payment.

**Uplink Employer Self Service (E S S)** allows you to do the following online:

- Register as a new employer;
- Verify and maintain unemployment insurance account information;
- Submit quarterly unemployment insurance wage reports;
- Make payments by e-check (no fee) and credit card (certain fees apply);
- Access correspondence from the Agency for the prior two -years;
- Add authorized users or correspondence agents;
- Review prior reporting, assessments, and payments.

If the organization is an employer with an existing SUTA account number and wishes to create an E S S account, click 'New User' on the Employer Self Service logon screen, then check the 'Yes' option button. In addition to your SUTA number, the organization will need its F E I N number and the total gross (subject) wages from the last posted quarter.

If the organization is unable to use the on-line registration process, it may register by completing State Form 2 8 3 7 (SUTA Account Number Application and Disclosure form). Please be aware that filing a paper registration form can significantly delay the registration process. Any delay in registration or reporting caused by the failure of the employer to electronically administer their SUTA account may result in the assessment of penalties, fines, interest, or increased tax rates.

The form is available at [DWD: Forms and Downloads](#) or by calling DWD at (800) 891-6499 and selecting the employer tax option. Completed forms must be mailed to:

IDWD – Employer Status Reports  
10 N Senate Ave Rm SE 202  
Indianapolis, IN 46204-2277

DWD will give the organization an individual account number if it qualifies.

It is an employer's responsibility to register on time and to file all reports on time. If correct premiums are not paid on time, interest and penalties will be charged. If the organization is liable for unemployment contributions, a wage and employment report must be filed timely. Organizations will not be able to successfully file without an assigned SUTA account number.

Beginning in February 2022, employers are able to register a new account after logging into their existing SUTA account. Please use the register new account from the select an account screen to begin the registration process. The user is automatically assigned the role of registration contact and is an administrator on the new account.

If an organization is liable for any quarter during the year, the organization must file all SUTA reports for the year including those that occurred prior to the organization's qualification quarter. If the organization has no wages during a quarter, they can use the Nothing to Report (NTR) option under the Wage Reporting > File a Wage Report menu option. Where the employer provides the correct payroll start date to DWD, E S S will automatically file any relevant NTR quarters for the employer.

### **E S S Browser Issues**

E S S works in the current version of most major browsers including Safari, Chrome, Firefox and Edge.

Chrome is the preferred browser for best results.

If the user logs into E S S and the landing page is displayed incorrectly or is missing the anticipated graphics, the cause of the display issue is generally a browser update. This issue can be resolved in Chrome in most cases by taking the following steps:

Go to <https://www.google.com/chrome/update/> and verify that the current version of the browser is in use.

If not using the latest version of the browser, please follow the on-screen instructions to update.

If using the latest version of the browser, click the three vertical dots on the right top of the screen at the end of the address bar.

Click settings.

Scroll down to Privacy and Security.

Click Clear Browsing Data – this will open new menu. When the menu opens, click Advanced.

Select the time range from the drop down (i.e., All time).

Check the box to the left of:

Browsing history.

Cookies and other site data.

Cached images and files.

Click clear data at the bottom right side of the menu.

Restart the browser for these changes to take effect and update on the user's device.

### **Required Posters**

All employers must prominently display the Unemployment Insurance informational poster available from DWD.

Download the poster at [unemployment.IN.gov](http://unemployment.IN.gov).

Posters should be posted in multiple locations at each worksite so that every employee can adequately view the information. If the organization does not have a permanent common worksite that is regularly visited by all employees, DWD will provide individual notices for employees on request.

When asked, the organization must give employees information about all UI rights and benefits under the law. This means that employers are not allowed to interfere with the worker's right to file an unemployment claim. For example, an employer cannot tell employees that they cannot file a claim if they quit or are fired.

Workers have the right to file the claim. Workers have covered employment if the employer has unemployment liability. DWD adjudication staff will determine if the worker qualifies for unemployment based on the separation, base period wages and other factors.

### **New Hire Reporting/Preventing Fraud**

Under IC 22-4.1-4-2 and the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), all public, private, non-profit, and government employers are required to report all newly hired employees, or employees returning to work after a break of 60 days or more, within **20 days** of hire (this should be the first actual date of work).

The Indiana New Hire Reporting Center requires reports of newly hired and rehired employees to be reported electronically.

Additionally, employers will be required to provide the following new data elements on all reports of newly hired or rehired employees:

- **Employee's current job title**
- **Employee's primary standardized occupational classification code**
- **Employee's starting compensation**
- **Employee's rate of pay (annually, hourly, other)**

More information about reporting these new employee data elements, including changes to file layouts and specifications for SFTP and Web Upload reports, can be found on our [File Transfer](#) page.

For more information regarding electronic reporting, please visit our [Electronic Reporting](#) page.

We encourage you to contact us if you have any questions or require registration assistance by using our [General Comments and Feedback](#) form or by emailing [Contact@IN-Newhire.com](mailto:Contact@IN-Newhire.com).

Failure to report new hires could result in a fine of \$25 per employee not reported, or up to \$500 if it is discovered the failure to report was part of a conspiracy between the employer and employee.

For more information, or to report new hires, please go to <https://in-newhire.com/>.

### *Why is new hire reporting important?*

Reporting new hires helps protect the organization, and other employers, against fraudulent unemployment claims.

### *How to report new hires*

#### **Gather information**

The needed information includes the employee's:

- Name
- Mailing address
- Social Security Number (SSN)
- Date of hire
- Date of birth
- Eligibility for medical insurance
- Current job title
- Primary standardized occupational classification code
- Starting compensation
- Rate of pay (annually, hourly, other)

#### **Create the report**

- Visit [www.in-newhire.com](http://www.in-newhire.com). Instructions will guide the organization through the process.

#### **Submit the report**

- The organization can submit reports via any method discussed on the new hire website (listed above.)
- The organization's payroll service can also report new hires. (It is the organization's responsibility to make sure the payroll service completes this process.)

### **New Employer Premium Rate**

Because rates are determined as of June 30th each year for the next calendar year, most new employers are assessed a rate of 2.5% for the first four calendar years that they operate in Indiana. Governmental entities, construction companies, and successor employers have different new employer rates.

The new employer rate for construction companies (with NAICS beginning with 23) is the lesser of 4.0 or the average rate for all construction companies. The new construction company rate for 2023 is 2.50%.

The new employer rate for governmental entities, not electing to be reimbursing as discussed in the section titled Getting Started, is 1.6%.

New successor employers inherit the rate of their predecessor, so a new successor employer rate can range from 0.50% to 9.4% under the current rate schedules.

Merit rating is the way that DWD tries to estimate the use of the Unemployment Insurance System by each employer and is based on the employer's history in Indiana. The number of claims as related to the amount of taxes paid is called the experience balance. In Indiana, the experience balance is made up of all contributions paid less all benefits paid to former employees of the employer or through mutualized



benefit charges. The amount of potential to file claims for benefits is represented by the most recently completed thirty-six months of payroll ending on June 30<sup>th</sup> of the year immediately before the year to

which the merit rate is going to be applied. This thirty-six month of payroll is referred to as the *lookback period* for merit rating.

An employer is no longer considered a new employer when they meet **BOTH** of the following requirements:

- The employer has been registered as an employer subject to the Act for 36 consecutive calendar months ending on June 30<sup>th</sup> of the year immediately prior to the Merit Rate year (Requirement A).
- The employer has reported some wages in each of the three 12-month periods ending on June 30<sup>th</sup> of the year immediately prior to the Merit Rate year (Requirement B).

The lookback period for merit rating is always the 36 months ending June 30<sup>th</sup> of the current year for the following year's rates.

If an employer has a gap in employment between any July 1<sup>st</sup> and June 30<sup>th</sup> period during the lookback, they will go back to the new employer rate under requirement B.

A gap in employment means that the employer had zero gross wages to report to Indiana. The employer will remain at the new employer rate until the year when the gap is no longer in the lookback period.

To qualify for the lowest possible premium, employers must meet both requirements A and B and have no delinquent quarterly reports, outstanding liabilities, or outstanding predecessor liabilities (Requirement C).

Once requirements A and B are met, the employer is eligible for an **experience-based rate**, also known as a **merit rate**.

### **Reimbursable Employers**

501(c)(3) not-for-profit entities and governmental employers may choose to be reimbursing employers. This means they reimburse the UI Trust Fund for benefit payments to their former employees instead of making regular quarterly contributions (referred to as payment in lieu of contribution).

Even if the employer has elected to make payment in lieu of contribution, the employer must file their quarterly payroll reports on time and with all required information.

Reimbursable employers must pay any invoice issued to them by DWD within 30 days of the mailing date of the invoice. Failing to timely pay will result in interest and penalties being assessed to the reimbursable employer.

*Become a reimbursable employer by:*

- Providing DWD a copy of the Internal Revenue Service (IRS) 501(c)(3) exemption status letter, or a copy of the application for exemption status; **and**
- Submitting a completed "Election to Pay Tax" form, DWD 1065, which can be obtained at [unemployment.IN.gov](http://unemployment.IN.gov), by the required deadline.

When the organization first becomes liable for unemployment as described in the section titled Getting Started, it has an opportunity to elect to make payments in lieu of contributions instead of paying quarterly contributions. If an election is not received by the election deadline, the employer is automatically contributory.

Election forms must be submitted within 31 days of the original qualification date. DWD counts the 31 days from the last day of the quarter that contains the qualifying event. Retroactive or late reimbursement elections are not allowed.

For a government of any type, the qualifying event is compensating any worker not specifically excluded under the Act for performing services.

For a 501(c)(3), the qualifying event is compensating four (4) or more workers for performing services in twenty (20) different weeks in the same calendar year.

Once the organization successfully elects to be a reimbursable employer, the status cannot be changed for a minimum of two years and will remain in effect until the employer revokes the election. An employer may revoke the election to be reimbursable by filing DWD form 1065 on or before December 1st in the year prior to the year the revocation is to be effective.

Reimbursable employers are charged for all UI benefits, including extended benefits not reimbursed by a federal program, benefits expended in error, and benefits under appeal. Reimbursable employers do not receive credit for benefit overpayments made by DWD for any reason until and unless DWD is successful in securing repayment from the claimant.

Reimbursable employers cannot be relieved of benefit charges where they are not the separating employer on the claim and are not employing the claimant on a part-time basis during the claim period. This is true even on a reopened claim where the employer was originally determined not to be chargeable when the worker separated from them.

If an employer changes their election from reimbursing to contributory after the mandatory two year minimum election period, they will be invoiced for all benefit charges under the reimbursable election until there are no charges related to the base period of a former worker where the reimbursable election was in effect.

This means that the employer may receive invoices and be required to pay contribution simultaneously. This is not a duplication of liability. Liability is per the employer's election at the time wages were paid to the worker without regard to when the benefits are distributed.

## QUARTERLY EMPLOYER REPORTING



### Quarterly Reports

Quarterly reports must be filed electronically via Uplink Employer Self Service (E S S). As of 1Q2019, employers only file one quarterly report, the wage and employment report, each quarter instead of a wage report and a contribution report as separate reporting.

If the organization has a significant barrier to electronic filing and is unrepresented, it may request an electronic filing waiver, SF56625. DWD will evaluate the request for a waiver of the electronic reporting requirement and notify the employer of their status as exempt or not exempt from the requirement. If the employer is exempt from electronic filing, they are required to use the approved UC5 revised in 2019 to report. The e-filing exemption will be revoked if the employer later demonstrates that the barrier no longer exists, that they are required to file electronically with any other Indiana agency, or if they fail to file quarterly on the form and in the manner required by DWD. Creating or using an alternative report and attaching that to the approved UC5 is an example of non-compliance that will result in the revocation of the employer's e-filing waiver. The waiver is available on-line at [unemployment.IN.gov](http://unemployment.IN.gov), or by calling DWD at 800-891-6499.

Employers with up to 50 employees can add the employee wage records by manually entering the information directly into E S S. If the employer has more than 50 employees, a file upload will be required using either ICESA (ASCII) formatting or .CSV formatting. A .CSV file can be created in Microsoft Excel or other common spreadsheet programs. A .CSV template can be downloaded from our [website](#).

To properly administer the Act and to provide the best possible service to employers and workers in Indiana, DWD collects information about where people are working, when they started working, how much pay they are receiving, and what they are doing to earn their pay. The Unemployment Insurance division uses this information to determine employer contributions and benefit availability for qualified claimants. The Workforce division uses this information to plan training services, predict hiring trends, create apprenticeship opportunities, and develop programs for the benefit of employers and workers throughout Indiana.

Quarterly report information includes:

- The quarter and year being reported;
- The SUTA number of the employer;
- The F E I N number being used by the employer on their 940 for this worker. This should be the same as the F E I N on the worker's 10 99 or W2;
- The worker's SSN or I T I N. Employers are required to secure a valid SSN or I T I N for each worker before allowing them to start performing services for remuneration;
- The worker's last name;
- The worker's first name;
- The worker's middle initial, if any;
- The worker's start date as reported to Indiana New Hire;
- The worker's Standard Occupational Classification (SOC) code, which is a six-digit representation of the worker's job title or assigned duties usually shown as XX-XXXX (if the code contains a decimal followed by two additional digits, the additional information is not required / reported);
- The primary zip code where the worker is performing services in Indiana;
- The worker's status as a full-time, part-time, or seasonal worker;
- The worker's gross subject wages;
- The worker's active status (yes or no) during the pay period containing the twelfth (12<sup>th</sup>) day of each month. Active status means that the employee is being compensated for covered employment.

Pursuant to 20 CFR § 603.11, please be advised that confidential claimant unemployment compensation information and employer wage information may be requested and utilized for other governmental purposes, including, but not limited to, verification of eligibility under other government programs.

## **Reporting Payroll**

For UI premium purposes, if the organization is liable for any part of a calendar year, it is liable for the entire year and must report all wages for the entire calendar year.

EXAMPLE: Company A starts payroll in December 2017. At the time Company A registers for an Indiana SUTA account, they would file reports for the first three quarters of 2017 showing nothing to report ("NTR"). On or before January 31, 2018, Company A would file a report for the 4th quarter with the wages.

If the employer correctly provides their payroll start date – meaning the first day on which they provided a covered worker with compensation for their services – E S S will automatically create any needed NTR reports as a courtesy to the employer. It is the employer's responsibility to make sure that those reports are filed, so please be sure to respond promptly to any notices sent by DWD regarding missing or incomplete reports.

If DWD determines that the organization failed to file any wage report, an estimate will be made based

on internal policy. If a report is determined to be missing or inadequate, the employer will be notified of the issue. If the employer does not file an adequate report by the deadline on the notice, they will be fined \$25 for each missing or inadequate report.

A quarterly report is inadequate if any SSN or ITIN used in filing the report is invalid. DWD uses the Social Security Administration definitions of valid SSN formats and the IRS definitions of valid ITIN formats to determine an invalid SSN or ITIN. DWD will notify the employer of any missing or inadequate reports before assessing the fine as described above.

Benefits are determined based on each quarter's wages; therefore, wages cannot be reported in only one quarter for the entire year. Wages must be reported for the quarter in which they were paid.

### **Amending Quarterly Reporting**

Amendments are filed at the individual account level for each quarter that requires corrections.

There is no mechanism available to make "cascade" or multiple quarter changes to a report.

If an employee has been reported under the incorrect social security number for four years, the employer or agency must file sixteen amended reports.

Wage reports are amended by replacing the entire original file unless the employer has less than fifty (50) employees. If the employer has less than 50 employees, the record can be corrected on the screen as an individual record amendment.

If the amended gross wages are different than the original gross wages for the employer, meaning that the change is more substantial than correcting a social security number or similar identification field, the changes must be approved by a DWD auditor before the change will be reflected on the employer's account.

Amending any quarter prior to 1Q2019 will cause the original UC1 reporting to be replaced by the amended quarterly wage and employment report requirements for the entire year. If the employer has previously self-calculated a wage base credit for an employee that performed services in more than one state or for a successorship, the credit may be lost per the changes in reporting requirements.

Successorship credits will be automatically applied to the extent that the transfer was reported to DWD with correct date information. As the successor gets credit for any wage base paid by the predecessor, credits for a quarter where a worker performs services for both employers are not awarded as the predecessor would not have paid the contribution at the time the concurrent employment occurs during the quarter.

Credits for wages paid to another jurisdiction are entirely dependent on the correct localization of the worker during the calendar year and the timely application for such credit by the employer. Please see the sections on multi-state employment and wage base credits for additional information regarding taxable wage assessments.

### **Covered Employers / Covered Employment**

Once a business becomes liable for unemployment taxes, the business is called a covered employer and the workers are engaged in covered employment for unemployment purposes. An employee must be

engaged in covered employment before they can qualify for unemployment benefits based on the separation from the employer.

If the business falls below the level of qualifying employment, the employer may be eligible to terminate their unemployment account.

The employer must fall below the level of qualifying employment for two consecutive years and must believe that they will never qualify again to apply for account termination.

Employers have until January 31st to file an application to terminate coverage for the current year. The organization must continue to file quarterly reports – even if the report is nothing to report - until it is notified that the account has been terminated or made inactive.

For UI premium purposes, there is no distinction between a full-time employee and a part-time employee. If an employee works for any amount of time during a calendar week, report the remuneration paid.

There is also no distinction between S-Corporations and business corporations (C-corporations). All corporate officers must report all payments for services.

### Quarterly Report Due Dates

Quarter	Wages Paid in Period	Report Due Date (on or before)
First	January, February, March	April 30
Second	April, May, June	July 31
Third	July, August, September	October 31
Fourth	October, November, December	January 31

All covered employers must file a quarterly report no later than the report due date as shown in the above chart.

### Retroactive Payments

The organization must notify DWD immediately when it makes a retroactive payment to an employee that would cover the same time UI benefits were paid, thus reducing the employee’s benefit amount.

Retroactive payments that may affect an employee’s benefits include wages, vacation pay, severance pay, or similar payments based on the services performed in the past but not compensated until a later date.

Please report the week(s) during which both the retroactive payment and the UI benefit payment occurred.

Report additional wages for prior quarters just like any other correction. See the section titled E S S Wage Reporting Guide for information on reporting payment to individuals collecting benefits.

**Employers who fail to file complete quarterly reports or have any outstanding liabilities will be subject to a penalty premium rate the following calendar year. The penalty rate is your calculated premium rate PLUS 2%, with a maximum rate of 9.4% on the current schedule.**

### **Paying the Amount Due**

Employers are provided with notice of their quarterly assessment when a report is filed that results in contribution liability being created. The organization that posts the report to E S S can access the assessment in the summary section of E S S.

DWD will not issue an assessment if the total liability of the employer is less than \$1.00 for a quarter / year. Payments of less than \$1.00 cannot be made electronically via E S S or VPS.

Please review the assessment carefully for errors. If the assessment is not paid in full, the assessment will be followed up by a notice and demand for payment. The notice and demand informs the employer that an assessment has not been paid in full. The organization will have fifteen (15) days after the notice is sent to protest the amount that has been assessed on the account.

If the assessment amount changes, the employer can access the new notice of assessment from the summary section of E S S.

Assessments are amended when the employer corrects an error, when their merit rate is amended due to a successorship determination or waiver of the penalty rate, or when a similar action occurs. If the notice of amendment results in additional liabilities on the quarter, and if the amended assessment is not paid immediately, a notice and demand for payment will be sent.

The organization will have fifteen (15) days after the amended notice and demand is sent to protest the additional amount that has been assessed. Please be sure to review the notice when received.

The payment screen in E S S is used to review the employer account and to verify the balance due on the account.

Payment of the total amount due must be received by DWD by the due date of the quarterly reports to be considered timely. The amount due shown in E S S will include any applicable fees, interest, penalties, or administrative assessments and will be reduced by the amount of any credits on the account.

Electronic payments not made via the E S S real-time payment method must settle on or before the due date. Non-electronic payments must be received by DWD on or before the due date to be timely. Payment delays caused by the delivery service used by the employer are the employer's responsibility. Interest and penalty are assessed based on the settlement or delivery date of the payment.

Employers electing to use any payment method other than the E S S real-time method are responsible for providing a correct SUTA account number for payment application. If making a non-electronic payment, the SUTA account number should be on the negotiable portion of the check.

If not making payment electronically, delivery delays are often caused by the use of an incorrect payment address. DWD has two valid payment addresses. The first is a physical delivery address and



the second is a P O Box.

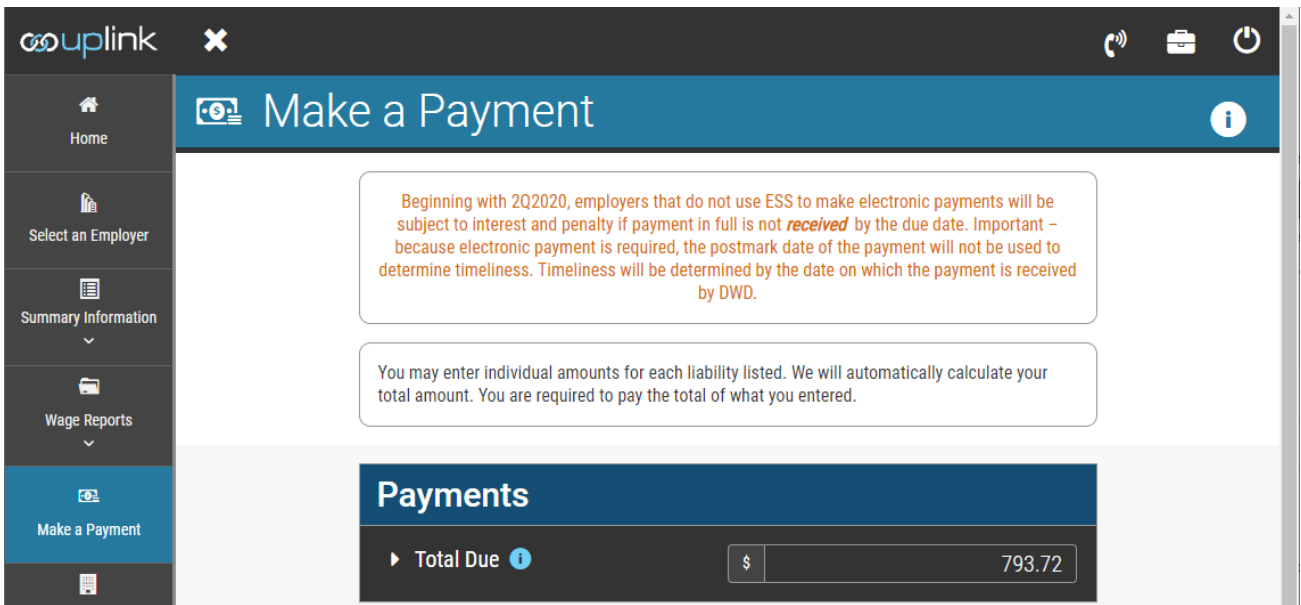
Physical delivery address:

Indiana Department of Workforce Development  
ATTN: UI Cashiering  
10 N. Senate Ave SE 201  
Indianapolis, IN 46204-2277

Mailing address:

Indiana Department of Workforce Development  
P O Box 847  
Indianapolis, IN 46206-0847

To change the amount of the payment or determine what liabilities are included in the payment amount, please expand the Total Due field by clicking the white triangle to the left of the word *total*.



Once the total due section is expanded (the white triangle is pointing down), click the X next to any amount to edit the amount that the employer is paying. Payments must be at least one dollar (\$1.00) for electronic payment.

If the employer is only paying the current liability due, edit all other liability types to Zero (0).

# Payments

▼ Total Due ⓘ

\$

793.72

Other Dues (\$64.83)

\$

64.83



▶ Predecessor Total (\$728.89) ⓘ

\$

728.89

Total Payment

\$

793.72

If the employer wants to remove the predecessor liability, expand the section by clicking the black triangle next to the word "predecessor."

# Payments

▼ Total Due ⓘ

\$

793.72

Other Dues (\$64.83)

\$

64.83



▼ Predecessor Total (\$728.89) ⓘ

\$

728.89

Predecessor Business Name  
SUTA: XXXXXX

\$

728.89



Total Payment

\$

793.72

Click the X next to the predecessor liability amount to remove/edit it. When clicked, the X will turn into a refresh symbol, and the total payment will change.

Once the white X is a refresh symbol, the amount box can be edited to another amount if the employer wants to make a partial payment. The minimum total payment is \$1.00.

The screenshot shows a 'Payments' interface with a dark blue header. Below the header, there are several input fields and buttons. The 'Total Due' is \$793.72. Underneath, 'Other Dues (\$64.83)' is shown with a value of 64.83 and a blue 'X' button. Below that, 'Predecessor Total (\$728.89)' is shown with a value of 0. The 'Predecessor Business Name' is 'SUTA: XXXXXX' and the value is 0.00 with a refresh button. At the bottom, the 'Total Payment' is \$64.83.

Item	Amount	Action
Total Due	\$ 793.72	
Other Dues (\$64.83)	\$ 64.83	X
Predecessor Total (\$728.89)	\$ 0	
Predecessor Business Name SUTA: XXXXXX	\$ 0.00	Refresh
Total Payment	\$ 64.83	

Amounts in warrant will not appear as eligible to make a payment. Warrants must be paid through the Sheriff of the County where the tax lien was recorded.

Predecessor liabilities are indicated on the payment screen as a consolidated amount. Expand the section to see the name and account number of any predecessor with open liabilities that are impacting the employer's merit rate. The existence of a predecessor liability makes the employer delinquent for merit rating purposes. Predecessor liabilities do not prevent an employer from receiving a clearance to do business with the State of Indiana.

Electronic payment is required under 646 IAC 5-2 as the prescribed payment method required by the Agency. Electronic check payment is always fee free. Credit cards are accepted but the user is required to pay the merchant cost in the form of a courtesy fee for using this service. If an employer is unable to make an electronic payment, the employer is responsible for the delivery of the payment to DWD on or before the due date. The postmark date is not used to determine the timeliness of the payment where the employer has a real-time payment option available via E S S.

DWD offers two portals for electronic payments, both administered for DWD by Value Payment Systems (VPS). DWD also offers ACH Credit payments via EDI as explained in the section below.

The recommended payment method is the integrated payment option that is linked from DWD to VPS. This option is a real-time interface to make payments for any type of debt except a tax warrant. Tax warrants must be paid to the sheriff of the county in which the warrant was issued.

The second method is to visit <https://payingov.com/dwd> and select Employer Liability Payment from the payment type field. This website allows an employer to set up reoccurring payments, email reminders, future one-time payments, and same day payments.

If your account is not in good standing and has been referred to the collection and enforcement division, please see the section on DWD collection actions.

If you have a debit block or positive pay mechanism associated to the bank account being used by the employer to make electronic payment, please provide the payer bank with the necessary exceptions to prevent the payment from being returned to DWD as a dishonored payment. If the employer has two dishonored payments via electronic check, DWD's provider will block the same routing number and bank account from being used to process a payment under certain Federal regulations related to bank fraud.

If using any VPS payment method, the number required to authorize the transaction on an account with a debit block is T356000158 for e-check and 9803595965 and 1264535957 for debit or credit cards. Credit cards are processed by World Bank. E-Checks are processed by T-Tech on behalf of VPS.

If a payment is dishonored by the maker bank, the employer may be assessed both interest and penalty as a result. DWD does not consider the use of debit blocks or positive pay to constitute reasonable cause for failing to timely pay an unemployment assessment.

If payment on an employer's account is received via any method except E S S real-time payment, the payment is applied to the oldest outstanding liability not in warrant. The payment is not applied to the most recent quarter filed unless the employer is in good standing. If an employer is in a repayment agreement, making a current quarter payment via any method except E S S can put the employer agreement in default.

**WARNING:** Using the incorrect SUTA account number when making a payment either electronically or by physical check creates a hardship on the employer's SUTA account which was used in error and on the correct SUTA account as it will show as unreported or unpaid. DWD actively works to prevent overpayment of liability on an employer's account when using the E S S integrated payment mechanism. If reporting or making payment using any mechanism other than E S S, the reporting party is responsible for any liability created or paid under the account number used. DWD does not move payments between SUTA accounts. To prevent errors and expense to the payer related to making a payment to the wrong account, we strongly recommend using E S S for all transactions and payments. To be clear – E S S is the prescribed reporting and payment method for the Agency as described in the Act and in Indiana Administrative Code.

**The E S S home screen will alert the employer if the account is not in good standing with the DWD.**

*EFT / EDI using CCD+ or CTX 820:*

DWD now accepts ACH Credit with a correctly formatted addenda record. Please consult with a bank or other payment processor if unfamiliar with these requirements before making a payment using this

method.

Please contact [DWDESSCommunications@dwd.IN.gov](mailto:DWDESSCommunications@dwd.IN.gov) for the appropriate bank account and routing numbers.

The following table provides the addenda record, also called record 7, information only.

Element	Comments	Content	Attribute 1	Attribute 2	Attribute 3
N/A	Segment Identifier	TXP	M	ID	3/3
TXP01	Tax Identification Number	Employer SUTA	M	A N	1/20
TXP02	Tax Payment Type Code	130	M	ID	1/5
TXP03	Date	CCYYMMDD	M	DT	8/8
TXP04	Tax Information ID Number	Employer F E I N	M	A N	1/30
TXP05	Tax Amount	\$\$\$\$\$\$\$\$CC	M	N2	1/10

Each element is separated by an asterisk (\*). Payments will be posted to the account as identified in TXP01. The payer is responsible for the accuracy of this information.

Sample addenda record

705TXP\*111111\*130\*20210930\*123456789\*000726648 5\

### Credits and Refunds

DWD automatically offsets any new assessment on an account by applying any available credits. Where an employer has a valid credit on their account, an employer may choose either to have that credit applied towards future assessments, until used in full, or request a refund.

The form and manner prescribed by DWD to request a refund is ESS. Where an employer is unable to request a refund via ESS, contact should be made with DWD, by telephone or in writing, to initiate a refund request.

Once received, the refund request will be reviewed. If approved, DWD will mail a refund voucher to be completed. It should be signed by a responsible party, or someone that possesses sufficient authority on the account to request the refund of said overpayment. Once the refund voucher is received by DWD, if approved, the request will be sent to the Auditor of State to have the refund warrant issued. Refund warrants may take up to 60 days to be issued. If the request cannot be approved, someone from DWD will reach out with additional information on next steps.

Per IC 22-4-32-19, not later than four (4) years after the date upon which a payment is made, an employer must request a refund for any payments believed to be erroneously paid or wrongfully assessed. DWD does not allow credits that have aged over 4 years to be refunded, in whole or in part, nor can they be applied towards future assessments, It is the employer's responsibility to monitor their account regularly to ensure that any valid credits are refunded, or fully applied to future assessments, before aging over four (4) years.



The purpose of this guide is to assist employers with correctly determining and reporting quarterly employment and wages to the Indiana Department of Workforce Development (DWD).

Employers are required to report wages for all workers that are engaged in covered employment. Unless a worker or a type of payment to a worker is specifically excluded, employers must report all remuneration (value) received in exchange for services, including the value of non-cash compensation.

Examples of excluded payments included deferred income, Cafeteria 125 (pre-tax) distributions, and payment for service on behalf of a church. To learn more about what to report (subject wages) and what not to report (excluded or exempt wages) please refer to the section titled Special Types of Employment and Payment for additional information.

**Note** – Deferred income becomes subject wages when distributed.

### **E S S Account Credentials**

Before an employer can begin reporting wages in E S S, they must establish credentials to use E S S.

The first step in the registration process is determining the type of registration that the user needs. There are three types of employer registrations – new employer, existing employer, and additional related employer.

#### *New Employer*

If the employer is newly liable for Indiana Unemployment, establishing credentials and creating an employer account for Indiana SUTA purposes are done together by clicking First Time User on the [E S S](#)

## [Welcome screen.](#)

The next screen the user encounters is called “Check Existing UI Account.” To complete this screen, select employer from the first dropdown, “Is this User ID going to be for a UI Employer or Agent Account?”

Select “No” under the question “Do you already have an existing Indiana DWD account number for the account type selected above?”

Enter the Federal Employer Identification Number, F E I N, of the entity that you need to register. DWD does not register employers in anticipation of liability. Unless you have actually paid a worker in Indiana to perform services as described in the section titled Getting Started, please do not attempt to establish a user account in E S S.

If the F E I N entered is not already associated to a valid SUTA account, the next two screens will contain information on successful registration. If you have all of the information needed, click “Register Now” to create a new user account.

Enter all fields with an asterisk (\*).

If you select a username that is already being used in E S S, you will receive an error message, “account already in use.” To clear the error, please select a different username. Normally, adding numbers to the end of the selected username is sufficient to make the username unique. E S S does not currently allow special characters in the username meaning that an email address cannot be used as the username.

If the email address entered has already been used in registering an employer or agent in E S S, you will receive an error message that the email address is associated to an account. Please see the section on linking employer accounts if this occurs.

### *Existing Employer*

If the employer is not newly liable for Indiana Unemployment, creating an employer account for Indiana SUTA purposes is not required. The employer will need to establish their authority to access the existing employer account. This process starts by selecting First Time User on the [E S S Welcome screen](#).

The next screen the user encounters is called “Check Existing UI Account.” To complete this screen, select **employer** from the first dropdown, “Is this User ID going to be for a UI Employer or Agent Account?”

Select “Yes” under the question “Do you already have an existing Indiana DWD account number for the account type selected above?”

Enter the Federal Employer Identification Number, F E I N, of the entity that you need to register.

The next screen will challenge the user to provide the F E I N, SUTA number and last gross wages reported to DWD.

To successfully claim the employer account, there must have been no prior account administrator and all three challenge questions must exactly match the information stored in UPLINK.

If the employer uses a third-party to report wages, the employer will need to contact the third-party to determine the amount of Indiana covered wages posted to the employer's account in UPLINK. This question, gross wages, is total Indiana State Unemployment Insurance (SUI) covered (subject) wages that have been posted. Do not use an amount that is going to be reported or that was not successfully submitted. If the employer reported no wages in the most recent quarter, zero (0) is a valid response.

Once the challenge questions are correctly answered, the user will be prompted to create a user account.

Enter all fields with an asterisk (\*).

If you select a username that is already being used in E S S, you will receive an error message, "account already in use." To clear the error, please select a different username. Normally, adding numbers to the end of the selected username is sufficient to make the username unique. E S S does not currently allow special characters in the username meaning that an email address cannot be used as the username.

If the email address entered has already been used in registering an employer or agent in E S S, you will receive an error message that the email address is associated to an account. Please see the section on Linking Multiple SUTA Accounts to the Same User for an existing account, or Additional Related Employers for a new account if this error occurs.

### *Account Recovery*

If an employer account has an administrator but the employer is unable to access the original administrator's credentials, the employer can recover the account credentials by following these steps:

1. Secure a copy of the most recent quarterly wage and employment report for the business. If it is close to the quarter due date, you may need the last two reports as the security check relies on the most recent quarter posted by IDWD.
2. Go to the UPLINK / E S S website at <https://uplink.in.gov/ESS/ESSLogon.htm>
3. Click "Forgot Password"
4. Click "Replace Administrator"
5. Answer the three-security question using the employer's prior quarterly reporting.
6. Complete the form creating the username and password. If your email address is already associated to an account in E S S, you will need a unique email address to create a new internal user account or link your accounts to the existing user credentials. If you get a message that says "account already in use" it means that the username you have selected is being used by someone else and you need to create a unique username.
7. Accept the affirmation of responsibility and identity
8. Print the New User Account Confirmation Screen

### *Linking multiple SUTA Accounts to the Same User*



Once an internal account user has credentials, a username and password in E S S, they can link any number of accounts that they are responsible for administering. This function is especially useful to PEO client administrators and commonly owned, managed or controlled businesses with shared services divisions.

To link an account, the user selects Add Additional Accounts from the Maintain Accounts menu on the left side of the screen.

The same three challenge questions used to create administrator rights to an employer account when registering as a new user or recovering an employer account will be presented on the add additional account for user screen.

Submitting the correct answers to the challenge questions and affirming the user's authorization to access the account will link the accounts together.

To access a linked account, click the Select an Employer option from the left side menu bar from any other screen in E S S. When the user logs into E S S, the select an employer screen will be presented instead of the home screen once the user is linked to two or more accounts.

### *Additional Related Employer*

If an existing user / employer has login credentials in E S S and needs to register a new employer account, the user can opt to register directly from the Select Account screen without creating new credentials. The registration interview is initiated at the point that a new user would start after logging back into E S S.

### **Reporting: Using the E S S / UPLINK Web Application**

Employers can enter their workers directly on the Wage Reporting screen in the E S S / UPLINK web application if they have fifty (50) or less workers to report. Employers may also use a file for less than 50 workers. Employers are required to use a file to report more than 50 workers.

Employers may create a quarterly report file using either Comma Separated Values (.CSV) or American Standard Code for Information Interchange (ASCII).

.CSV file can be created in spreadsheet applications like Excel.

ASCII files are not recommended for users that do not have specialized computer experience. The basic format for an UPLINK file in ASCII was developed by the Interstate Conference of Employment Security Agencies (ICESA). The original ICESA format has been modified to accommodate Indiana's reporting requirements.

If the employer is using accounting software, they may want to call their service provider and ask how to export a file. The employer should also ask the provider if the exported file is formatted as a .CSV file or an ICESA file.

Please call DWD at 800-891-6499 for help creating a comma separated values (.CSV) file. DWD cannot assist with creating a modified ICESA file.

### **Common Terms / Definitions used in Quarterly Reporting**

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**State Unemployment Tax Account Number (SUTA)** –The number that identifies the employer to DWD. The number is assigned by DWD when the organization is determined by DWD to be operating with covered employment. The number is up to six digits long with leading zeros. If the account number is 1317, the six digits are 001317. Using trailing zeros, for example 131700, could cause the report to post to another employer’s account. If using an ICESA file, the SUTA number in the E and S rows must be the same.

**State Unemployment Insurance (SUI)** – Term used by some payroll companies in describing covered wages. The employer may receive a report from the payroll company that describes a wage calculation as “Indiana SUI Subject Wages.” The number designated as Indiana SUI Subject Wages is the number the employer will need to use to successfully pass the security challenge when creating E S S / UPLINK user credentials.

**Federal Employer Identification Number (F E I N)** –The number that the employer will use to identify the entity that they will use when reporting the worker’s wages on their W2 or 1099.

**Social Security Number (SSN) or Individual Tax Identification Number (I T I N)** –The number that the employer will use to identify the worker when reporting the worker’s wages on the W2 or 1099.

When reporting wages to Indiana, each worker should be reported only one time per F E I N / Zip / employment type combination. The worker can be reported more than one time per SUTA, but only one time per F E I N / Zip / employment type combination.

**NOTE:** Please be aware that some employers are required to use E-Verify and secure the SSN of a worker before allowing them to perform services for remuneration to assure that the person is who they claim to be and that they have authorization to work in the U.S. All employers can be required to repay UI Benefits if they knowingly employ a worker who is not authorized to work in the United States. The Act provides protection against civil penalties if the employer has used E-Verify to validate the SSN provided by the worker.

**Quarter** –A number between 1 and 4 representing the calendar quarter being reported. See the table below for additional information.

**Year** –The four-digit (YYYY) calendar year associated to the calendar quarter being reported. In some computer programs, this may be shown on the screen as CCYY for century / century / year / year. Both examples represent calendar year. Even though the due date for the 4<sup>th</sup> quarter is in the next calendar year, the reporting year is the year when the employer paid the wages.

**Due Date** – The last day of the calendar month immediately following the last day of the calendar quarter. It is the employer’s responsibility to give themselves enough time to report and pay timely. It is a good idea to report early even if the employer is waiting until the due date to make a payment. DWD will assess penalties (10%) and interest (1%) if the employer does not pay by the designated due date. See the table below for information on quarters and due dates.

QUARTER	QUARTER START	QUARTER STOP	DUE DATE
1	January 1	March 31	April 30
2	April 1	June 30	July 31
3	July 1	September 30	October 31
4	October 1	December 31	January 31

**Standard Occupational Classification (SOC Code or SOC)** – The SOC Code system is a federal statistical standard used to classify workers into occupational categories for the purpose of collecting, calculating or disseminating data. Employers can use a job title to find the SOC Code online using this website. Report only the first six digits (XX-XXXX) any additional information after the first six digits is not required / reported.

<https://www.hoosierdata.in.gov/coder/>

When reporting wages to Indiana via .CSV or ICESA, enter the first six digits of the SOC Code with no dashes for each worker. When using E S S to manually enter wages, the dash will be automatically inserted as part of the display formatting. Dashes should not be manually entered or included in the file.

**Start Date** – This is when the worker began their current employment with the employer. If the worker has a gap in employment of sixty (60) days or more, the start date is the date on which the worker returned.

**NOTE:** Employers must report all new hires *including returning workers* to the Indiana New Hire and National New Hire registries.

**Zip Code of Primary Work Location** – In general, this is the zip code where the worker spends the majority of their time. If the worker routinely travels as a part of their job, it is either where the worker starts from, if they have a base of operations, or where the worker is directed from – like a central office, as long as it is in Indiana. If none of these apply, it can be the zip code where the worker resides if the worker sometimes works in the same state where they live. If none of those locations is in Indiana, the employer may need to report the person to a state or jurisdiction other than Indiana. Call DWD at 800-891-6499 and ask for help with localization.

**Full Time / Part Time / Seasonal** – If the employer has a seasonal code approved by DWD for the person being reported, then use that 2-digit code (01 – 99). See the employer handbook for information on applying for seasonal status if the business operates less than 26 weeks each calendar year or has functionally distinct operations less than 26 weeks total each calendar year. Seasonal codes are for a specific range of dates provided by the employer on the seasonal application. If the employee is not seasonal, use Full Time (FT) or Part Time (PT) as defined by your industry standards (if any). There is no DWD definition of Full or Part time – this is an employer defined designation.

**NOTE:** Only DWD can assign seasonal status; employers cannot self-designate without approval. The quarterly report file will have an error if a seasonal code that has not been approved by DWD is used, or if a seasonal code that does not match the quarter being reported is used.

**Location** – A location is a unique combination of SUTA, F E I N, Primary Zip code, and Full Time / Part Time / Seasonal.

**EXAMPLES:**

SUTA 000001+ F E I N 999999999 + Zip Code 46204 + Full Time / Part Time / Seasonal FT =  
Location 1

SUTA 000001+ F E I N 999999999 + Zip Code 46204 + Full Time / Part Time / Seasonal PT =  
Location 2

SUTA 000001+ F E I N 999999999 + Zip Code 46278 + Full Time / Part Time / Seasonal FT = Location 3

SUTA 000001+ F E I N 999999988 + Zip Code 46204 + Full Time / Part Time / Seasonal FT = Location 4

SUTA 000001+ F E I N 999999999 + Zip Code 46204 + Full Time / Part Time / Seasonal 01 = Location 5

**Employed on the twelfth (12<sup>th</sup>) day of the month** –If the worker is performing services or is being compensated during a pay period containing the 12th day, then the worker is employed on the twelfth (12<sup>th</sup>) day of the month. This includes both full-time and part-time workers who worked or received wages subject to unemployment during the pay period. The count should be unduplicated, so if the worker is being reported under the same SUTA but for multiple locations, be sure to indicate “Yes” only one time per worker.

### **Other Important Considerations**

**Status Changes and Transfers** – If the employer closes, reorganizes, transfers, sells, or otherwise disposes of their Indiana business operations, they must report the status change to DWD within thirty (30) days of the change. The report can be completed in the UPLINK / E S S web application or by filing SF46800 (SUTA Account Termination or Transfer Request) which can be downloaded from <https://www.in.gov/dwd/2406.htm>.

If the employer changes their legal mailing address or name, they must report the status change to DWD via the UPLINK / E S S web application or by filing SF2837 (SUTA Account Number Registration and Disclosure Statement) which can be downloaded from <https://www.in.gov/dwd/2406.htm>.

If the responsible party changes, the employer should update this information in the UPLINK / E S S web application. In some cases, the responsible party information is used to assess financial liability (a tax lien or tax warrant) as a personal liability to the named individual; thus, it is important to keep this information updated.

**NOTE:** The responsible party is the individual or entity which controls, manages, or directs the employer and the dispositions of its funds or assets.

If two or more businesses in Indiana have substantial common ownership, management, or control and one business transfers any assets -- including workforce -- to the other business, a mandatory transfer has occurred under IC 22-4-11.5-7. The mandatory transfer must be reported to DWD via the UPLINK / E S S web application or by filing SF2837 for the business that received the assets and SF46800 for the business that transferred the assets.

If a new business or an existing business gains, by any means, the operational assets and / or workforce of another business, the new or existing business must report the transfer to DWD via the UPLINK / E S S web application or by filing SF2837.

**Independent Contractors** – To be considered an independent contractor in Indiana for Unemployment, the relationship between the individual performing services (worker) and the entity for which services are performed (business) must meet all three of the following tests. Failing any one part of the test means that the worker must be reported as an employee of the business for unemployment purposes.

The worker must be essentially free from the direction and control of the business including the business' right to direct or control the worker. And;

The worker must be performing services which are not in the usual course of the business' operations. And;

The worker must be independently established in the same trade or business as the services performed for the business and must be able to offer the same services to the general public.

**Additional Penalties** – If the employer does not make a required report, DWD will assess the employer with a \$25 penalty for each missing report.

If the employer does not provide all the information required on the report, DWD will assess the employer with a \$25 penalty for each inadequate report.

**E S S / UPLINK Wage Reporting Error Messages**

If the manually entered record or uploaded file is missing information or is incorrectly formatted, Uplink will generate an error report. Three levels of errors may display on the error report:

**Upload (Critical) Errors** prevent the employer from submitting a report. For file upload, if any of these errors occur, the report will not show any of the other error types.

**Adequacy Errors** result in DWD assessing a penalty if the employer does not correct them. The employer will still be able to submit the report. DWD will make additional attempts to contact the employer and obtain the missing information before assessing any penalty.

**Warnings** are incomplete or missing fields that do not result in a penalty to the employer if not corrected. The employer may still submit a report with warnings.

Error Description	Error Type	Penalty
Invalid or missing SUTA.	Upload	N/A
Wrong Quarter / Year	Upload	N/A
Missing Required Data	Upload	N/A
Wrong Character type.	Upload	N/A
Duplicate Record	Upload	N/A
Invalid Social Security Number	Adequacy	Yes
Invalid / missing F E I N	Warning	F
Non-Indiana Zip Code	Warning	F
Invalid / missing SOC	Warning	F
No response to any 12 <sup>th</sup> day of the month question	Warning	F
Invalid PT/FT	Warning	N/A
Invalid Seasonal Code	Warning	No
First or Last name is short. One letter is required.	Warning	No

Error Description	Error Type	Penalty
Invalid Middle Initial. Use a Space if not known	Warning	No

The table above provides additional information on the error types and severity of the errors. Please be aware the errors marked (F) in the table below may be subject to penalty assessment in the future. If there is information that the employer is not able to provide, example being SOC code, complete the field with zeros (for numeric fields) or spaces (alpha fields).

Downloadable reports containing errors and warnings for both file upload and manual entry will provide information on any errors or warnings.

## **SPECIAL TYPES OF EMPLOYMENT AND PAYMENT**

The following information will help to determine whether special types of employment and wages are subject compensation or exempt compensation. Some wages are covered or exempt only under certain conditions. These are noted as conditional.

Advances against future earnings = Subject.

Agricultural Labor = Conditional. Once an employer has 10 workers in 20 calendar weeks in the same calendar year or \$20,000 in cash wages in a single calendar quarter, the wages become subject wages and the employer becomes liable for unemployment.

Aliens, Resident: Services performed in the United States = Subject.

Aliens, Resident: Services performed outside of the United States = Conditional. Wages are subject if services are performed in connection with an American vessel or aircraft and performed under contract; or the alien is employed on such a vessel or aircraft when it touches a U.S. port.

Annuities: Payments made by the employer into a fund for retirement or death benefits under a plan offered to all employees or a certain class or classes of employees = Exempt.

Back Pay: Wages paid due to a dispute related to employment = Subject.

Bonuses = Subject.

Cafeteria Plan: Deductions under Internal Revenue Code section 125 = Conditional. Payments are exempt unless the employee chooses cash (pre-tax). If the employee chooses another benefit, the treatment is the same as if the benefit was provided outside of the plan.

Commissions = Conditional. Subject unless the worker is compensated solely by way of commission (absolutely no other cash or non-cash compensation) and is the master of their own time and effort.

Corporate Officer Payments: Corporate officers performing a service for the corporation (applies to Subchapter S, C Corp, and LLC electing to be treated as a corporation) = Subject.

Cosmetologists or Barbers = Conditional. Exempt only if all of the following conditions are met: 1. practitioner is licensed; 2. contracts with a shop; 3. is free from control and direction of the shop owner; 4. owns or leases equipment; 5. receives payment from clientele and 6. acknowledges in writing that they are not covered by UI.

Deceased Worker: Wages paid to beneficiary or estate after calendar year of worker's death = Exempt.

Deceased Worker: Wages paid to beneficiary or estate in year of worker's death = Subject.

Deferred Compensation = Subject when constructively received (paid).

Dependent Care Assistance Programs: (Limited to \$5,000 annually, \$2,500 if married filing separately) = Conditional. Exempt only to the extent that it is reasonable to believe the amounts are excludable from gross income under Internal Revenue Code section 129.

Director Fees: Fees paid to directors of a corporation for attending meetings of the board of the directors = Conditional. Exempt if the director performs no service other than attendance at, and participation in, the meetings.

Disabled Workers: Wages paid after year in which worker becomes entitled to disability insurance benefits under the Social Security Act = Subject.

Employee Benefit Expense Reimbursement: Amounts over the specified government rate for per diem or standard mileage = Subject.

Employee Benefit Expense Reimbursement: Amounts not exceeding the specified government rate for per diem or standard mileage = Exempt.

Family Employees of a Sole Proprietor or SMLLC not electing to be treated as a corporation: Minor child employed by parent = Exempt.

Family Employees of a Sole Proprietor or SMLLC not electing to be treated as a corporation: Child 21 or older employed by parent = Subject.

Family Employees of a Sole Proprietor or SMLLC not electing to be treated as a corporation: Parent employed by sole proprietor = Exempt.

Family Employees of a Sole Proprietor or SMLLC not electing to be treated as a corporation: Spouse employed by sole proprietor = Exempt.

Foreign Government or International Organization = Exempt.

Foreign Service by United States Citizens: For American employers = Subject.

Foreign Service by United States Citizens: As U.S. government employees = Exempt.

Holiday Pay = Subject.

Home Workers (industrial, cottage industry): Common law employees = Subject.

Home Workers (industrial, cottage industry): Statutory employees = Subject.

Hospital Employees: Interns = Exempt.

Household Employees: Domestic service in private homes, college clubs, fraternities, and sororities = Conditional. Subject if total cash wages are \$1,000 or more (for all household employees combined) in any quarter in the current or preceding calendar year.

Insurance Agents or Solicitors: Full-time life insurance salesperson or other salesperson of life, casualty, or other varieties of insurance = Conditional. Subject if employee is not paid solely by commissions.

Insurance for Employees: Accident and health insurance premiums under a plan or system for employees and their dependents generally or for a class or classes of employees and their dependents = Exempt.



Insurance for Employees: Group term life insurance costs = Exempt.

Leave-Sharing Plans: Amounts paid to an employee under a leave-sharing plan = Subject.

Limited Liability Companies (LLCs): Payments made to member workers of member-managed LLC where the workers do not also manage, and all LLCs electing to be taxed as corporations = Subject.

Newspaper Carriers and Vendors delivering to customers = Conditional. Exempt if one of the following conditions are met: 1) Newspaper carriers under age 18, or 2) newspaper and magazine vendors buying at fixed prices and retaining receipts from sales.

Non-Profit Organizations (NPO) not qualifying as 501(c)(3) entities = Subject.

Non-Profit Organizations (NPO) qualifying as 501(c)(3) entities = Conditional. Subject unless specifically excluded once the organization has 4 or more workers in 20 weeks in the same calendar year.

Officers or Shareholders of a Corporation including LLC electing to be taxed as a corporation = Conditional. Subject where distributions and other payments made by a corporation to a corporate officer or shareholder are reasonable compensation for services to the corporation by the officer or shareholder.

Partner or Sole Proprietor: Distribution of profits to general or limited partners of a partnership or to a sole proprietor = Exempt.

Railroads: Payments subject to the Railroad Retirement Act = Exempt.

Religious / Church: Organization operated primarily for religious purposes and managed, supervised, controlled, or primarily supported by a Church, Association of Churches or Convention of Churches and all Churches, Associations of Churches, and Conventions of Churches = Exempt.

Retirement and Pension Plans: Elective employee contributions and deferrals to a plan containing a qualified cash or deferred compensation arrangement (e.g., 401(k)) = Conditional, but generally Subject. Please see Publication 15-A of the Social Security Administration for more information on employee contributions.

Retirement and Pension Plans: Employer contributions to a qualified plan = Exempt.

Salespersons: Statutory employees = Subject, except as noted for commissions.

Salespersons: Common law employees = Subject.

Severance, Termination, or Dismissal Pay = Subject.

Sick Pay = Subject for the first 6 months following the last month in which the employee performed services.

State/Local Governments and Political Subdivisions (Employees of) = Conditional. Subject unless specifically excluded.

State/Local Governments and Political Subdivisions (Employees of) Payments (including salary and wages) to most elected and appointed officials = Exempt.

State/Local Governments and Political Subdivisions (Employees of): Precinct Election Workers = Exempt.

Student, Scholars: Student enrolled and regularly attending classes, performing services for a private school, college, or university; auxiliary non-profit organization operated for and controlled by school, college, or university; or public school, college, or university = Exempt.

Tips or Gratuities reported in writing to employer = Subject.

Vacation: Paid vacation for employee = Subject.

Worker's Compensation = Exempt.

## SEASONAL EMPLOYMENT



Seasonal employment is service performed for a DWD approved seasonal employer during the approved seasonal period of less than 26 weeks. UI benefits may be paid to individuals on the basis of service performed in seasonal employment only if the claim is filed within the approved seasonal operating period. If the claim is filed outside the seasonal operating period, benefits may be paid only on the basis of any non-seasonal wages.

Thus, having seasonal status protects the employer's experience balance – and the Indiana Trust Fund – from a seasonal worker being paid while unemployed during the off-season. An employer must pay contribution on seasonal wages because a claimant can use the wages if they meet certain qualifications – like being laid off from a subsequent job during the seasonal employers "on" season.

### **Qualifying as a Seasonal Employer**

A seasonal employer operates all or part of a business for recurring periods of less than 26 weeks in a calendar year due to either the seasonal nature of the business or climatic conditions. As part of the application process, employers are required to submit information about the nature and function of all jobs that should be classified as seasonal **and** for all jobs that are not classified as seasonal.

It is very important that employers complete this job analysis carefully and completely. Seasonal status cannot be granted for a job which is functionally similar to a non-seasonal job. The location of the work is not a factor in this determination - only the work that is actually performed is taken into consideration.

As an example, there are employers that maintain rental properties that are open year-round and rental properties that are open only during a distinct tourist season. During the tourist season, the employer hires housekeeping staff for the purpose of cleaning the properties that are only open during the tourist season. Because the duties being performed by these staff are the same as the duties performed by housekeeping staff on the year-round properties, this is considered a temporary increase in staffing, not seasonal employment.

On the other hand, if the same employer hires security personnel to maintain the seasonal properties while they are not available for rental, the security personnel might qualify for seasonal status if the off season for these properties is less than 26 weeks each calendar year.

Employers may qualify for multiple seasonal periods, but the total of all seasonal periods must be less than 26 weeks each calendar year.

In order to be considered a seasonal employer for UI reporting purposes, the employer must file Form 2003 (Request for Seasonal Determination Status) with DWD. DWD will issue a decision within 90 days of receiving the request. After DWD approval, an employer assumes seasonal employer status effective the first day of the next calendar quarter.

In order to qualify as a seasonal employer for a portion of the business, that portion must be identifiable as a distinctly different operation. For example, a municipally owned golf course would be considered a distinctly different operation from the municipality. If it is in operation less than 26 weeks each calendar year, the golf course could qualify as a seasonal employer.

As a part of the application process, the business must inform DWD of the number of positions it wants to have classified as seasonal within the approved seasonal portion(s) of the business. Opening and closing dates of each seasonal operation must also be specified. DWD provides special forms for this information. Please call (800) 891-6499 and select the employer tax option to request the forms.

If the business is approved for seasonal status, it must keep an accurate account of wages paid to seasonal workers within the approved seasonal period. The business should report all covered wages quarterly, and seasonal wages are covered wages for all reasons. One of the fields on the wage report is used to indicate the season number approved by DWD for the employee. Even if the entire workforce of the employer is approved for seasonal status, the employer must report the season at the worker level on the quarterly wage and employment report for the wages to be excluded from a claim for unemployment benefits made by the worker.

### **Loss of Seasonal Employer Status**

If the employer's seasonal operation exceeds 26 weeks in a calendar year, the organization must notify DWD within 30 days.

Seasonal status is automatically lost for the period of operation after that calendar quarter. The employees can use the wages paid in this period as regular wages to establish UI claims.

Once lost, seasonal employer status can be re-applied for in any calendar year after the year in which the designation was revoked.

## **BUYING, SELLING, TRANSFERRING, OR REORGANIZING A BUSINESS**

Buying, selling, transferring, or reorganizing a business will likely impact the Indiana unemployment insurance account.

DWD determines acquisitions based on the **continuation** of all or a part of an existing trade or business from the previous owner to the new owner. If the organization intends to acquire all or part of an existing Indiana business and to use the acquired assets in the operation of the business, then file an intent to acquire notice with DWD no less than five (5) days prior to the expected transfer date. Once this notice has been filed, the organization is allowed limited access to information regarding the proposed disposer's UI experience balance and standing with DWD.

A determination of successorship does not require that the ownership of the corporation change or that the predecessor and successor share ownership, management, or control. For purposes of successorship, the transfer of the workforce is the transfer of an asset and can be considered to be a continuation of the previous business in certain circumstances. For questions on the applicability of successorship rules to a specific organization, please contact DWD at (800) 891-6499 and select the employer tax option.

Please note that predecessor and disposer mean the same thing and acquirer and successor mean the same thing.

There are certain types of business reorganizations or transfers of assets including employees between entities that constitute a mandatory transfer under the SUTA Dumping Prevention Act and do not require that DWD believe that the transfer has resulted in a substantial continuation of all or part of the prior business operations. Where the assets are commonly owned, managed, or controlled by parties to the transfer, DWD is required by the Act to transfer a like amount of experience balance and to rate the parties by blending the experience balance as immediately as possible to the transfer event. For transfers meeting these criteria during the first quarter of the year, the rate blending is retroactive to the first day of the year. If the transfer does not occur during the first quarter the blended rate is effective as of the first day of the following calendar year.

Professional Employer Organizations (PEO) not registered as employers with DWD are required to report client accounts under the client's assigned SUTA account (client level). If the PEO has elected PEO level reporting, the clients of the PEO are predecessors to the PEO when they join the PEO and are partial successors of the PEO when they leave the PEO.

Employers using a PEO are still required to report the operational changes. The business must report when they join the PEO and transfer the employees to the PEO for reporting. The employer is the disposer when they join the PEO because they are disposing of their employees to the PEO for reporting purposes.

When an employer leaves a PEO, the PEO becomes the disposer, and the employer acquires back the portion of the PEO that represents their business as a percentage of the total business of the PEO.

The PEO is separately required to report client additions and deletions to DWD.

### **Complete Transfer of Indiana Operations (Ind. Code § 22-4-7-2(a))**

Whether the business is new to the state of Indiana or is already paying Indiana UI premiums, it must

notify DWD when a transfer of an organization, trade, or business occurs. This notification is required even if the business does not agree that a successorship for unemployment purposes has happened.

DWD will determine that the transfer is a **complete successorship** in the following circumstances:

- An entity acquires (purchases, leases, or takes control of) **substantially all** of the operational assets of an Indiana employer which results in the continuance of an organization, trade, or business in full or in part;
- An entity is issued a new federal identification number, merges, incorporates, or reorganizes the business in any manner, or
- An entity gains the **right** to operationally control an organization, trade, or business operating as an employer in Indiana.

DWD will make a determination of successorship, which the entity is able to protest if it disagrees with the determination.

A complete transfer of Indiana Operations occurs when a new employer has the right to use the assets of a business that discontinued operating in Indiana as an employer.

**Example:** A new business buys all of an automotive service center, but only intends to operate an oil change facility. The new business sells all of the assets acquired that are not useful and does not retain any of the former owner's employees. This is a complete transfer for the limited purposes of unemployment insurance.

The reason that DWD is required to hold successorships as described in this example is to correctly assess the risk of unemployment claim filing as a result of the change – or lack of change – in the business operations.

A successorship for Unemployment purposes is not the same as a statutory merger or a transfer of ownership for any reason other than determining the unemployment rate and liability of the surviving business.

New successor employers take over the experience account balance, liabilities, and premium rate of the previous owner.

If the business is a current employer, it retains the current rate through the end of the calendar year of the acquisition, and then receives a blended rate for subsequent years.

Where the employers correctly report the transfer, DWD will use the wage data reported by the previous owner for computing the excess wages for the employees retained.

All outstanding liabilities are assumed by the successor. If the successor has notified DWD of the intended transfer no less than five days in advance, the successor is entitled to receive information on the standing of the disposer.

Please send notice of intent to acquire to [DWDESSCommunications@dwd.IN.gov](mailto:DWDESSCommunications@dwd.IN.gov) to notify the Agency of the intent to transfer and to document the standing of the employer. There is no specific state form for intended transfer notification.

The acquirer must notify DWD via E S S or complete State Form 2837 (SUTA Account Number Application and Disclosure Form). This notification is required even if the acquirer already has a SUTA number.

The disposer must notify DWD via E S S or complete State Form 46800 (SUTA Account Termination or Transfer Request).

Notification is required from both the acquirer and the disposer no more than 30 days after the transfer has occurred. If the transfer occurs after the beginning of a calendar quarter, both the disposer and the acquirer must file quarterly reports for the quarter in which the transfer occurred.

The disposer must report the wages paid from the first date in the quarter until the transfer of ownership. These reports and any associated UI premiums are due from the disposer immediately following the transfer of ownership even if the quarterly due date is sometime in the future. The acquirer's liability cannot be assessed until DWD knows the amount of wages reported for the transferred workers, if any, from the disposer.

Filing in E S S is required. If a hard copy state form is used, ensure it is a current form. Using older versions of a form may delay processing. All of the Agency's current state forms can be found at [unemployment.IN.gov](http://unemployment.IN.gov)

### **Partial Transfer of Indiana Operations (Ind. Code § 22-4-7-2(b))**

Whether the business is new to the state of Indiana or is already paying Indiana UI premiums, it must notify DWD that a transfer of an organization, trade, or business has occurred even if the business does not agree that a successorship should be determined.

DWD will determine that the transfer is a partial successorship in the following circumstances:

- A distinct and separate (segregable) portion of an organization, trade, or business operating as an employing unit in Indiana is acquired (purchased, leased, or taken control of by any means); or
- All or part of the workforce of the business is transferred to a new entity or between existing employing units in Indiana and the transfer results in a partial continuation of the disposer's business.

DWD will make a determination of successorship, which the employer is able to protest if they disagree with the determination.

If the business is determined to be a successor, it may use the wage data reported by the previous owner for computing the excess wages for the employees the new owner retains. The previous owner must transfer a proportionate amount of the experience balance and the merit rate based on the portion of the business being transferred.

The new owner must notify DWD via E S S or complete State Form 2837 (SUTA Account Number Application and Disclosure Form). This notice is required even if the new owner already has a SUTA number.

The previous owner must notify DWD via E S S or complete State Form 46800 (SUTA Account Termination or Transfer Request). Notice from both employers is due to DWD no more than 30 days

after the transfer date.

Failure to notify DWD will result in DWD making a determination of the portion of the transfer based on the best information reasonably available to DWD. Usually, this means that DWD will use the amount of wages transferred to determine the percentage of business transferred. DWD can use any percentage for the change between 0.01 and 99.99 depending on the information available.

If the new owner has an existing DWD account, the owner's merit rate will be retained until the following calendar year.

**Important** – there can be serious costs for not reporting a transfer to DWD.

Always report transfers to DWD, even if the business does not think DWD should hold a transfer under the Act. A determination of transfer can be protested by the disposer or the acquirer if the employer does not believe that a continuation of business has occurred. The business has fifteen (15) days from the date that DWD sends the determination notice to protest in writing.

DWD is required to detect and hold successorships between Indiana employing units even if the parties to the transfer do not report that a transfer occurred. DWD will use the internet, press releases, wage record movement, employee interviews, and the continuation of identity (such as an acquirer using Facebook, telephone numbers, websites, YELP listings, Better Business Bureau account, physical address, or other non-tangible assets of the disposer) as the basis for determining that the parties have failed to report a required transfer. Failure to report a transfer can result in a retroactive increase in the merit rate of the acquirer which means that they will be assessed additional contributions, interest, penalties, surcharge (when applicable), and penalty rates as required.

DWD has up to four years from the date on which the transfer occurred to make a determination and can assess interest retroactively for all four years at 1% per month. Interest will continue to accrue from the point in time of the assessment of additional contribution, until all of the contribution has been paid.

A retroactive rate increase will also result in an underpayment penalty of 10% of the additional contribution due. This is a one-time penalty for each quarter / year affected by the late determination.

If DWD determines that the employer intentionally failed to report a transfer, and there is evidence of substantial common ownership, management, or control between the predecessor and successor, civil penalties can be applied.

If DWD can show that the acquirer knew that they were required to report, then they can go back more than four years and add another 50% penalty for the intentional failure. Thus, failing to report can be a costly error for the employer. When in doubt, report and let DWD make a determination if any conditions apply to the business.



## **DISSOLUTION, LIQUIDATION, WITHDRAWAL OF A BUSINESS**

Organizations are required to file documentation with DWD in the event that they are ceasing to operate, distributing assets, or otherwise removing themselves from Indiana operations whether voluntarily or involuntarily. This requirement applies to all organizations whether non-profit, for profit, corporate or noncorporate entities.

The form of notification required by DWD is SF46800, SUTA Account Termination or Transfer Request, which can be located [here](#) or by calling (800) 891-6499 and select the employer tax option. SF46800 should be filed within thirty (30) days of the final decision to cease business operations.

If the organization fails to notify DWD as required, all responsible parties will become personally responsible for any liabilities owed to DWD under the Act. A responsible party is (1) for a corporate entity, the corporation's officers and directors; or (2) for a non-corporate entity, the entity's chief executive.

Failure to timely file the notice of dissolution can result in the assessment of penalties in addition to any other assessments made against the organization and / or the organization's responsible parties. The penalty is thirty percent (30%) of the contribution outstanding at the time of the dissolution assessed to the responsible parties if reasonable efforts are not made to set aside assets to pay DWD at the time of dissolution.

If the organization is in good standing with DWD at the time of the cessation of business operations, and if a responsible party timely files SF46800 along with a request in writing for a clearance letter, DWD will issue such clearance releasing the responsible parties from personal liability for any outstanding liability to DWD. Only those responsible parties disclosed to DWD as an attachment to the SF46800 can be protected by DWD's issuance of a clearance letter.

## COLLECTION ACTIONS

Employers are required to make payment in full for all assessment of contributions, surcharges and / or reimbursements on or before the due date provided in statute.

The due date for reimbursement is the end of each calendar month for the prior month's benefit charges. The due date for contribution and surcharge is the last day of the month following the last day of the calendar quarter. See the section titled E S S Wage Reporting Guide for a chart of contributory due dates.

If an employer fails to make required payment timely and in full, the employer can be subject to a number of punitive measures such as interest, penalties, fines, fees, damages, and court costs.

Reimbursable employers will receive a monthly invoice which will reflect any unpaid invoices in addition to the current amount being assessed. If a reimbursable employer wishes to dispute the amount of any current invoice, they must do so by filing a written protest not later than fifteen (15) days after the invoice is mailed by DWD. The mailing date and the invoice date printed on the invoice are the same date. If the employer does not protest the current portion of the invoice within the time period allowed by statute, then the employer must pay the invoice in full by the end of the month. The employer tax protest form, SF55109, can be found [here](#).

Please be aware that DWD has the presumption of being correct when issuing an invoice, so the accrual of interest is not stopped (stayed) by a protest. The employer should also be aware that part of the election to be reimbursing is a certification that the employer will make payment in full as invoiced.

If the employer does not win the protest, they will be required to pay all assessments including any interest associated with the failure to make a timely payment. DWD will not initiate any collection action during the time that the invoice is under protest, but the employer is strongly encouraged to make the payment in full by the due date and seek a refund after the protest has been decided by the liability administrative law judge to avoid being assessed with interest.

Contributory employers receive a notice of assessment only when contribution is established for a quarter. In addition to any other notices regarding an assessment, DWD will issue a notice and demand to a contributory employer if collection action is to be initiated. Employers should respond promptly to the notice and demand – in writing or by creating a repayment agreement. Employers have fifteen (15) days from the notification date of the assessment or notice and demand, whichever is earlier, to protest the amount that DWD has determined that they owe. The employer tax protest form, SF55109, can be found [here](#).

As with reimbursable invoices, DWD is considered to have correctly assessed the employer at the time the assessment is made. DWD will not initiate collection action while the assessment is under protest, but the protest does not stop the accrual of interest on the balance due. Employers are strongly encouraged to pay all assessment even if they are protesting to keep interest from accruing on the balance due. If the employer wins the protest, they can receive a refund of any payment where DWD has wrongfully assessed the amount due.

If the employer has not protested the assessment or entered into a repayment agreement, DWD has the authority under the law to take aggressive collection action.

DWD can file a tax lien with the clerk of the county court against the person and property of the business including the responsible parties as described in the section titled Dissolution, Liquidation, Withdrawal of a Business.

DWD can request that the sheriff serve a tax warrant on a business which can include such actions by the sheriff as a bank levy or seizure of the business assets for sale at auction.

DWD can file a request with the Attorney General to enjoin a business against operating in Indiana.

DWD can levy the bank account and / or the accounts receivable of the business.

DWD can intercept any tax returns of the business – and of the responsible parties as described in the section titled Dissolution, Liquidation, Withdrawal of a Business.

Employers can avoid collection action by filing all required returns in a timely manner, communicating changes in the filing status of the business promptly to DWD, and responding to all mailings from DWD in writing.

If your business experiences a cash flow problem or needs additional time to make payment in full on a quarterly return, payment agreements are available if certain conditions are met. Please contact DWD to learn more about payment agreements before DWD is forced to take collection action against you or your business.

### **Failure to pay – Legal Actions**

If the organization fails to pay quarterly UI premiums timely, the following will occur:

- A penalty charge of 10% of the unpaid quarterly contribution amount will be assessed to the account;
- The organization will be charged 1% interest on the premium amount due for each month, or partial month, any part of the contribution is outstanding; and
- A penalty of 50% of the outstanding amount will be assessed if it is found that the organization committed fraud with the intent to evade payment.

If the quarterly assessment is not paid in full by the due date, a “Notice and Demand” will be sent. The organization may get a Notice and Demand if a mailed payment has not been received and processed on or before the due date. Employers are required to pay electronically to avoid delays in payment posting and credit.

The Notice and Demand will detail all outstanding liabilities due for specific quarters but does not show the total amount of the original assessment. Please refer to the Notice of Assessment or Notice of Amended Assessment found in the Employer Summary section of E S S to determine the basis for the liability.

Failure to pay a Notice and Demand will result in additional collection activities. For questions concerning the amount, please contact DWD immediately at 800-891-6499 and select the employer tax option.

DWD may acquire a lien on the employer's personal property for delinquent contribution, surcharge, interest, and penalty charges.

In Indiana, it is considered **fraud with the intent to evade payment**, a misdemeanor, for an employer to:

- Make a false statement to prevent or reduce benefit payments;
- Encourage or induce an individual to waive or forego benefits rights; or
- Fail to testify or answer any lawful inquiry.

The law also provides a penalty for any person who willfully violates any provision of the DWD Act.

**DWD aggressively pursues delinquent accounts. Delinquent employers should either pay the amount due or contact DWD as soon as possible to discuss payment options. Payment agreements are available to any employer that needs to arrange for payment over-time and has not previously defaulted on a payment agreement. Please contact DWD at 800-891-6499 and select the employer tax option for details on down payment and monthly minimums.**

## EMPLOYER EXPERIENCE ACCOUNTS



This section of the guide will explain how UI benefits are determined and how they affect the employer's experience account. If the organization recently bought or sold any portion of the business, see the section titled Buying, Selling, Transferring, or Reorganizing a Business for important details regarding the experience account.

### **Employer Experience Account Components**

The contribution portion of all UI premiums is collected by DWD and deposited into the UI Trust Fund. An individual account record is maintained for every employer covered under the Act. One way to think about the Employer's experience account is as an Unemployment Insurance checkbook.

Every time the organization pays UI premiums or voluntary payments, the amount is deposited to the organization's experience account. Money is withdrawn from the account only for UI benefits paid to former employees, including employees working reduced hours or laid-off employees, and for a portion of the Mutualized Benefit Charges.

The experience account may not be credited for overpayments if those overpayments resulted from a failure by the organization to respond in a timely or adequate manner to DWD's requests for information related to a claim, and if the organization has a pattern of failing to respond to requests for information.

Claimants do not file an unemployment insurance (UI) claim against a specific business, they file a claim

against their own earnings in the base period of a claim. DWD makes the decision on which accounts are, or are not, charged in a claim. The claimant has no control over this decision. UI benefit payments are charged proportionately to **all of** the claimant’s employers during the “base period”. (**Base Period is discussed below.**)

### *Qualifications for UI Benefits*

In order to be eligible for benefits, an individual must:

- Earn sufficient wages during the base period;
- Be unemployed through no fault of their own; **and**
- Be able, available, and actively seeking full-time work.

Each of these criteria will be addressed in more detail below.

### **Sufficient Wages Earned During Base Period**

An individual’s **base period** consists of the first four of the last five completed calendar quarters. To establish a valid claim, an individual must have total wages during the base period that are at least one and one-half (1.5) times greater than the claimant’s highest quarter wages. The claimant must also have base period wages totaling at least \$4,200 with \$2,500 of those wages earned in the last six months of the base period.

**Example:** *A claim started January 6, 2018, has a base period that starts in October 2016 and ends in September 2017. In order to qualify for benefits:*

- The claimant must have earned total base period wages that are 1.5 times greater than their highest quarter wages
- The claimant must have earned at least \$4,200 during the base period (October 2016 through September 2017), **AND**
- The claimant must have earned at least \$2,500 during the last 6 months of the base period (April 2017 through September 2017).

### **Benefit Amount**

To determine the maximum weekly benefit amount, divide the total base period wages by 52. Then, multiply that number by 0.47. The weekly benefit amount should be rounded down to the next whole dollar amount. The WBA is based on the total wages earned in the base period. The maximum WBA in Indiana is \$390.

- For example, if the total wages in the base period was \$30,000 then the WBA would be:  
 $\$30,000 \div 52 = \$576.92$

$576.92 \times 0.47 = \$271$  (weekly benefit amount rounded down to the next whole dollar amount)

## Unemployed Through “No Fault of Your Own”

Employees are only entitled to UI benefits if they are unemployed through no fault of their own. If the person quits voluntarily (without a good, work-related reason), is discharged for just cause, or is discharged for gross misconduct, that individual is not eligible for UI benefits. See the section titled Employer Experience Accounts for further explanation of just cause and gross misconduct.

## Able, Available and Actively Seeking Work

Benefits can be denied or reduced if the individual:

- Refuses a suitable job offer;
- Refuses or fails a pre-employment drug screening - Report an individual who refuses or fails a drug test by filing a protest form, available online [here](#).
- Fails to participate in required re-employment programs;
- Does not show proof they are actively searching for work according to the DWD specified work search requirements;
- Is temporarily not able to work due to illness, injury, leave of absence, or a suspension due to work-related misconduct.

A claimant’s weekly benefit payment can be reduced by one-third (1/3) for each day they are unavailable.

### *Examples of Individuals NOT Eligible for UI Benefits*

#### **On-Call or As-Needed Workers During any Week They Work or Refuse Work**

- **Statutory Authority:** IC 22-4-3-3 [effective July 1, 2011]
- **Definition of on-call or as-needed worker:** Those who are regularly and customarily employed on an on-call or as-needed basis and are paid during any week for services by an employer, or have work available from the employer. If working for an employer, the individual works whenever the employer requires and there is no set work schedule.
- **How it works:** On-call and as-needed workers are not eligible for unemployment benefits if they receive pay OR refuse work during any week.
- DWD must be able to determine whether the individual knew at the time of hire they would not have a set work schedule and hours would fluctuate according to need AND must be able to determine when individual worked or refused work during any week.
  - Below are some examples of items that may assist DWD in making this determination:

- 1) Evidence of individual's acceptance of offer to work.
  - Examples of evidence of individual's knowledge of on-call or as-needed position: Job description, job posting or written published policy about specific position
- 2) Evidence showing that the individual was paid for services performed on behalf of the employer.
  - Examples of evidence for payment of earnings: individual's paycheck, direct deposit form, or warrant specifying the weeks the individual was paid; or
- 3) Evidence that the individual declined available work at any point in time during the week or weeks at issue. This means evidence of
  - 1) when the employer notified the individual of available work AND
  - 2) when the individual failed to report to work.
  - **Examples of evidence of proper notification:** written communications with dates, times and number of available hours, or verbal testimony by the individual's supervisor reflecting the same information; established policy and procedures required to be followed to determine if work is available (i.e.: automated job lines or call-in procedures).

**Factors used to determine whether individual is an 'on-call' or 'as-needed' worker:**

- 1) Whether individual accepted a position with knowledge of a flexible work schedule;
- 2) Whether individual had a reasonable expectation of regular employment;
- 3) Whether employer restricted pool of applicants on the job description to ensure the on-call or as-needed employee is available;
- 4) Whether the employer established policies and procedures detailing how the employer would make work available to the individual;
- 5) Whether the individual's position was regularly or customarily known to the general public as an on-call or as-needed position.

*\*This list is not limited to only the above factors. Please visit [unemployment.in.gov](http://unemployment.in.gov) for additional information.*

*Workers Employed at a Business During a Short-Term Shutdown or Unpaid Vacation*

Some examples of factors that may be used by DWD to determine an employee is not eligible under this criterion for unemployment insurance benefits include, but are not limited to:



A written contract between the employer and the employee providing notification for the short-term shutdown or unpaid vacation.

The short-term shutdown or unpaid vacation was the result of the employer's regular policy or practice.

The employee had a reasonable assurance of continued employment following the short-term shutdown or unpaid vacation.

The assurance is not required to be directly communicated, but may be inferred by past policies, practice, custom, etc.

The employer voluntarily provided DWD with advance notice of the short-term shutdown or unpaid vacation.

*Employees of Certain Head Start Programs Who are on Planned Breaks (such as summer vacation)*

- **Statutory Authority:** IC 22-4-14-7 [effective July 1, 2011]
- **Definition of employees of certain Head Start programs:** Individuals who work in an instructional, research or principal administrative capacity for a Head Start program that operates in connection with a local school system (educational institution), governmental entity or a nonprofit organization, and provide services to or on behalf of an educational institution are not eligible for unemployment benefits during planned breaks.
- **How it works:** A determination will be made as to whether the employee of a Head Start program is ineligible for benefits using some of the following criteria:
  - 1) Is the program integrated with a local school system or have the primary purpose of educating students?
  - 2) Does the program have an established educational curriculum that is taught to participants of the program?
  - 3) Does the program have a set academic calendar?
  - 4) If an individual does not work in an educational institution, do they work for a governmental entity or a nonprofit organization and provide services to or on behalf of an educational institution?
  - 5) Do the program employees have a reasonable assurance of employment once the scheduled vacation or break concludes?
- DWD must determine whether Head Start employees were aware of the academic calendar at the beginning of an academic term or at the time of hire.

Below are some examples of items that may assist DWD in making this determination:

- 1) A copy of the academic calendar with start and end dates of academic terms, official and customary vacation periods, and holiday recesses.

- 2) Evidence that the employee had reasonable assurance they would return to work to perform the same or similar services for Head Start at the beginning of the next academic term or end of the vacation/break period.
  - Examples of reasonable assurance that the employee would return to work:  
  
Official letter from Head Start to the employee providing a return-to-work date, contract between Head Start and employee setting forth terms of employment.
- 3) Employer must protest the DWD Separating/Base Period Employer Notice sent to the employer relative to the filing of a claim for unemployment benefits by an employee and must indicate:
  - Whether the local school system is exercising some direction and control;
  - Whether the teachers and assistants are required to have a specific educational background or specialized training;
  - Whether the teachers are required to prepare lesson plans; and
  - Whether the teachers receive their pay from a school system.

Some factors used to determine if a Head Start employee performed services for a local school system and/or in an educational capacity:

- 1) Whether the local school system is exercising some direction and control;
- 2) Whether the teachers and assistants are required to have a specific educational background or specialized training;
- 3) Whether the teachers are required to prepare lesson plans; and
- 4) Whether the teachers receive their pay from a school system.

Please visit [unemployment.in.gov](https://unemployment.in.gov) for additional information.

#### *Employees Receiving a Voluntary Buyout*

Employees who accept a voluntary buyout to resign or retire are not eligible for unemployment insurance.

#### **Deductible and Non-Deductible Income**

##### *Pension, Retirement, Annuity Distributions*

Distributions from pension, retirement or annuity plans are generally deductible income if the employer contributed to the plan and the employer is in the base period of the claim. Deductions will not occur from receipt of pension, retirement, or annuity plans when:

- The Department decides the issue on or after 07/02/2023,
- The decision affects benefit weeks on and after 07/08/2023, and

- Only the employer made all contributions to the plan.

These payments will not be counted as deductible income when an individual uses the distribution to satisfy a severe financial hardship resulting from an unforeseeable emergency that is the result of events beyond the individual's control.

#### *Severance/Dismissal, and Vacation Pay*

The amount received by an individual as compensation upon separation from employment, including severance/dismissal and vacation payouts, is deductible income and will be deducted from unemployment insurance benefits. For example, if a claimant is eligible for \$300 per week in UI benefits and receives \$400 per week in severance pay after a plant closure, the severance pay will be deducted from the claimant's weekly UI benefit. The claimant will not be eligible to receive benefits while the employer pays severance.

#### *How a Former Employee's Benefit Claims are charged to an employer.*

UI benefit payments are charged in inverse chronological order against the accounts of **all** base period employers based on the amount of wages paid by each employer and the number of weeks claimed by the former employee. If an employee worked for two or more employers during the same quarter in the base period, the benefit payment charges are made first to the account of the most recent employer, then the next most recent and so on. If the order of employment cannot be determined, benefits are charged proportionately with regard to the amount of wages paid during the quarter.

#### *How a Former Employee's Benefit Claims create an invoice for a reimbursable employer.*

When an employer makes an election to make payments in lieu of quarterly contribution, they are agreeing to repay the UI Trust Fund for every cent paid to a former employee where they are a base period employer even if the claimant has previously been determined to have separated from the employer and been disqualified if the claimant files another claim, and a portion of the former employee's base period is after the original claim period.

As explained elsewhere, the base period is the first four of the last five completed quarters. When a former employee files a claim, the quarter in which the claim is filed is the incomplete quarter. Because the incomplete quarter and the most recently completed quarter have not been used in the current claim, those wages can be used in a subsequent claim.

It is very important for a reimbursable employer to understand that they give up their protest rights on base period separations as part of their election to make payments in lieu of contributions. This is true even if DWD previously determined that the claimant did not qualify for benefits when they separated from the reimbursable employer.

When the former employee files a new claim, the reimbursable employer moves from being a separating employer who is eligible to protest the claimant's qualification to receive benefits, to a base period employer with no protest rights and no rights under the Act to be relieved of charges related to the new claim.

#### *Partial UI Benefits Paid to a Current, Former or Laid-Off Employee*

Individuals may qualify for partial benefits if their current employer reduces work hours to less than a regular full-time work week. If a person currently receiving UI benefits takes a new part-time job they may be eligible for partial UI benefits. These individuals must report their part-time wages on each weekly voucher. The experience accounts of the base period employers will be charged according to how benefits are paid, as described below.

### **For benefit weeks ending before 07/08/2023**

#### Pay Earned from an Employer not in the Base Period

- If an individual earns pay equal to 20% or less of their weekly UI benefits from an employer not in the base period of the claim, no deduction of their weekly benefits will be made.
- If a claimant earns pay equal to more than 20% of their weekly UI benefits from an employer not in the base period, a dollar-for-dollar deduction will be made for all wages earned in excess of 20% of the individual's weekly benefit.

#### Pay Earned from an Employer in the Base Period that Reduced Work Hours

- If any wages are earned from an employer in the base period of the claim that reduced work hours, a dollar-for-dollar deduction will be taken from the individual's weekly benefit payment.

#### **Examples:**

- A person's weekly benefit amount is \$200. That individual earns \$50 per week working at a new part-time job. Since 20% of their \$200 weekly benefit amount is \$40, their benefits will be reduced by \$10 weekly, making their payment \$190 because that person made \$10 in excess of 20% of their weekly benefit amount. The experience account of the base period employers would be charged accordingly.
- If this same person earned \$40 or less per week from the part-time job, no deduction of weekly benefits would occur because \$40 or less per week would be 20% or less of their weekly benefits amount.
- If the \$50 was earned from a current employer who reduced weekly work hours, \$50 would be deducted from the weekly benefit amount, reducing their payment to \$150. The experience account of the base period employers would be charged accordingly.

### **For benefit weeks ending on and after 07/08/2023**

#### Wages Earned During the Week

- If an individual worked during the week, a dollar-for-dollar deduction will be made from their benefit payment for all wages earned in excess of \$100.

#### **Examples:**

- A person's weekly benefit amount is \$200. They earn \$50 one week from working. Since their earnings are less than \$100, their weekly benefit amount will not be reduced.
- A person's weekly benefit amount is \$200. They earn \$130 one week from working. Since they earned more than \$100 their weekly benefit amount will be reduced by the amount over \$100. Their payable amount will be \$170 (\$200 minus \$30).

**Individuals working full-time are not eligible for UI benefits even if pay from their full-time job is less than they would receive in weekly benefits.**

### *Voluntarily Leaving Employment*

Quitting voluntarily without good cause in connection with the work is considered a “disqualifying separation.” With some exception, former employees who voluntarily quit without good cause in connection with the work are not eligible for benefits beginning the week the separation occurred. DWD makes these determinations on the most recent separation prior to the claimant filing a claim. Accepting a voluntary buyout package is an example of a voluntary quit.

Where a worker qualifies for benefits, but the separating or base period employer is relieved of charges, benefits for contributory employers are paid directly from the UI Trust Fund through the Mutualized Benefit Charge. See part C for details on how these charges work.

Reimbursable employers are not eligible for relief of charges even where the separation would have been disqualifying if the reimbursable employer were the separating employer. Base period employer relief of charges is one of the benefits that the employer gives up in exchange for making payment in lieu of contributions.

### *Discharge for Just Cause*

Discharge for just cause is also considered a “disqualifying separation.” DWD determines whether the employer had just cause to terminate the claimant’s employment for the most recent separation prior to the claimant filing a claim.

Former employees that are discharged for just cause are not eligible for benefits beginning the week the separation occurred.

“Discharge for just cause” means discharging (or firing) an employee with **complete documentation** and acknowledgement of understanding by the employee of the following:

- Falsifying employment documents to obtain employment
- Knowingly violating a reasonable and uniformly enforced employer policy or rule, including a rule regarding attendance.
- Attendance problems, if the employee cannot show good cause for absences or tardiness (attendance policy must be documented and understood by employee)
- Damaging the employer’s property through willful negligence
- Refusing to obey instructions
- Reporting to work under the influence of alcohol or drugs where there was no potential to harm another individual
- Consuming alcohol or drugs at the workplace during working hours (drug use policy)

must be in effect, documented and acknowledged by the employee)

- Endangering the safety of self or co-workers
- Imprisonment following conviction of a misdemeanor or felony
- Any breach of duty reasonably owed to the employer

### *Gross Misconduct*

The penalty for gross misconduct is that the claimant cannot use any prior earnings to establish a claim for benefits, back to the beginning of the base period for the related claim. Unlike other separations, DWD makes determinations on whether earnings are usable on separations for gross misconduct that occur in the base period as well as for the most recent separation prior to filing a claim. “Gross misconduct” includes:

- Workplace felony
- Work-related class A misdemeanor
- Reporting to work under the influence of alcohol or drugs where there **was** potential to cause harm to self or others.
- Other specified circumstances as defined in IC 22-4-15-6.1

### *Suspension of and Requalifying for Benefits*

When DWD determines a claimant is not eligible for benefits due to the reason for separation (excluding gross misconduct), the claimant’s maximum claim balance is reduced by 25%. Additional disqualifications will result in further reductions of the claim balance. Claimants may again become eligible through subsequent employment following a disqualifying separation. The claimant must have at least 8 weeks of earnings and earn 8 times their weekly benefit amount.

### *Mutualized Benefit Charges*

In addition to the direct benefit charges, once per year the organization’s contributory experience account will be assessed **Mutualized Benefit Charges**. Each year, all benefit charges that are relieved from contributory employer accounts, as described previously, are totaled, and charged proportionally to all contributory employers. DWD determines the organization’s share of these charges by dividing the taxable wages by all taxable wages paid in the state. The organization’s annual Statement of Mutual Benefit Charges is published on the annual premium notice. The MBC benefit charge statement is not a bill – please do not pay the amount shown as the annual amount charged. The amount is deducted automatically from the employer’s experience account.

## STATE PREMIUM RATE COMPUTATION

### New 2023 Employer Premium Rates

Employers receive a notice from the Department of Workforce Development with their 2023 applied rate sent to the mailing address provided to the Agency. The applied rate is a combination of the premium rate and the solvency surcharge. The solvency surcharge for 2023 is 0 percent of the premium. If an employer wishes to estimate the rate, follow the steps below.

First, determine the Premium Rate:

#### How to Determine the Premium Rate

The premium rate will be determined based on the employer's individual experience account status as of June 30th of each year.

The premium rate is determined by following these steps:

1. Determine the type of UI premium rate (new employer, penalty or merit)
2. Determine the experience rate ratio
3. Determine the premium rate from the applicable schedule.
4. Determine the Applied Premium Rate (the premium rate multiplied by 1.00 to reflect the interest surcharge)

#### *1. Determine the type of UI premium rate.*

There are three types of UI premium rates:

**New Employer Rate:** A new employer rate of 2.5%, NAICS code 23 of 2.50%, or a government rate of 1.6% applies unless the following conditions are met. New employers are exempt from the solvency surcharge.

1. The Employer has been subject to paying UI premiums for the past 36 months prior to June 30.
2. The Employer has reporting liability in each of the three 12-month periods immediately preceding June 30.
3. The Employer is not subject to the penalty rate.

**Penalty Rate:** Any employer, new or merit-rate can be assessed the penalty rate. The penalty rate is the rate as calculated in step 1 or 3 plus 2%. Employers are subject to the penalty rate if:

1. They fail to file any required quarterly report within 10 days of the specific date requested by the Merit Rate Delinquency Notice sent by certified mail.

2. They fail to pay the premiums, interest and/or penalty charges owed for past quarters within 10 days of the specific date requested by the Merit Rate Delinquency Notice sent by certified mail.
3. They fail to pay the premiums, interest and/or penalties charges owed by a predecessor account within ten days of the specific date requested by the Merit Rate Delinquency Notice sent by certified mail.

**Merit Rate:** Employers that no longer hold new employer status and are not subject to the penalty rate qualify for an experience-based merit rate.

A merit rate is computed based on:

The Employer experience balance as of June 30th

The Employer past 36 months' payroll

*2. Determine the Employer experience rate ratio*

The Employer's merit rate is based on the status of their DWD employer experience account. The experience account compares all premiums (contributions) paid into their account and all benefits charged against their account. Be sure to convert to a ratio (percentage) prior to comparing to the appropriate rate chart.

	<b>Experience account credit balance as of June 30</b>
<b>Reserve Ratio =</b>	-----
	<b>Total taxable wages paid by the employer/predecessor during the 36 months immediately preceding June 30</b>

*3. Determine the Employer's premium rate from the applicable schedule*

The Employer's experience account will have one of the following status designations:

**Credit reserve balance** -Their state UI premiums paid exceed benefits charged to their account. They have a positive experience balance.

**Debit reserve balance** -UI benefits charged to their account exceed state UI premiums paid into their account. They have a negative experience balance.

Be sure to convert to a percentage prior to comparing to the appropriate rate chart.



Rate Schedule for Accounts with a Credit Reserve Balance as of June 30

As Much As	But Less Than	Premium Rate
3.00	Maximum	0.50
2.80	3.00	0.70
2.60	2.80	0.90
2.40	2.60	1.20
2.20	2.40	1.40
2.00	2.20	1.60
1.80	2.00	1.80
1.60	1.80	2.00
1.40	1.60	2.30
1.20	1.40	2.50
1.00	1.20	2.70
0.80	1.00	2.90
0.60	0.80	3.10
0.40	0.60	3.40
0.20	0.40	3.60
0.00	0.20	3.80

Rate Schedule for Accounts with a Debit Reserve Balance as of June 30

As Much As	But Less Than	Premium Rate
0.00	1.50	4.90
1.50	3.00	5.10
3.00	4.50	5.30
4.50	6.00	5.50
6.00	8.00	5.70
8.00	10.00	6.00
10.00	12.00	6.40
12.00	14.00	6.80
14.00	16.00	7.10
16.00	maximum	7.40

4. Determine the Applied Premium Rate

Determining the applied rate is very easy once the employer has determined their premium rate.

From step one, determine the rate type.

- If they are subject to the new employer rate, they are not subject to the solvency surcharge. The applied rate is 2.5%, 2.50%, or 1.6% depending on the employer's industry type.
- If they are subject to the penalty rate, but are also a new employer, they are not subject to the surcharge. The premium rate is 4.5%, 4.50%, or 3.6% depending on the employer's industry type.
- If they are a merit rated employer, multiply the premium rate above by 1.00 to determine the employer's applied rate.

The surcharge for 2023 is 0 percent. The charts below convert the premium rate to applied rate for 2023.

#### Applied Rate Schedule for Accounts with a Credit Reserve Balance as of June 30

As Much As	But Less Than	Premium Rate	Applied Rate	Penalty Rate
3.00	Maximum	0.50	0.500	2.500
2.80	3.00	0.70	0.700	2.700
2.60	2.80	0.90	0.900	2.900
2.40	2.60	1.20	1.200	3.200
2.20	2.40	1.40	1.400	3.400
2.00	2.20	1.60	1.600	3.600
1.80	2.00	1.80	1.800	3.800
1.60	1.80	2.00	2.000	4.000
1.40	1.60	2.30	2.300	4.300
1.20	1.40	2.50	2.500	4.500
1.00	1.20	2.70	2.700	4.700
0.80	1.00	2.90	2.900	4.900
0.60	0.80	3.10	3.100	5.100
0.40	0.60	3.40	3.400	5.400
0.20	0.40	3.60	3.600	5.600
0.00	0.20	3.80	3.800	5.800

## Applied Rate Schedule for Accounts with a Debit Reserve Balance as if June 30

As Much As	But Less Than	Premium Rate	Applied Rate	Penalty Rate
0.00	1.50	4.90	4.900	6.900
1.50	3.00	5.10	5.100	7.100
3.00	4.50	5.30	5.300	7.300
4.50	6.00	5.50	5.500	7.500
6.00	8.00	5.70	5.700	7.700
8.00	10.00	6.00	6.000	8.000
10.00	12.00	6.40	6.400	8.400
12.00	14.00	6.80	6.800	8.800
14.00	16.00	7.10	7.100	9.100
16.00	maximum	7.40	7.400	9.400

### Voluntary Payments

Voluntary payments can be made by eligible employers within 30 days from the date on the face of the annual merit rate notice. If the organization is eligible for a merit rate, has no delinquencies, and is not already at the lowest rate for the calendar year, the organization will be offered an opportunity to buy down the contribution portion of the total premium.

Employer rate reassessments are not subject to voluntary payment offers and changes in the employer's experience balance can result in the offer being void. This means if the liability on the account is reassessed for any reason, the annual voluntary payment offer will be subject to change and may no longer be valid due to the change in the experience balance of the employer.

Accounts can be reassessed because the employer corrects a prior reporting error, gets a refund of a prior contribution overpayment, is determined to be a successor/predecessor, or is subject to a compliance audit.

If the organization makes the voluntary payment, the reduction to the surcharge amount will automatically be applied.

In E S S, the payment screen will show the voluntary payment offer as a selectable option during the valid payment period. The amount due for a voluntary payment displays as zero and can be edited by the employer. Please be very careful in using the voluntary payment option as E S S will allow an employer to pay less than the minimum offer amount required to trigger a rate change. Once submitted, the voluntary payment is not refundable in full or in part. If the employer pays less than the offer amount shown, the employer will get a voluntary payment failure notice. This means that a voluntary payment was submitted but was insufficient to cause the rate to change. If this happens, the employer is not entitled to a refund of any part of the amount paid and the payment cannot be transferred to any other account or any other liability, existing or future, on the employer's account.

The E S S payment screen is the only mechanism where an employer without a pre-approved electronic filing waiver can submit a voluntary payment. If an employer has a pre-approved electronic filing

waiver, they will be provided with a specific payment mechanism to timely submit a voluntary payment. Other than the exception for electronic filing waivers, the only employer payment that will be accepted as a voluntary payment to buy down the assessed merit rate will be a payment indicated in E S S as a payment in response to the voluntary buy-down offer and completed through E S S.

Employers may pay more than the voluntary payment offer if they wish to increase their experience balance enough to buy down additional levels. The employer is responsible for calculating this additional amount. The offer provided by DWD is sufficient to buy down one level based on the experience balance as of the calculation date. If the experience balance is changed as described above, the offer made by the DWD may be insufficient to buy down the rate.

If the employer's voluntary payment is dishonored – i.e. returned or refused by the maker's bank – the employer's rate will be reverted to the original merit rate assessed and the employer will not be allowed to attempt payment again.

It is not always in the best interest of the employer to make a voluntary payment. Voluntary payments cannot be refunded in full or in part, and only one voluntary payment can be made per year.

### **Premium Rate Summary**

The premium rate is determined based on the solvency of the UI Trust Fund as well as the organization's individual account status. The fund ratio, which determines the rate schedule, is how the UI Trust Fund solvency is factored into the rate. The credit/debit reserve ratio incorporates the individual account status into the rate.

Many factors affect the premium rate. A rate increase may be the result of employee pay increases or more of the former employees of the organization receiving UI benefits, which decreases the experience account balance. Also, the UI Trust Fund suffers when statewide total benefits paid exceed total premiums collected. As a result, if the UI Trust Fund is not solvent, all employers pay a higher rate in order to replenish the funds. Please see the section titled Employer Experience Accounts for more information on how UI Benefits are determined and how the organization's account is affected.

## WHAT TO EXPECT IF A FORMER EMPLOYEE FILES A CLAIM



### Separating and Base Period Employer Notice

Whenever an individual files an initial claim for benefits, their last employer and all of their base period employers are notified and asked to verify the reason for the claimant's unemployment. This notifies the organization that its experience account **may** be charged.

Employers that have elected to participate in the State Information Data Exchange System (SIDES) or SIDES E-Response can respond to these notices electronically. SIDES allows employers to exchange UI separation information with DWD electronically. To learn more about SIDES and E-Response, please visit [unemployment.IN.gov](http://unemployment.IN.gov).

If the organization is not signed up for electronic notice and response (SIDES), it may then use state form 640P to protest a claimant's eligibility for benefits. The information the organization provides on this form could affect the claimant's eligibility or any charges to the employer's experience account for benefits paid. Form 640P is available online [at unemployment.IN.gov](http://unemployment.IN.gov).

If the organization has been determined to be a complete successor employer, base period separation notices with regard to UI filings by employees of the predecessor will be sent. These notices are required so that the organization is aware of potential charges against the transferred experience balance, but the organization is not required to respond to the notice unless it has direct knowledge of the separation.

Employers have a duty to prevent unemployment benefits from being paid if the claimant is not entitled

to receive benefits. To prevent benefits from being paid in error, the organization must respond electronically, or submit Form 640P, if a former employee seeking unemployment benefits is unemployed because that person:

- Quit voluntarily or was absent for unknown reasons
- Was discharged for just cause (see the section titled Employer Experience Accounts)
- Was discharged for gross misconduct (see the section titled Employer Experience Accounts)
- Is not entitled to **ANY** pay or benefits from the organization;
- Is ineligible for any reason listed in this handbook

**Do not** notify DWD if the employee was laid-off, unless the organization believes that person is ineligible for any reason listed in this handbook, (e.g., vacation pay, etc.) Protest form 640P should be faxed to DWD at (317) 633-7206, if possible. Protests may also be submitted by mail to:

Indiana Department of Workforce Development  
Attn: UI Claims Adjudication Center  
10 N. Senate Ave., RM SE 113  
Indianapolis, IN 46204-2277

Reading and responding to the Base Period Separation Notice (SF52984)

Each color-coded section of the sample notice is explained below.



INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT  
 State Form 52984 (7-08)  
 10 N. SENATE AVE.  
 INDIANAPOLIS, IN 46204-2277  
 CONFIDENTIAL RECORD PURSUANT TO IC 4-1-6, IC 22-4-19-6



052984011



03/08/2021

Any Indiana Employer  
 1234 Any Address  
 Any City, IN 46299

Employer Account Number: 123456  
 Employer Location Number: 0

The individual listed below has filed a claim for unemployment benefits. Your experience account may be charged for benefits paid to the individual during the benefit period shown. The amount of benefit charges may be up to 28% of the total base period wages earned in your employment. Please read carefully the instructions of the back side of this notice and **RESPOND BY FAX WHENEVER POSSIBLE. FAX NUMBER ON THE BACK.**

Notice Type	Social Security Number	Claimant Name	Base Period Ending	Benefit Year Ending	Claim Level	Local Office	Base Period	ACQ
INITIAL	XXX-XX- 5301	Employee, Former	09/30/2020	02/26/2022	UI	210	YES	
SEE INSTRUCTIONS								

Color Explanation Table

Blue - The Mailing date starts the clock on the employer’s timeliness. Employers have ten days from the mailing date of the notice, plus three days for mail delivery, to submit a SF54244 / 640P. Do not write a response on the Base Period Separation Notice SF52984 / 640R.

Green - If the Employer Account Number is six (6) digits or less, it is a SUTA number. This means that the entity to which the form is addressed exists in the Indiana DWD employer database. If the Employer Account Number is eight (8) digits, it is a party ID. This means that the entity does not exist in the Indiana DWD Employer database. This also means that the claimant has added a mailing address to receive the separation notice. This does not mean that DWD has determined that the entity added by the claimant is an employer or has liability for Indiana Unemployment contributions.

Orange - If the Notice Type is initial and the employer has knowledge about the separation that could potentially disqualify a claimant from receiving benefits, the employer should submit the 640P within 10 days of the mailing date of the notice. If the Notice Type is “reopen,” do not submit a 640P.

Pink - If the claimant’s name and partial SSN do not match the employer’s records, before submitting a 640P, check your quarterly wage and employment reports for a potential reporting error. The first five digits are hidden. SSN keying errors are the number one reason that employers receive notices about claimants that have never worked for them. Do not submit a 640P for transferred liability. If the claimant did not work for the employer, and the employer has not made a reporting error, and there is not an \* under ACQ, submit the 640P if the worker was never an employee and the employer account number is a SUTA number.

Grey - The second most prevalent reason is transferred liability. If the claimant record is marked with an asterisk (\*) under ACQ, the worker was employed by a predecessor.

Yellow - The base period is the first four of the last five completed quarters counting from the last day worked asserted by the claimant when they opened a claim. The quarter when the claim is filed is called the incomplete quarter. It is not part of the base period. The quarter immediately before the incomplete quarter is the lag quarter. The lag quarter is the fifth quarter or last of the five completed quarters counting back from the last day worked by the claimant. The wages used in the claim are the remaining four quarters. In this example, 1Q2022 is the incomplete quarter. 4Q2020 is the lag quarter. The base period is 4Q2019 through 3Q2020 or 10/01/2019 – 09/30/2020. Only employers that reported wages during the base period can be charged in the claim.

Lime green - The claim level indicates the type of claim which also indicates who pays for the claim. A UI claim is paid for by the base period employers. A PUA or PEUC claim is paid by a Federal program. An EB claim is paid partially by the base period employers and partially by a Federal program.

Sky blue - The base period indicator is Yes or No. If “YES”, the employer can be charged up to 28% of the gross wages reported for the claimant during the base period for regular UI. If “NO”, the employer cannot be charged.

Grey - ACQ is an acquisition indicator. If there is an asterisk (\*) in this column, DWD has determined that the employer acquired all or part of another Indiana employer. The employer had protest rights on the determination of successorship when it was made. See the Employer handbook for more information on Successorships.

## Determination of Eligibility

If the organization believes a former employee is not eligible for benefits and the protest form was submitted, all relevant facts will be reviewed by DWD. After this review is completed, a Determination of Eligibility (DOE) will be issued by DWD. The DOE form will be sent to the organization and the employee. DOEs can be found in the Employer’s Correspondence History on E S S. The document name is usually Generic Determination Notice.

The employer has the right to appeal a DOE using the appeals process described in the section titled The Appeals Process.

## Statement of Benefit Charges

Each month DWD posts a Statement of Benefit Charges (State Form 535) to employers whose accounts have been charged because benefits were paid to former employees. DWD will mail a Charge Statement Notification to the employer to alert them that a Statement of Benefit Charges is available to be reviewed. The organization should:

- Log into E S S and navigate to the Correspondence History menu;
- Review the statement carefully;
- Contact DWD as soon as possible if charges are incorrect.

Call toll-free (800) 891-6499 and follow the options for benefits customer service if there are general questions about benefit charging.

Receiving a Statement of Benefit Charges does not reopen the question of the claimant’s eligibility to receive unemployment. See the section above on Determination of Eligibility for information on



appealing the claimant's eligibility to receive unemployment or base period employer relief of charges.

The organization should notify DWD promptly if the worker has returned to work, received any payments which they should have reported as deductible income (such as vacation or severance pay), or have refused an offer of work.

- To report work refusals, please submit the Notice of Work Recall Refusal (640 WR) available at [unemployment.IN.gov](http://unemployment.IN.gov).
- To report someone who is receiving UI benefits and is not reporting their hours of work and earnings, please follow use the [Report Unemployment Fraud](#) page on our website to submit an investigation request.

If the organization has reason to believe that the Statement of Benefit Charges is incorrect for reasons other than the claimant's eligibility to receive benefits or relief of base period charges, the organization should submit a Tax Liability Protest Form (SF55109) no more than fifteen days from the mailing date of the Charge Statement Notification which is also the posting date of the Statement of Benefit Charges. See the section titled The Appeals Process for additional information on tax liability protests.

### **Combined Wage Transfer**

If a former employee of the organization is receiving UI benefits from another state and has wages reported from the organization on their claim, it is called a "Combined Wage Transfer". There is no difference to the organization's account whether the former employee lives in Indiana or elsewhere. DWD simply "combines" the wage information from Indiana employers pertaining to the former employee and "transfers" the information to the state in which the former employee is filing for UI benefits.

### **Filing an Appeal**

Any party with standing may appeal the DOE and request a hearing before an Administrative Law Judge (ALJ). The organization has standing to appeal if the ALJ could change the outcome of the original decision in the organization's favor. The appeal and request for a hearing must be made in writing. Appeal instructions are located on the back of the DOE form. Appeal requests should be sent to:

UI Appeals  
10 N. Senate Ave  
Indianapolis, IN 46204  
Fax: (317) 233-6888

An appeal must be filed within 10 days from the date on the DOE. The appeal period begins when DWD sends the DOE form, not when the organization (or the employee) receives the document. For more information on the appeals process, see the section titled The Appeals Process.

### **Wage Investigation**

When a worker files a claim for unemployment benefits, they are given a monetary determination which provides information on base period earnings from all employers. A worker may file an appeal to the monetary determination. The worker's appeal of the monetary determination will be heard before an

Administrative Law Judge (ALJ). If the issue on appeal is determined by the ALJ to be potential missing or incomplete wage reporting by an employer, the ALJ will refer the matter to the Wage Investigation division for an investigation. This referral creates a condition called a “blocked claim”.

The wage investigator will examine the proof of earnings received from the worker and will then contact the worker to gather additional facts and evidence with regard to the nature of the relationship between the parties. If the worker provides a basis for further investigations, the investigator will contact the employer, generally by email, and request additional information regarding the nature of the workers services. It is very important that both the worker and the business respond to the investigator as the normal determination period for an investigation is 10 calendar days.

The investigator will analyze all facts, evidence, and statements provided and will issue a written determination to the court and to the parties regarding the wages and employment of the worker.

If the wage investigator determines that the original monetary was correct and that no wages should be added to the claimant’s base period, the original appeal will be closed with no change to the original monetary determination. If the claimant disagrees with this outcome, the claimant will need to reopen the appeal with the ALJ.

If the wage investigator determines that the original monetary was incorrect, a new monetary determination will be issued. If the parties disagree with the new monetary determination, they should file a new appeal so that the matter can be scheduled for a hearing with regard to the new monetary. Instructions for filing an appeal are on the monetary determination.

If the wage investigator determines that the employer failed to report wages as required, thereby creating liability to the employer, the employer has fifteen (15) days from the date the determination is sent to protest the determination in writing. Employer liability protests are discussed in detail in the section titled The Appeals Process.

### **Wage Data and other Confidential Information**

Information provided by a claimant or employer is confidential under the Act and can only be shared if DWD receives a court order or because a State or Federal agency has the legal authority to request and receive access to the information.

If required to do so, DWD will release information received from a claimant or employer to authorized government organizations to be used for official purposes including, but not limited to, verification of an individual’s eligibility for government programs other than Unemployment Compensation.

Pursuant to 20 CFR § 603.11, please be advised that confidential claimant unemployment compensation information and employer wage information may be requested and utilized for other governmental purposes, including, but not limited to, verification of eligibility under other government programs.

## **STATE INFORMATION DATA EXCHANGE SYSTEM (SIDES)**

### **What is SIDES**

SIDES is a web-based system that allows electronic transmission of information requests from UI agencies to employers and/or Third-Party Administrators (TPAs), as well as transmission of replies containing the requested information back to the UI agencies. There are two ways employers or TPAs can connect with SIDES.

### **SIDES E-Response**

SIDES E-Response is a secure website that employers use to exchange UI information with state agencies electronically. When a UI claim is filed, IDWD will send an email notification within 24 hours to the designated email address. Participating employers or their third-party administrators (TPA) submit a response to the request for UI separation information online, attach supporting documentation, and receive an immediate date-stamped confirmation of receipt. In Indiana, you also receive potential charging liability information for UI claims online!

### **UI SIDES**

UI SIDES is best suited for employers and TPAs who typically deal with a large volume of UI information requests from multiple states or territories. UI SIDES is best suited for employers or TPAs processing 150 – 200 claims per year in five or more states / territories.

While SIDES requires up-front IT integration resources and efforts, it has the potential to streamline the UI response process.

Currently, employers and TPAs use SIDES to exchange separation information with 50 states and territories in a standard format.

In Indiana, you also receive potential charging liability information for UI claims through SIDES!

The NASWA SIDES Team provides resources such as the Concept of Operations and Implementation Guide, Developers' Guide, and model software for connecting to the Central Broker. Technical staff is also available to answer questions during the integration development process.

## THE APPEALS PROCESS



### Appeals

An employee or employer may appeal the initial determination for benefits. The organization may appeal a benefits determination to an Administrative Law Judge (**ALJ**). ALJ hearings are usually conducted over the telephone but may occur in person. If the ALJ does not rule in the organization's favor, it may appeal to the Review Board, followed by the Indiana Court of Appeals.

Employers may appeal certain determinations made regarding their SUTA account to a Liability Administrative Law Judge (**LALJ**). Liability appeals are limited to original determinations of qualification or successorship, original liability assessments, audit findings, investigation findings, and benefit charge posting.

Please note, benefit charge posting and a determination that the claimant is eligible for benefits are not the same. The employer can protest only the order and percentage of charges posted against their experience balance as it relates to other employers in the base period through the LALJ. The claimant's eligibility to receive benefits is a matter for the ALJ and not the LALJ.

### Benefit Eligibility Appeals

The ALJs and Review Board have jurisdiction over benefit eligibility appeals. Employers or individuals appealing a Determination of Eligibility (DOE) may request a hearing before an ALJ. ALJ hearings are informal, but the fundamental rules of evidence and procedure apply.

When there is a hearing, the parties involved have an obligation to be present with all relevant documents and witnesses. Relevant documents might include:

- Attendance records
- Performance reports
- Counseling records
- Work rules or policies
- Physician's statements
- Employment handbook (and signed employee acknowledgement documentation)

- Written policies and procedures (and signed employee acknowledgement documentation)

### *Recommended Documentation and Practices*

- 1) It is important to create and adopt workplace policies and procedures. These should be documented in writing to eliminate confusion and doubt.
- 2) The organization should also adopt an Employee Handbook containing all policies and procedures and the appropriate enforcement steps.
- 3) Inform and train employees on policies, procedures, and the Employee Handbook.
- 4) Require employees to sign a document stating they understand and agree to the policies and procedures, and that they know what is contained in the Employee Handbook.
- 5) Enforce all policies uniformly and document all violations carefully.
- 6) Any noted violation of policies, procedures, or the Employee Handbook should be well documented by the organization with the date of infraction, and acknowledgement by the organization, the immediate supervisor, and employee, if possible.
- 7) Documents that are signed by a supervisor or manager of the employer who disciplined and witnessed the former employee's violations of policy, etc. are not accepted as evidence. The witness **must be present** in the hearing, just as any other judicial hearing.

The ALJ will make a decision based upon the evidence and testimony the parties present at the hearing. The ALJ will consider all evidence that would be admissible under common law and the statutory rules of evidence.

Testifying witnesses should have personal knowledge (from their own first-hand experience) of the facts or circumstances. The ALJ can accept written statements, whether notarized or not, but will give them no weight because they are not subject to cross-examination or rebuttal.

### **Postponement of Hearings**

Hearings are postponed in cases of emergency only. Any other request to postpone must be made as soon as possible and well in advance of the scheduled hearing date. Written request to postpone a hearing must be received by the ALJ at least three (3) days before the date of the hearing. A copy of the request must be sent to the other party. The organization must specify on the request that a copy was sent. ALJs will not automatically grant a postponement. The ALJ will consider the merits of each request.

If the organization is the appealing party and fails to appear at the hearing and a request for postponement was not granted, the ALJ will dismiss the appeal. A "Notice of Dismissal" will be sent to both parties. The organization had seven (7) days from the date of the Notice of Dismissal to file a written request with the ALJ for reinstatement of the appeal. The organization's request must include a good reason for the failure to appear.

### **Review Board Proceedings**

Any party with standing may appeal the ALJ's decision. To appeal an ALJ decision regarding UI benefit eligibility, the organization must send a letter to the Review Board that states its desire to appeal and the reason for the appeal within 15 days of the date the ALJ decision was mailed to the organization. This letter should specifically and concisely explain why the organization believes the ALJ's decision is wrong.

The Review Board does not handle appeals pertaining to premium liability. These must be directed to the Indiana Court of Appeals.

In most cases, the Review Board will examine the record of the ALJ hearing and will reach its decision based upon the ALJ hearing. The Review Board may grant a request to introduce additional evidence, if the appealing party shows good cause that the new evidence is relevant and explains why the new evidence was not previously presented to the ALJ. A request to introduce new evidence should be included with the letter requesting a Review Board appeal.

Any party with standing may appeal the Review Board decision by filing a request for an appeal with the Indiana Court of Appeals. A Review Board decision becomes final 30 days after the decision is mailed to both parties if neither party has filed an appeal request with the Indiana Court of Appeals.

### **Employer Liability Protests**

Liability Administrative Law Judges (LALJs) conduct hearings concerning employer coverage and premium liability.

The LALJ's jurisdiction is limited to disagreements between employers and DWD regarding:

Assessments for interest, taxes, contributions, payment in lieu of contribution, surcharge, and penalties;

Successorship, including these related issues:

The transfer of accounts;

The determination of rates of contributions;

Determinations under the SUTA Dumping Prevention Act (Ind. Code § 22-4-11.5)

Employer benefit charging;

Claims for refunds or adjustments;

The definition of covered employment (worker misclassification) under Ind. Code § 22-4-8.

The organization may protest an initial determination by delivering an Unemployment Insurance Tax Protest (SF55109) to the email address, [DWD Tax Liability Protests@dwd.IN.gov](mailto:DWD_Tax_Liability_Protests@dwd.IN.gov), as indicated on the Unemployment Insurance Tax Protest form.

In addition to the State Form 55109, please submit:

- information regarding the basis for the protest;

- the facts or evidence the protesting party relied on in determining that the actions of DWD were erroneous;
- a copy of the document that prompted the protest; and
- any supporting documents that the protesting party would like to have examined in support of the claim.

The protesting party must sign the protest. If the protesting party is represented by counsel, the name and contact information for the representative and for the protesting party should be included on the protest document. The protesting party also may appear either pro se or through an authorized full-time employee. Non-attorney agents cannot represent a protesting party in a tax liability hearing per Ind. Code § 22-4-32-3. This requirement is different from representation in a hearing on claimant benefit eligibility where a lay person or agent may represent a party per Ind. Code § 22-4-17-3.2.

Protests must be received within fifteen (15) days after the date the initial determination or notice being protested is sent. Filing a protest after the fifteen (15) day deadline may result in a dismissal.

### **Proceedings before a Liability Administrative Law Judge (LALJ):**

Upon receipt of the protest, the LALJ will set a date for a telephonic Pre-Hearing Conference and notify the interested parties. The LALJ will provide each party with a Notice of Pre-Hearing Conference. The Notice will inform the parties of the issues raised by the protest, the date and time of the telephonic Pre-Hearing Conference, the requirement for the protesting party to contact IDWD Legal no later than seven (7) days prior to the Pre-Hearing Conference to discuss the status of the protest. The parties should be prepared to discuss their availability and availability of witnesses for future conferences and hearing, whether the case has settled, and additional issues or parties that may be necessary to resolve the matter. Appearance at the Pre-Hearing Conference is mandatory and failure to appear within fifteen (15) minutes of the scheduled start time may result in dismissal of the protest in its entirety. The LALJ will contact the parties for the Pre-Hearing Conference at the telephone contact number that they submit to the LALJ in writing prior to the hearing. Parties are to remain available at the contact number that was provided to the LALJ up to and including sixty (60) minutes from the scheduled start time.

In general, the Indiana Rules of Trial Procedure and Indiana Rules of Evidence shall govern proceedings before an administrative law judge. 646 Ind. Admin. Code 5-10-5.

Parties are encouraged to engage in settlement negotiations and keep the LALJ updated regarding status of settlement negotiations. Parties may make requests of the LALJ and should send copies of their requests to all noticed parties. Parties may file requests for continuances of an upcoming Pre-Hearing Conference and requests for enlargement of time for pending deadlines if the Pre-Hearing Conference has occurred.

If the protested matter proceeds to a hearing the LALJ will discuss during status conference and Final Pre-Hearing Conference, hearing dates, hearing location, dates for exchange of final witness and exhibit lists, dates for parties to exchange exhibits, and a date for parties to file joint stipulations as to facts and documents not in dispute.

After the hearing, the LALJ will issue a written decision to all interested parties. Decisions of the LALJ are appealable. The decision of the LALJ becomes final 30 days after the mailing date, unless there is a filing

of a Notice of Appeal within the 30 days, and a subsequent case filed with the Indiana Court of Appeals. The Notice of Appeal delays the decision for 30 days.

## **Indiana Court of Appeals**

Appeals to the Indiana Court of Appeals may be made if the appealing party disagrees with the Review Board or LALJ decision. These appeals are held under the same terms and conditions that govern appeals in all civil actions. (See [www.in.gov/judiciary](http://www.in.gov/judiciary) for more information.) The Court does not re-try cases, but it does clarify questions of law raised by court decisions.

## **Reasonable Cause Waivers for Late Payment of Contribution or Reimbursement**

The Department has limited discretionary authority to waive the assessment of interest or the assessment of a delinquency (penalty) rate where the employer can show that a reasonable businessperson in the same circumstances would not have been able to comply with the statute to report and pay their unemployment on time.

To initiate a request for a waiver of penalty or interest for not making timely payment on a quarterly report or reimbursable bill, go to E S S and select the menu/commands Requests > Request Interest/Penalty Waiver > Add Waiver. The organization will need to select the quarter and year for which a waiver is being requested and provide information about why the Department should grant the waiver request.

A tax worker will reach out to the organization, usually by email, about the request as additional documentation is always required before DWD can approve a waiver request. If the organization does not respond to the request for additional information, or if the organization does not provide the documentation requested within ten (10) days of the tax worker making the request, then the request will be denied. A notice indicating approval or denial of the waiver is sent to the account holder.

Reasonable cause includes circumstances as prescribed by the department for such unavoidable events as:

- Acts of
  - Nature;
  - God;
  - Terrorism;
  - War;
- Death or incapacitation of an owner or preparer;
- Theft, embezzlement, or deceit by a responsible party, fiduciary, or trusted employee;
- E S S unavailable / widespread internet outages (does not apply to employer password issues);
- Reliance on a third-party provider (does not apply to interest assessments but can be a basis for removing a penalty assessment). The third-party must be able to prove to the satisfaction of the Agency that they have changed their business practices in a manner that effectively eliminates the potential for reoccurrence. Administrative errors, staffing



issues, data entry errors, and similar reasons to not meet the standard for waiver approval.

This list is not intended to be all inclusive as each request is evaluated on the merits and documentation provided by the employer.

If the organization has an electronic filing waiver submit a request in writing to DWD.

Requests must be mailed to:

IDWD – Employer Account Maintenance  
ATTN: Request for Waiver  
10 N Senate Ave. RM SE 202  
Indianapolis, IN 46204-2277

### **Nonrule Policy Document # 2021-06 Waivers of Increased Unemployment Insurance Contribution Rates**

**DATE ADOPTED:** December 20, 2021. Applicable to all waiver requests for increased unemployment contribution rates imposed under Indiana Code § 22-4-11-2(c) beginning with calendar year 2022 rates.

**ADOPTED BY:** Department of Workforce Development — Frederick D. Payne, Commissioner

**SUPERSEDES:** Unemployment Insurance Board Resolution Oct. 21, 2009

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**DISCLAIMER:** This nonrule policy document is intended to supplement applicable rules and laws. It does not replace applicable rules and laws and, if it conflicts with these rules or laws, the rules or laws shall control. Decisions made under this nonrule policy document are not subject to review unless such review is separately granted by statute.

**Overview:** To provide guidance regarding waivers of increased unemployment contribution rates imposed for untimely, delinquent, and/or outstanding unemployment insurance reports or liabilities. This guidance supersedes the Unemployment Insurance Board Resolution, dated Oct. 21, 2009.

**Background:** If an employer fails to timely report or pay its quarterly unemployment insurance liabilities, the Department is required under Indiana Code § 22-4-11-2 to increase the employer's unemployment contribution rate by 2%. The department may waive the imposition of this increased rate if it finds the employer's failure was for excusable cause.

**Policy:** Employers are required to pay unemployment insurance contributions in the form and manner required by the Department. Ind. Code § 22-4-29-1. For each year, the Department determines the contribution rate applicable to each employer. Ind. Code § 22-4-11-2(a). The rate is increased by 2% "unless all required contributions and wage reports have been filed within thirty-one (31) days following the computation date and all contributions, penalties, and interest due and owing by the employer or the employer's predecessor for periods before and including the computation date have been paid" by

the date specified by the Department. *Id.* at (c). “The department or the department's designee may waive the imposition of rates under this subsection if the department finds the employer's failure to meet the deadlines was for excusable cause.” *Id.*

The Department may waive this increased rate only if:

The employer or the employer’s agent requests the waiver via e-mail to the Agency at [DWDESSCommunications@dwd.IN.gov](mailto:DWDESSCommunications@dwd.IN.gov) no later than December 31 of the year for which the waiver is being requested;

The employer has filed an accurate report in the form and manner prescribed by the Department for each quarter the employer was required to file;

The employer and any predecessors of the employer have no outstanding liability for unemployment insurance contributions, interest, penalties, costs or special charges; and

The Department determines the failure to timely pay all outstanding contributions, penalties, and interest was due to excusable neglect.

The Department may find the failure to pay was caused by excusable neglect if the failure was caused by:

Acts of nature; God; terrorism; or war;

Death or incapacitation of an owner or preparer;

Theft, embezzlement, or deceit by a responsible party, fiduciary, or trusted employee;

ESS unavailable / widespread internet outages (not including employer password issues);

Administrative errors by employees or agents of the employer;

Filing in a manner other than that required by the Department while an initial request for an alternative method is pending;

Error by the Department;

Reliance on a third-party provider.

This list is not intended to be all inclusive as each request is evaluated on the merits and documentation provided by the employer. Lack of knowledge or understanding of the filing or payment requirements do not meet the standard for waiver approval. The Department may issue a waiver conditioned upon the employer and/or employer’s agent’s adherence to a corrective action plan. Failure to adhere to the corrective action plan may result in rescission of the waiver or denial of future waiver requests.

### **Merit Rate Penalty Waiver Administration**

On receipt of the initial request for a merit rate penalty waiver, the Agency will evaluate the information provided and will respond by sending one of these three responses by reply email:

The waiver is approved;

A corrective action plan is required from the employer;

Additional information is needed to evaluate the request.

If the waiver is approved, the employer will be mailed a merit rate recalculation approval letter followed by a revised merit rate notice.

If a corrective action plan is requested, the employer will have ten business days to return the plan to DWDESSCommunications@dwd.IN.gov. If the plan is not received, the employer will receive a merit rate recalculation denial letter. If the plan is received but incomplete, insufficient, or otherwise not eligible to be approved, the employer will receive a follow-up email with additional information and, where appropriate, an offer to correct and resubmit the plan. If the plan is received and approved, the employer will receive a merit rate recalculation approval letter followed by a revised merit rate notice.

If additional information is required, the employer will have ten business days to supplement their request for waiver. If the additional information is not received, the employer will receive a merit rate recalculation denial letter. If the additional information is received, the additional information email will be treated as an initial request.

If the employer is approved for a waiver and the employer is later determined to have violated the conditions for the waiver, the Agency will notify the employer by email to the address from which the waiver request was submitted.

If the Agency determines that the violation requires the employer's waiver to be rescinded, the email notification will be followed by a merit rate recalculation approval letter, a revised merit rate notice, and a notice and demand for the additional contribution, penalties, and interest payable as a result.

An employer will be determined to have violated the conditions for the waiver if the payment used to satisfy the delinquency is subsequently dishonored, stopped, or returned by the payer's bank.

## MAINTAINING INTEGRITY IN THE UNEMPLOYMENT INSURANCE PROGRAM



### Reporting New Hires

Under IC 22-4.1-4-2 and the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), all public, private, non-profit and government employers are required to report all newly hired employees, or employees returning to work after a break of at least 60 days, within 20 days of hire (this should be the first actual date of work).

The Indiana New Hire Reporting Center requires reports of newly hired and rehired employees to be reported electronically.

Additionally, employers will be required to provide the following new data elements on all reports of newly hired or rehired employees:

- **Employee's current job title**
- **Employee's primary standardized occupational classification code**
- **Employee's starting compensation**
- **Employee's rate of pay (annually, hourly, other)**

More information about reporting these new employee data elements, including changes to file layouts and specifications for SFTP and Web Upload reports, can be found on our [File Transfer](#) page.

For more information regarding electronic reporting, please visit our [Electronic Reporting](#) page.

We encourage you to contact us if you have any questions or require registration assistance by using our [General Comments and Feedback](#) form or by emailing [Contact@IN-Newhire.com](mailto:Contact@IN-Newhire.com).

Failure to report could result in a fine of \$25 per employee not reported, or up to \$500 if it is determined the failure to report was part of a conspiracy between the employer and employee. The organization can report new hires at [www.in-newhire.com](http://www.in-newhire.com).

*Why is new hire reporting important?*

Reporting new hires helps protect the organization's account and other employers against fraudulent unemployment claims.

### **Report UI Fraud**

If someone receives UI benefits and they know they are not eligible, it is considered fraud. One such example would be an individual that receives benefits while working full-time. Other examples of fraud include receiving benefits while working and receiving pay "under the table," receiving benefits under another individual's name, or receiving benefits while working part-time and not disclosing it on the weekly voucher. Report UI fraud:

- Online at [unemployment.IN.gov](http://unemployment.IN.gov)

- Via mail at Department of Workforce Development, Benefit Payment Control Section, 10 North Senate Avenue, Room SE105, Indianapolis, IN 46204, or
- Via fax at (317)234-2932.

Identifying information is not required in order to report unemployment insurance fraud. However, DWD will not be able to contact the organization to seek additional information about the complaint if the organization chooses to remain anonymous.

Please provide as much detailed information as possible concerning the allegations:

- Include the name and address of the individual or business suspected of committing fraud
- Give the individual's SSN or last 4 of SSN if available
- Give the name of the business where the individual has been employed during the last year
- Describe the complaint in detail and provide dates if possible

Penalties and interest are applicable to an individual who commits fraud. DWD assists in the prosecution of individuals who commit UI fraud.

### **Report Work Refusals**

If an individual refuses a suitable job offer or refuses or fails a drug screening as a condition of employment, they are not eligible for unemployment benefits and will be liable to repay any benefits received after the refusal.

*How to Report:*

- Go to [unemployment.IN.gov](http://unemployment.IN.gov)
- Complete the Notice of Work Recall Refusal (Employer) | State Form 56951 (640WR)
- Fax form to (317)633-7206

*What is a Valid Job Offer?*

- Must be a genuine offer of employment (defined as suitable employment in IC 22-4-15-2)
- Genuine offer must include a job position and a timeline for acceptance
- If the offer is issued in writing, it creates substantiated evidence

**DWD will make final determination on whether the offer was for suitable employment as defined in IC 22-4-15-2.**

## Employer Audits

A top priority for DWD is to protect the integrity of the UI Trust Fund, and one way this is done is through employer audits. Audits ensure that claimants are being paid accurately and that employers are paying their appropriate share. DWD Unemployment Insurance Auditors are located throughout the state and conduct random and targeted audits of employers in order to ensure that all are complying with SUTA regulations and that DWD is consistent in our enforcement.

### *Employment Records*

Per Indiana Code, employers are required to keep accurate payroll and employment records.

The following list discusses records that DWD expects to find when conducting an audit:

- All payment for service records including:
  - Separate records for each worker showing dates of service, work location, payment dates and amounts paid;
  - Copies of W-2 forms and W-3 transmittal forms for each employee;
  - Copies of 1099 forms and 1096 transmittal form;
- All cash disbursement records, including check registers, check stubs, disbursement journals, and bank statements;
- General ledger, chart of accounts, financial statements, and master vendor lists;
- Canceled checks, petty cash receipts, daily cash reports, etc.;
- Quarterly SUTA reports;
- FUTA 940 forms;
- FICA 941 forms;
- Business Federal Income Tax Returns – 1040 Form Schedule C, 1120, 1120S, or 1065;
- Any other records indicating payments for services performed;
- Source documents showing the reason for any payments to individuals other than payroll. Valid documents include things like certificates of insurance, business websites, invoices, business cards, contracts, and receipts.

Employer audit records and reports to DWD are confidential and are not published or open to the public. If the organization's account is selected for an audit, the organization will be notified in writing and will be able to personally talk to the individual handling the audit. Please inform the assigned auditor of any special considerations.

An employer's records must be open at all times for inspection and must be retained for at least five years.

## **SUTA Dumping**

SUTA Dumping is a form of tax avoidance or tax rate manipulation through which employers create a new employer account and abandon the negative experience on their original account. This results in the original employer dumping higher unemployment taxes by obtaining the lower new employer rate. SUTA dumping involves the manipulation of an employer's unemployment tax rate and/or payroll reporting to owe less in unemployment taxes. DWD is committed to investigating, detecting, and preventing this practice and maintains a SUTA Dumping Investigation Unit for this purpose. It is important to abide by the following to avoid running afoul of the SUTA dumping law:

### *Mandatory Transfers*

UI experience account balances must be transferred whenever there is:

- Substantially common ownership, management, or control between the parties
- One entity transfers all or part of its trade or business (including its workforce) to another entity

Both the employer from which the employees / assets exited and the employer to which the employees / assets were received must report the transfer to Indiana. See the prior section, Buying, Selling, Transferring, or Reorganizing a Business, for reporting requirements.

### *Prohibited Transfers*

A new employer acquiring the trade or business of an existing employer for the sole purpose of qualifying for a lower premium rate is not entitled to the previous owner's UI experience account. This practice results in higher rates for other employers and is not allowed. A new employer premium rate will be assigned. See the section titled Buying, Selling, Transferring, or Reorganizing a Business for additional information. Existing businesses are also prohibited from acquiring a different trade or business for the purpose of transferring their workforce to another account with a lower UI experience rating.

### *Penalties for SUTA Dumping*

Any employer that knowingly violates or attempts to violate the law regarding SUTA Dumping will be subject to the highest premium rate for the year in which they violated the act and for the following three years. If the employer is already at the highest tax rate or if the amount of the increase is less than 2%, a penalty of 2% additional contributions will be imposed.

Any person that advises an employer on how to carry out SUTA Dumping is subject to a civil penalty of up to \$5,000 per incident. This penalty is assessed to non-employers such as accountants, attorneys, tax advisors, and third-party reporting agents that knowingly or recklessly assist or advise an employer in violating the requirements of the Act.

### *Why SUTA Dumping is Harmful*

Under the experience rating system, employers pay UI premiums at a rate that is based on the benefit claims filed against their business and the amount of wages paid.



Employers with more employees receiving UI benefits should pay higher premium rates. Employers with fewer employees claiming UI benefits should pay less.

Employers who engage in SUTA Dumping practices (or other tax schemes) to avoid paying their fair share unfairly shift the burden to other employers.

SUTA Dumping is harmful because it:

- Compromises the integrity of the UI system
- Results in an uneven playing field
- Increases rates for all employers
- Results in the UI Trust Fund losing money

## FREQUENTLY ASKED QUESTIONS



### **What is Unemployment Insurance?**

Unemployment Insurance (UI) is a federal-state program developed by the US Congress as a social program paid for by employers to give money to qualifying unemployed persons. Employers pay money into a trust fund that then distributes the money to those receiving benefits. Employees do not pay for or “pay into” this program. UI is regulated under the Federal Unemployment Tax Act (FUTA). The portions of the program delegated to the state under FUTA are regulated under the State Unemployment Tax Act (SUTA). Employees are eligible for unemployment benefits only if they are unemployed through no fault of their own and are able to work, available to work, and actively seeking full time employment.

### **Who pays Unemployment Insurance?**

Employers pay UI premiums or reimburse the UI Trust Fund for benefits paid once they meet the employer qualifications under Indiana Code § 22-4-7 as described in the section titled Getting Started. UI premiums and reimbursements are paid to DWD. The payments are held in trust to pay UI benefits. Employers are not allowed to deduct UI premiums and reimbursements from employee wages.

### **Who is an Employer?**

For purposes of Unemployment, an employer is an entity that compensates an individual for performing services in the usual course of the work of their organization, trade or business.

Some exceptions to this definition do apply. Employers are defined in Indiana Code § 22-4-7. Please see section titled Getting Started for more specific information on this topic.

### **What is a Reimbursable Employer? What do they pay?**

A reimbursable employer is a type of employer that elects to directly reimburse the UI Trust Fund for benefits paid to employees of their organization.

Not-for-profit (501(c)(3)) organizations and government employers are eligible to directly reimburse the UI Trust Fund for benefits paid. The eligible organization has specific documents and forms that must be provided to be approved as a reimbursable employer as described in the section titled Getting Started.

Once an employer qualifies as a reimbursable employer, the status is kept for a period not less than two years.

The election to be reimbursable is maintained unless the employer revokes the election by filing a DWD form 1065 changing their election to contributory.

Like employers that pay premiums, reimbursable employers must file quarterly wage reports. Reimbursable employers must directly pay the UI Trust Fund the exact amount of benefits paid to their former employees within thirty days of any invoice issued by DWD.

### **Who is an Employee?**

For the purpose of Unemployment Insurance, an employee is generally an individual who performs a service for an entity in the usual course of their organization, trade, or business and is compensated in some way for the services that they perform. Not all entities are subject to the Unemployment Act. Please see section titled Getting Started for a discussion of covered, partially excluded, and exempt entities.

One should conclude that an individual is an employee, as opposed to an independent contractor, if the entity for which the individual is providing the service has the right to control the way in which the service is carried out, or if the work performed is in the normal course of entity's business, or if the individual performing services is not independently established in the same trade or business as that performed for the entity.

It is the right to control that is important. The control does not ever need to be exercised to be a determining factor. "Employee" as defined for UI purposes is different than it is defined for IRS purposes, workers compensation, etc.

### **What are Wages?**

Wages are defined as cash or non-cash compensation received for services performed.

Wages include salaries, bonuses, commissions, vacation pay, retroactive pay increases, and any other payments made by an employer unless specifically excluded by the Act.

An example of compensation that is excluded by the Act is the value of Cafeteria (Section 125) Benefit plans.

## Who must register with the Indiana Department of Workforce Development (DWD)?

New employers subject to the Act as described in the section titled Getting Started, and any entity that acquires an existing business (change of operational control) must register or re-register with DWD.

The acquiring employer is usually not allowed to use the disposer's account number. If the acquiring employer already has an account number, they will continue to use that number to report.

It is considered a change of operational control any time a business changes from one type of legal organization to another. This means that changing from a sole proprietor to a corporation or a partnership needs to be reported and the new organization needs to establish a different account number.

Changing stock ownership or the responsible party in a corporation is **not** considered a change of ownership or type of legal organization.

Whenever any change occurs, please ask DWD if a new account is needed.

## How do I register?

Once an employer is subject to UI law, the employer must file an application on State Form 2837 (SUTA Account Number Application and Disclosure Form) with DWD or register online via the Uplink Employer Self Service (E S S) application at <https://uplink.in.gov/ESS/ESSLogon.htm>.

The employer will be given an individual employer account number on registration.

The employer is responsible for timely registration and reporting and must file a quarterly report even if the employer does not know their SUTA number. Employers should contact DWD before the due date of the quarter if they are in this situation for advice on how to avoid being assessed penalty or interest.

## What will the organization's rate be? What must the organization pay?

The new employer rate for most employers is 2.5%.

The new construction employer rate is the either 4% or the average of all employers with a NAICS beginning 23 whichever is smaller, so it can change each year.

The new employer rate for a government is 1.6%.

The new employer rate for a new successor entity is the rate of the predecessor entity.

If the organization has at least 36 continuous months of liability and wages as of June 30<sup>th</sup>, it will receive a calculated **merit rate** for next calendar year.

The calculated **merit rate** is the variable rate on which the premiums are based. The merit rate reflects how many former, current, or laid-off employees have received unemployment benefits, the number of people statewide that have received unemployment benefits, and the organization's total taxable wages for the prior 36 months.

The organization pays the premium rate on the first \$9,500 of wages per employee, per year. Anything

over \$9,500 is considered excess wages. Excess wages are excluded from UI premiums.

If the organization is delinquent, the rate is increased by 2% even if the organization is a new employer in Indiana. The organization is delinquent if it has **any** outstanding reports, payments, or predecessor liabilities when the annual Merit Rate Delinquency Notice expires.

**Do the organization's workers qualify for UI coverage EVEN if the organization does not qualify as an employer under the Act?**

No. If the organization is excluded from the Act, such as a church, then the workers do not have UI coverage and cannot receive UI benefits.

If the organization does not qualify as a covered employer, but wants UI coverage for workers, it may apply for voluntary coverage. If voluntary coverage is approved, the organization must keep coverage for the workers at least two years. The annual deadline for voluntary election is March 31<sup>st</sup> per policy.

**What records must the organization keep?**

For UI purposes, the organization must keep records of:

- The beginning and ending date of each pay period and the date on which compensation is received by the worker;
- Total and UI subject compensation distributed each pay period;
- The number of workers being compensated for covered employment during the pay period containing the 12<sup>th</sup> day of each month;
- Information on the worker's status as a part-time, full-time, or seasonal employee;
- The location and entity (zip code and F E I N) for which services were actually performed;
- Each employee's name, social security number and compensation when earned and when received;
- The SOC code (job title based) which is usually shown as XX-XXXX (if the code contains a decimal followed by two additional digits, the additional information is not required / reported);
- The date each employee was hired or re-hired after a break in services of 60 days or more;
- The date each employee left employment and the reason the employment relationship ended;
- All dates and persons involved in workforce reduction (temporary or permanent) including the layoff date, recall date, result of a recall (i.e. work refusal), nature of the reduction (planned / reoccurring or unplanned), and the amount of any compensation distributed during the shutdown period (holiday, vacation, severance, sub-pay, etc.);
- All distributions to workers performing services not classified as wages by the employer.

**The business is a corporation, and the only employee is a corporate officer. Is the organization required to report the wages that the corporate officers earns from the corporation?**

The corporation is a legal entity that employs the corporate office. Wages earned from the corporation must be reported to file an application for UI benefits in the future. The amount of UI benefits available will depend on the amount of wages received from the corporation and the conditions of the break from

employment with the corporation.

**In what type of situation can the organization treat workers as independent contractors?**

The status of a worker is determined by the nature of the relationship between the business and the worker.

A worker is not considered an employee and should be considered an independent contractor *only if all* of these apply to the individual:

- The worker is the master of their own time and effort to the extent that the organization does not even have the right to direct or control their work; AND
- The worker is performing a service or services which are outside the usual course of your business – this means that the organization has not acted as though the work is essential to business operations; AND
- The worker performs the same services for other people that they perform for the organization and that the organization does not try to prevent the worker from performing the same services for the general public.



Many of the terms used in Indiana's Unemployment Insurance program have special meanings that may differ somewhat from those generally used. Below are some simplified definitions of common UI terms. These are not legal interpretations and are provided only as a guide.

**Balance (experience account)** – The net amount of funds attributed to the employer and all predecessors of the employer (if any). DWD adds in all of the contributions received and subtracts out all of the benefits paid, refunds issued, and mutualized benefit charges distributed to determine the employer's current account balance. This amount can be positive or negative and represents the employer's historical usage of the unemployment system. This is not a balance due and does not represent a financial liability to the employer.

**Base Period** – The four consecutive calendar quarters used in determining an individual's eligibility for UI benefits. This period is the first four quarters of the last five complete calendar quarters directly before the week an individual files a UI claim.

**Benefit Year** – The 52-week period UI benefits can be claimed. The benefit year begins the week an individual files a UI claim.

**Calendar Quarter** – Three-month period ending March 31st, June 30th, September 30th or December 31st.

**Computation Date** – June 30<sup>th</sup> of the year immediately prior to the year for which a merit rate is effective.

**Contributions** – Mandatory unemployment insurance premiums. They are paid quarterly by contributory employers.

**Covered Employer** – Employer subject to the Unemployment Insurance program. (See SUTA, FUTA, DWD guidelines.)

**DWD** – Indiana Department of Workforce Development (Agency).

**Employer** – An entity that pays covered wages to individuals. Employers are subject to the Unemployment Insurance program. See the section titled Getting Started for additional information.

**Employing unit** – An individual or organization that has one or more workers receiving compensation for services in Indiana. This includes all types of entities such as: individuals; partnerships; associations; joint ventures; estates; joint trust companies; receivers; insurance companies; limited liability companies, and corporations.

**Experience account** – An employer's individual account maintained by DWD that is credited for UI premium payments and voluntary payments. This account is charged for UI benefit payments to former employees and mutualized benefit charges.

**FUTA** – Federal Unemployment Tax Act. The law that regulates the federal portion of the Unemployment Insurance program.

**Initial Claim** – The first application (claim) for UI benefits made by an individual. This process determines if the individual is eligible for benefits.

**Merit Rate** – The rate employers qualify for, based on experience, when they no longer are considered new employers and are not subject to the delinquent rate. Merit rates are computed based on the past 36 months wages and the organization's account status as of each June 30<sup>th</sup>.

**Mutualized Benefit Charges (MBC)** – Each year, all benefit charges that are relieved from employer accounts in the prior calendar year are totaled and charged proportionally to all premium-paying employers. DWD determines the company's portion of the MBC by dividing the taxable wages by all taxable wages reported to the state for the prior calendar year. Any excess surcharge is used to reduce the amount of charges distributed.

**Reimbursable employer** – Employers who directly reimburse the UI Trust Fund for all UI benefits paid which are charged against the employer's reported wages.

**Special Charges / Surcharge** – Additional amount assessed against an employer's contribution due that is used to pay interest on advances if the Trust Fund is insolvent and the State has to borrow funds with which to pay UI Benefits.

**Standard Occupational Code (SOC)** – a six-digit number used to describe the work performed by a worker usually shown as XX-XXXX (if the code contains a decimal followed by two additional digits, the additional information is not required / reported).



**SUTA** – State Unemployment Tax Act. The law that regulates the state portion of the Unemployment Insurance program.

**UI** – Unemployment Insurance.

**Voluntary payment** – An additional payment made by employers. Certain qualifying payments will result in the employer obtaining a lower premium rate.

**Wages / Covered Wages** – Remuneration given by an employing unit to an individual for services rendered. If not explicitly excluded under the Act, the remuneration is covered wages.