

# *Employer's Handbook*

*For the Unemployment Insurance  
Program in North Dakota*





To Employers.....	1
Overview.....	3
What is the Purpose of the Unemployment Insurance Program? .....	3
Definitions.....	5
Responsibilities of Job Service North Dakota Unemployment Insurance Tax Area .....	8
Unemployment Insurance Tax .....	9
Who is Subject to North Dakota Unemployment Compensation Law? .....	9
Employer Account Number .....	10
Covered Wages .....	10
Payments not Considered Wages.....	10
Excluded Employment .....	11
Corporate Officer/LLC Manager Exemption .....	11
Chart of Covered and Exempt Wages.....	13
Localized and Multi-State Employment .....	14
Reporting and Records .....	15
Records to be Kept by an Employing Unit.....	15
Poster to be Displayed by Employer .....	16
Completion of Quarterly Reports.....	16
Taxable Wages .....	17
Excess Wages .....	17
Example Showing Calculation of Total, Taxable, and Excess Wages.....	17
Quarterly Report Due Dates.....	17
Online and Electronic Reporting of Quarterly Contribution and Wage Data.....	18
Separate Contribution Reports for Different Business Units .....	18
Correction of Quarterly Reports .....	19
Paying Unemployment Contributions Electronically .....	19
Late Reports/Incomplete Reports/Illegible Reports – Penalty and Interest .....	20
Penalty for Late, Incomplete, or Illegible Reports .....	20
Interest.....	20
Delinquent Reports – Effect on Contributions.....	20
Collection of Delinquent Reports and Contributions .....	21
Construction Projects Subject to Bonding Requirements .....	21
Determining Your Contribution (Tax) Rate .....	22
New Employer Contribution (Tax) Rates .....	22
Experience Rated Employer Contribution (Tax) Rates .....	22
Experience Rating Process .....	22
Contribution (Tax) Rate Calculation Process .....	22
Taxable Wage Base Determination .....	23
Tax Rate Schedule Determination.....	23
Employer’s Tax Rate Determination.....	23
Voluntary Contributions.....	24
Transfer of an Employer’s Experience Rating History to a Succeeding Employer .....	24
Mandatory Transfer .....	24
Acquisition of the Entire Business .....	25
Acquisition of Part of a Business .....	25
Anti-Suta Dumping Legislation .....	25
Staffing Services .....	26
Merged Accounts.....	26
When the Successor is an Existing Employer.....	26

When a New Employer Acquires Two or More Existing Employers .....	27
Unemployment Insurance Financing Options .....	27
Contributing Method (Tax-rated Method).....	27
Special Financing Options for Government Entities, Non-Profit Organizations, and Indian Tribes .....	28
Changing Payment Method.....	29
Inactivation of Account.....	29
Termination of Liability .....	30
Federal Unemployment Tax Credit.....	30
Audits of Employer Records.....	31
 Unemployment Insurance Benefits.....	 32
Determination of Eligibility .....	32
Amount of Unemployment Insurance Benefits.....	32
Basic Eligibility Requirements .....	33
Notification to Employer/Prompt Appeal.....	33
Assigning Benefit Charges.....	34
Charges to an Employer's Account .....	34
Statement of Benefits Paid.....	35
Disqualifications .....	35
Voluntary Quit .....	35
Misconduct.....	35
Labor Dispute.....	36
Refusal to Accept Suitable Work .....	36
 Appeals.....	 37
Time Limit .....	37
Hearing .....	37
 Controlling Unemployment Insurance Costs .....	 38
Stabilize Employment.....	38
Minimize Account Charges .....	38
Maintain a Stable Tax Rate .....	39
 Information, Forms, and Assistance .....	 40

---



# Our Mission

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

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

---



# TO EMPLOYERS

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



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

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

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

If your question is not answered in this handbook, contact the Unemployment Insurance Field Representative in your area. A complete listing of Job Service Customer Service Offices, forms, and pertinent information regarding the Unemployment Insurance Program are available at [www.jobsnd.com](http://www.jobsnd.com).

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



# OVERVIEW

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

The Unemployment Insurance Program is beneficial to both employers and employees. The purpose of the Unemployment Insurance Program is to provide temporary, partial wage replacement to individuals who have become unemployed through no fault of their own. Unemployment insurance benefits help the unemployed protect their financial health while cushioning the impact of economic downturns.

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

Employers pay unemployment insurance taxes under two tax systems, federal and state. Taxes paid to the federal government under the Federal Unemployment Tax Act (FUTA) are used to fund the administrative costs of the federal and state programs, to finance a variety of services provided through the network of state employment security agencies, and to cover the federal costs involved in extended benefits. Taxes paid to the state government are used to pay unemployment insurance benefits to unemployed workers who have become unemployed through no fault of their own.

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

**PLANNING OPPORTUNITY:** Refer to "Controlling Unemployment Insurance Costs" section for unique ideas and opportunities to manage and control your unemployment insurance costs and stabilize employment.



# DEFINITIONS

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



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

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

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

- The annual payroll for the 12-month period immediately preceding the computation date for an employer who has been liable for at least 12-months but less than 24-months.
- The average of the annual payrolls for the last two 12-month periods immediately preceding the computation date for an employer who has been liable for at least 24-months but less than 36-months.
- The average of the annual payrolls for the last three 12-month periods immediately preceding the computation date for an employer who has been liable for 36-months or more.

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

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

**Benefit Year:** A period of 52 consecutive weeks that begins with the Sunday preceding the date an unemployment insurance benefits claim is filed.

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

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

**Claimant:** An individual who files a claim for unemployment insurance benefits.

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

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

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

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

**Employer:** When an employing unit is determined to be responsible for providing Unemployment Insurance (UI) coverage for its workers, the employing unit is required to pay (contribute) a quarterly payroll tax. The employing unit then is called a "contributing employer". An employing unit may become liable for providing coverage for its workers under any of the five following categories:

- **Governmental Entities**, including **federally recognized Indian Tribes**
- **Nonprofit Organizations** described in Section 501(c)(3) of the Internal Revenue Code
- Employers of **Domestic** (household) Workers
- Employers of **Agricultural** Workers
- **General Business** Employers (those that fall into none of the other categories)

Note: Government Entities, Indian Tribes or wholly-owned entity of an Indian Tribe, and Nonprofit organizations may choose to provide their coverage as a "reimbursing" employer rather than a "contributing" employer.

**Employment:** All work done by persons age 16 or older, whom you pay, whether permanently or temporarily employed, unless the work is specifically exempted from coverage under provisions of the law is considered employment. Employment includes services performed by officers of a corporation, including "S" corporations, and by certain managers of limited liability companies.

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

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

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

**Fiscal Year:** October 1 through September 30 for state unemployment insurance tax purposes.

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

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

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

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

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

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

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

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

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

**Trust Fund (or UI Trust Fund):** North Dakota’s reserve account within the Federal Unemployment Trust Fund, financed through covered employers’ unemployment insurance taxes. The trust is used only to pay unemployment insurance benefits to eligible workers of North Dakota employers.

**Voluntary Contribution:** A voluntary payment made to an employer’s unemployment insurance account in order to improve the employer’s contributions-to-benefits ratio and thereby decreasing their tax rate assigned.

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

# RESPONSIBILITIES OF JOB SERVICE NORTH DAKOTA UNEMPLOYMENT INSURANCE TAX AREA

Job Service North Dakota unemployment insurance tax area is primarily responsible for providing assistance and information to employers concerning the Unemployment Insurance (UI) tax, determination of employer liability, and for UI tax collections. The basic activities of the UI tax area are to:

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

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

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

# UNEMPLOYMENT INSURANCE TAX

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

Job Service North Dakota determines whether an employing unit is a liable employer as defined in the North Dakota Unemployment Compensation Law based on information the employing unit provides on the Report to Determine Liability form (SFN41216).

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

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

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

- Acquiring all or part of a business of an employer already covered under the law.
- Being liable under the Federal Unemployment Tax Act (FUTA). An employer liable for FUTA becomes immediately liable to North Dakota Unemployment Compensation Law when they hire a worker in North Dakota.
- Having paid gross wages of \$1,500 or more (to one or more employees) in any calendar quarter in the current or preceding calendar year.
- Having one or more persons in employment for any part of a day in 20 different weeks in a calendar year. The weeks of employment do not need to be consecutive.
- Having paid cash wages of \$1,000 or more in a calendar quarter in the current or preceding year to a worker who performs domestic service (domestic labor in private home, local college club, or local chapter of a college fraternity or sorority).
- Having paid cash wages of \$20,000 or more for agricultural labor in a calendar quarter or having ten or more employees in agricultural labor in 20 different weeks during a calendar year.
- Non-profit organizations with 501(c)(3) exempt status (i.e., certain educational or charitable organizations classified as non-profit under Section 501(c)(3) of the Internal Revenue Code) will become liable by employing four or more individuals for some portion of a day in 20 different weeks of a calendar year.
- Political subdivisions, governmental entities, Indian tribes, and wholly owned entities of Indian tribes are automatically liable upon employing any non-excluded workers.

- By choosing to make a voluntary application for coverage and having the application accepted by Job Service North Dakota.

## **EMPLOYER ACCOUNT NUMBER**

Each liable North Dakota employer is assigned an employer account number, which should be included on all correspondence with Job Service North Dakota.

## **COVERED WAGES**

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



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

The term "wages paid" includes wages actually received by the worker. An employer must report the wages for the quarter in which the wages were actually paid.

## **PAYMENTS NOT CONSIDERED WAGES**

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

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

## EXCLUDED EMPLOYMENT

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



Some services excluded from coverage and not taxable under the law are listed below.

- Sole proprietors and partners are not considered employees; their income is not subject to unemployment tax and should not be reported.
- Managers, who are also members (owners), of a limited liability company that is taxed as a partnership or a disregarded entity.
- Services performed for a son, daughter, or spouse, or services performed by a child under the age of 18 for a parent while residing in the parent's home. This exclusion does not apply if it is a corporation. It applies to partnerships, or certain limited liability companies treated as partnerships, or disregarded entities for federal income tax purposes only if the worker has a shared exempt relationship with each partner.
- Service by a licensed insurance, securities, or real estate agent, if such service is performed for remuneration solely by way of commission.
- Services performed for a church or an organization operated for religious purposes and controlled by a church.
- Services in the performance of duties as an elected official for a political subdivision or Indian tribe.
- Railroad employment.
- Activities undertaken as a member of the state Army or Air National Guard.
- Services performed for a school by students enrolled in the school or performing services in a work-study program. (This exemption may apply to a student's spouse under certain conditions.)
- Service performed by an individual under the age of 18 in the delivery or distribution of newspapers.

## CORPORATE OFFICER/LLC MANAGER EXEMPTION

North Dakota Unemployment Compensation Law provides that work performed by corporate officers or certain Limited Liability Company (LLC) managers who receive remuneration for service is employment and their earnings must be reported as wages on all quarterly reports filed with Job Service North Dakota. However, the law also provides an option for exemption of remuneration to corporate officers or LLC managers owning 25 percent or more of the corporation.

The corporation or LLC, with the consent of the officer/manager, may file an [\*Application to Exempt Corporate Officers or Limited Liability Company Managers From Job Insurance Coverage \(SFN 18411\)\*](#). This application must be filed within 60 days of formation of the corporation or LLC or by January 31 of the year in which the desired exemption is to become effective. This exemption does not apply to any Limited Liability Company that is wholly owned by or operated as an Indian tribe, state, or local government, or non-profit organization with respect to services performed for those entities that are required by federal law to be covered under the North Dakota Unemployment Compensation Law.

**CORPORATIONS AND LIMITED LIABILITY COMPANIES MAY WANT TO INVESTIGATE THE EFFECT OF THE EXEMPTION ON THEIR FUTA TAX CREDIT AND RATE PRIOR TO MAKING AN APPLICATION FOR EXEMPTION.**

**PLANNING OPPORTUNITY:** Exemption of corporate officers from unemployment insurance coverage is most beneficial to those employers with a high state unemployment insurance tax rate and few, if any, other employees.

Job Service will review the application and notify the employer, in writing, of the application's acceptance or denial. Once approved, an exemption remains in effect until an application is filed to void the exemption.

## CHART OF COVERED AND EXEMPT WAGES

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

- 1) Remuneration to, (a) Corporate officers and, (b) Managers of Limited Liability Companies that are treated as corporations for purposes of federal income taxation AND managers (of any LLC) who are not members, for services performed are considered wages under state law, and must be reported. However, remuneration to corporate officers or Limited Liability Company managers owning 25 percent or more of the corporation or LLC may be exempted, if with the consent of the officer/manager, and within 60 days of formation of the corporation or LLC, or during January of any calendar year, the corporation/LLC files an application to exempt their services from coverage.

## **LOCALIZED AND MULTI-STATE EMPLOYMENT**

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

### **Criteria 1. LOCALIZED WORKERS**

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

### **Criteria 2. BASE OF OPERATIONS**

If Criteria 1 does not apply, an employee's services are covered in North Dakota if some services are performed in North Dakota and the employee's base of operation is in North Dakota. "Base of operation" means the place, usually permanent in nature, from which the employee starts working and to which the employee customarily returns to perform the terms of employment. It can also be the place to which the employee returns to receive instructions or messages.

### **Criteria 3. PLACE OF DIRECTION AND CONTROL**

If neither Criteria 1 nor Criteria 2 applies, an employee's services are covered in North Dakota if some services are performed in North Dakota and the place from which you direct and control the employee is in North Dakota. Generally, your headquarters would be the place from which you direct and control the employee.

### **Criteria 4. PLACE OF EMPLOYEE'S RESIDENCE**

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

### **Criteria 5. IF CRITERIA 1 THROUGH CRITERIA 4 DO NOT APPLY**

If Criteria 1 through Criteria 4 does not apply, and the individual's services are not covered under the laws of any other state or Canada, the services are covered in North Dakota if you direct and control the individual from North Dakota.

# REPORTING AND RECORDS

## RECORDS TO BE KEPT BY AN EMPLOYING UNIT



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

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

The law requires that records of an employing unit be open for inspection by Job Service North Dakota or its authorized representatives at any reasonable time and as often as may be necessary.

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

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

For each payroll period:

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

For each worker:

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

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

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

The poster is provided to employers when they first become liable for unemployment insurance taxes. Additional copies of the poster can be printed from [www.jobsnd.com](http://www.jobsnd.com) or by contacting your local Unemployment Insurance Field Representative.

## **COMPLETION OF QUARTERLY REPORTS**

A liable employer must file quarterly reports and pay tax on the wages reported each calendar quarter. Quarterly reports must be filed electronically. They can be filed online at [www.jobsnd.com](http://www.jobsnd.com) through the UI EASY (Unemployment Insurance Employer Account System), or through secure FTP.

Secure FTP (File Transfer Protocol) lets you upload a file containing quarterly Contribution and Wage Report data via the Internet (file transfer) in a secure environment. The file must be in the ICESA format. The file may contain quarterly report data for multiple employers. This is a convenient electronic reporting option for payroll providers.

On quarterly reports, employers are required to report total gross wages paid for employment during the quarter.

## TAXABLE WAGES

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

## EXCESS WAGES

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

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

For this example, assume that the Taxable Wage Base for the calendar year is \$20,300.

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

1 <sup>st</sup> Quarter		2 <sup>nd</sup> Quarter		3 <sup>rd</sup> Quarter		4 <sup>th</sup> Quarter	
Total Wages	Excess Wages						
\$ 7,000	\$ 0	\$ 7,000	\$ 0	\$ 7,000	\$ 700	\$7,000	\$ 7,000

## QUARTERLY REPORT DUE DATES

Quarterly reports and tax payments must be electronically submitted by the end of the month following the quarter as indicated below:

Quarter	Due Date	Earliest Online Filing Date
January 1 – March 31	April 30	March 15
April 1 – June 30	July 31	June 15
July 1 – September 30	October 31	September 15
October 1 – December 31	January 31	December 15

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

## ONLINE AND ELECTRONIC REPORTING OF QUARTERLY CONTRIBUTION AND WAGE DATA



All contribution and wage reports must be filed by a bureau-approved electronic method. Job Service North Dakota's *Unemployment Insurance Employer Account System (UI EASY)* is a secure online web application that allows employers to conduct their business of their business with the Unemployment Insurance Program effectively and securely:

- File quarterly Contribution and Wage Reports.
- Make electronic payments using the ACH Debit or Credit Card transaction methods.
- View and amend previous reports.
- Calculate payments to lower your tax rate for voluntary contributions.
- File and manage appeals.
- View payment history.
- Verify status of payments and reports.
- View and update account information.

**UI EASY** is available seven days a week, except from 10:00 pm – midnight, Monday through Friday and occasionally for system maintenance.

You may access **UI EASY** or find information on other electronic reporting methods from our website at [www.jobsnd.com](http://www.jobsnd.com).

**PLANNING OPPORTUNITY:** Consider the time and money you will save through electronic report filing.

## SEPARATE CONTRIBUTION REPORTS FOR DIFFERENT BUSINESS UNITS

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

## CORRECTION OF QUARTERLY REPORTS

If an employer submitted an erroneous report of employee wages, or erroneously reported the amount of total, nontaxable or taxable wages for a previous quarter, the employer **MUST NOT** make adjustments by increasing or decreasing these amounts on a current quarterly report.

The employer should complete the [Statement to Correct Employer's Contribution and Wage Report \(SFN 41270\)](#) form, showing the quarter in which the error occurred, the correct name, Social Security Number, and wages of individual employees (if the error was in the reporting of employee wages), and the difference between the original reported amounts and the corrected amounts. This form is available at [www.jobsnd.com](http://www.jobsnd.com). If an error reflects an underpayment of contributions, the employer should submit the contribution due, plus any applicable interest, along with the [Statement to Correct Employer's Contribution and Wage Report form](#).

## PAYING UNEMPLOYMENT CONTRIBUTIONS ELECTRONICALLY

Job Service North Dakota accepts Unemployment Insurance contribution payments through Electronic Fund Transfer (EFT).



The Automated Clearing House (ACH) Debit transaction method is available in the UI EASY system. The ACH credit transaction method is a national standard for the electronic transfer of funds using the ACH network.

Employers must register for the ACH Credit program by completing the Application for ACH Credit Transfer, which is included in the Electronic Fund Transfer Guide. This guide is available in the documents section of [www.jobsnd.com](http://www.jobsnd.com).

**Effective with reports for the quarter ending March 31, 2018, all payments must be made electronically.**

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

Quarterly reports are due each quarter as long as the account is active, even if no wages were paid in the quarter, or if all wages are excess wages with no tax due. This wage information is necessary to process benefit claims. If an employer has paid no wages during the quarter, the employer should indicate “none” on the report, and submit the report in a timely manner.

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

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

Any employer who fails to submit a Contribution and Wage Report by the due date, or submits an incomplete report for a quarter, shall pay the bureau a penalty equal to five percent of the contributions due for each month or part of a month until the report is submitted. The penalty for the first month of the first delinquent report in a calendar year may not be less than twenty-five dollars. The penalty for the first month of any subsequent delinquent reports in a calendar year may not be less than \$100. The penalty for subsequent months may not exceed 20% of contributions due. The maximum penalty imposed by this subsection may not exceed \$500 for any single report. An employer may be assessed a penalty, even if no wages were paid in a quarter, for failure to submit a complete Contribution and Wage Report by the due date.

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

### **INTEREST**

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

### **DELINQUENT REPORTS – EFFECT ON CONTRIBUTIONS**

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

North Dakota Century Code 52-04-09 requires that Job Service North Dakota notify an employer by certified mail when tax rates are being determined, if an employer has failed to file a required report, or has filed an insufficient report for any quarter.



The Past Due Report Notice for the third quarter of the year, which is mailed to delinquent employers via certified mail, serves this purpose. In addition to informing the employer of the quarters for which a report has not been received, it informs the employer that unless the employer files the delinquent report(s) within 15 days after the mailing of the past due report notice, the employer's rate for the upcoming year must be set as follows:

- Experience-rated negative employers, new positive construction employers, and new negative employers must be assigned the negative employer maximum rate.
- Experience-rated positive employers and new positive non-construction employers must be assigned the negative employer minimum rate.

## **COLLECTION OF DELINQUENT REPORTS AND CONTRIBUTIONS**

Contributions/taxes not paid by the employer from whom they are due require other employers to make up the shortfall. For this reason, Job Service North Dakota maintains a rigorous collection program to obtain delinquent reports and contribution. If there is a balance due on an account, the employer will receive a contribution (tax) notice. If an Employer's Contribution and Wage Report is not received by the date due, the account will be sent to a local Unemployment Insurance Field Representative for collection of the report and taxes due. If a Field Representative is not successful in obtaining the reports and contributions due from the employer, stronger action is taken.

Job Service North Dakota has several collection methods at its disposal including, but not limited to, property liens, garnishments, judgments, and other court action.

## **CONSTRUCTION PROJECTS SUBJECT TO BONDING REQUIREMENTS**

Any project in North Dakota with an estimated construction cost of at least \$50 million will likely fall under unemployment insurance bonding requirements. North Dakota Century Code 52-04-06.1 outlines specific bonding requirements for North Dakota projects that meet the following criteria:

- The estimated construction costs are \$50 million or greater
- The project is planned to be completed or discontinued within a period of 7 years.

This bonding requirement is in addition to required payment of all unemployment contributions and taxes due.

The Construction Project Risk Protection provision requires the general or prime contractor, or the owner in those situations in which there is no general or prime contractor, of a major construction project to post a surety bond or irrevocable letter of credit with Job Service North Dakota **prior** to commencement of construction work on the project.

Each contractor on the covered project must maintain separate payroll records and must submit separate quarterly reports for all employment and all wages paid for work on the project.

## **DETERMINING YOUR CONTRIBUTION (TAX) RATE**

### **NEW EMPLOYER CONTRIBUTION (TAX) RATES**

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

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

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

### **EXPERIENCE RATED EMPLOYER CONTRIBUTION (TAX) RATES**

Experience-rated employers are those employers with sufficient time in the Unemployment Insurance Program to meet the liable and chargeable criteria. Experience-rated employers are assigned rates based on their own company’s experience with, and their potential risk of, unemployment.

### **EXPERIENCE RATING PROCESS**

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

### **CONTRIBUTION (TAX) RATE CALCULATION PROCESS**

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



## **TAXABLE WAGE BASE DETERMINATION**

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

## **TAX RATE SCHEDULE DETERMINATION**

Job Service North Dakota's Labor Market Information (LMI) area determines separate tax rate schedules for positive and negative account employers.

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

## **EMPLOYER'S TAX RATE DETERMINATION**

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

- The cumulative lifetime reserve balance
  - is used to determine if the employer is positive or negative. If the employer has a positive cumulative reserve balance, then the positive rate schedule is applied. If the employer has a negative cumulative reserve balance, then the negative rate schedule applies.
- The six-year reserve balance
  - is calculated as the most recent six fiscal year contributions minus the most recent six year benefits. The calculation uses contributions and benefits during the six fiscal years proceeding the current tax year. Contributions include those paid between November 1 and October 31 of each year. Benefits are those charged between October 1 and September 30 of each year.
- The employer's average taxable payroll
  - is a six-year reserve ratio calculated by dividing the six-year cumulative reserve by the last three years' average taxable payroll. This reserve ratio determines the significance of the employer's account balance in relation to the employer's potential liability for benefits. The higher an employer's reserve ratio, the lower the employer's rate. The reserve ratio determines which rate within the respective rate schedule will be assigned to the employer's account(s).

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

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

Rate determinations and taxable wage base notices are mailed to all employers during the first full week of December each year.

## **VOLUNTARY CONTRIBUTIONS**

Employers may make voluntary contributions to their unemployment insurance account to improve their contributions-to-benefits ratio and thereby decrease their assigned tax rate.

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



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

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

### **MANDATORY TRANSFER**

If an employer acquires all or part of the business or workforce of another employer and at the time of acquisition there was common ownership, management, or control, Job Service North Dakota must transfer the predecessor's unemployment insurance experience history and rate to the successor. Some examples of when mandatory transfer applies are:

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

## **ACQUISITION OF THE ENTIRE BUSINESS**

When an employer acquires an entire business and continues essentially the same business activity as the predecessor, without interruption, you ***may*** have the option of acquiring the experience rating history of the former owner if a mandatory successorship does not apply. The experience rating history includes the history of payroll, contributions and benefit charges. Therefore, when you acquire the experience-rating history, any unemployment benefits awarded based on wages paid by the former owner may be charged to your account (the successor). A predecessor may refuse to transfer its experience rating history.

## **ACQUISITION OF PART OF A BUSINESS**

An employer is not automatically assigned the tax rate and experience rating history account of the former owner when the employer acquires part of the business. An employer may apply to succeed to the portion of the experience rating history of the predecessor's account which applies to that portion of the business acquired. A predecessor must provide written authorization to Job Service North Dakota authorizing the appropriate percentage of transfer to the successor. A predecessor may refuse to transfer a portion of its experience rating.

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

## **ANTI-SUTA DUMPING LEGISLATION**

North Dakota's 2005 Legislative Assembly addressed the risk to the Unemployment Insurance Trust Fund posed by the practice of State Unemployment Tax Act (SUTA) dumping. The 2005 Legislature passed HB 1195 which was effective August 1, 2005, and is applicable to all employers that have North Dakota UI tax accounts including Professional Employer Organizations (PEOs).

SUTA dumping is one of the biggest issues facing the Unemployment Insurance Program and is a tax evasion scheme where shell companies are formed and creatively manipulated to obtain low unemployment insurance tax rates. When a low rate is obtained, payroll from another entity with a high unemployment insurance tax rate is shifted to the account with the lower rate. The entity with the higher rate is then "dumped." Such abusive schemes leave other employers making up for the unpaid tax. SUTA

dumping is also referred to as state unemployment tax avoidance and tax rate manipulation.

Employers who engage in SUTA dumping (or other tax manipulation schemes) to avoid paying their fair share unfairly shift their costs to other employers. SUTA dumping is harmful because it:

- Compromises the integrity of the unemployment insurance system.
- Results in an uneven playing field.
- Eliminates the incentive for employers to avoid layoffs.
- Adversely affects tax rates for all employers.
- Costs the Unemployment Insurance Trust Fund millions of dollars each year.

SUTA dumping hurts everyone: employers, employees, and taxpayers make up the difference in higher taxes, lost jobs, lost profits, lower wages, and higher costs for goods and services.

House Bill 1195 provides that, in addition to civil penalties, a person who knowingly violates or attempts to violate the anti-SUTA dumping prohibitions will be guilty of a Class C felony.

For a full text of House Bill 1195, go online: <http://www.legis.nd.gov/assembly/59-2005/bill-text/FASP0400.pdf>. Contact your local Unemployment Insurance Field Representative if you have questions regarding the anti-SUTA dumping measures.

## **STAFFING SERVICES**

House Bill 1195 passed by the 2005 session of the North Dakota Legislature contains provisions that apply to staffing services and North Dakota unemployment insurance accounts. Long-term staffing services are required to report workers (on their quarterly unemployment insurance tax reports) assigned to a client company using the client company's unemployment insurance tax account number and, with certain exceptions, will pay taxes using the client company's unemployment insurance tax rate. These reporting requirements apply to all contracts effective on or after July 1, 2005.

## **MERGED ACCOUNTS**

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

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

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

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

When two or more existing businesses merge into a new business, the experience of the two or more existing accounts would be combined, and a new rate would be calculated for the current tax year. When two or more new employers combine to form a new business, the employer is assigned the tax rate for new construction or non-construction industry employers.

**PLANNING OPPORTUNITY:** Review options for assuming the unemployment insurance experience rate history of a predecessor and whether it would be beneficial for your business.

## UNEMPLOYMENT INSURANCE FINANCING OPTIONS

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



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

### CONTRIBUTING METHOD (TAX-RATED METHOD)

Under the contributing method, the employer makes quarterly contributions to the Unemployment Insurance Compensation Trust Fund. The amount is determined by the employer's assigned tax rate and taxable employee wages. Initially, an employer is charged a "new employer" tax rate. After a specified length of time in the Unemployment Insurance Program, the employer is assigned an experience-based rate. Benefits are not charged to an employer's account for rate computation purposes if the employee left employment without good cause, was discharged for misconduct, or the employee received benefits that were later determined to have been improperly paid. Tax rated employers can more accurately estimate unemployment tax costs since their tax rate remains constant for a complete calendar quarter.

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

### DIRECT REIMBURSEMENT METHOD

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

Under the Direct Reimbursement Method, the employer **may not** be relieved of benefit charges paid after an employee voluntarily quits, is discharged, or is improperly paid benefits. The employer is responsible for reimbursing the fund for the full cost of all benefits paid which were attributable to wages paid to its employees.

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

Reimbursement payments will vary depending on the number of former employees who are receiving unemployment benefits. With this method, it is difficult to estimate costs.

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

*How does the direct reimbursement payment option work?*

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

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

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

### ADVANCED REIMBURSEMENT METHOD (FLAT-RATE METHOD)

Under the Advanced Reimbursement Method, the employer pays a fixed percentage of its total payroll each quarter to create a reserve from which the quarterly billings are paid.

Initially, each quarter the employer pays one percent of its total payroll. Each year thereafter, the quarterly percentage is adjusted to maintain a reserve balance equal to one percent of the previous fiscal year's total payroll. This rate is calculated by subtracting the account's cumulative lifetime reserve from the calculation of 1 percent of the previous year's taxable payroll.

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

## CHANGING PAYMENT METHOD

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

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

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

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

## INACTIVATION OF ACCOUNT

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

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

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

## TERMINATION OF LIABILITY

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

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

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

- Has moved from the state.
- Has discontinued the business conducted by it at the time it became liable under the terms of the North Dakota Unemployment Compensation Law.
- Has been decided in a judicial proceeding or has become bankrupt.

## FEDERAL UNEMPLOYMENT TAX CREDIT

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



The Federal Unemployment Tax Act (FUTA) tax rate is currently 6.0% on the first \$7,000 in wages paid to each employee in a calendar year. When an employer is current in the payment of their state unemployment insurance taxes, the employer may receive a tax credit of 5.4% against the federal tax on their Federal Form 940 regardless of their North Dakota unemployment insurance tax rate. This means that North Dakota employers who pay their state taxes timely will pay a net FUTA tax of 0.6%.

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

Please note that an exemption of corporate officers and LLC managers from state unemployment insurance coverage may affect your FUTA tax credit and rate.

## AUDITS OF EMPLOYER RECORDS

Job Service North Dakota conducts audits on employers' records periodically to ensure compliance with the taxing provisions of the law, and to promote the employer's knowledge and understanding of their requirements under the law. Employer accounts may be randomly or individually selected for audit.



Audits may be conducted at the employer's place of business or at an accountant's office. Job Service North Dakota will contact employers to schedule an audit appointment that is convenient to the employer and the Unemployment Insurance Field Representative.

The Unemployment Insurance Field Representative will interview the owner or representative of the business before examining the records. The purpose of the interview is to determine the nature of the business, the types of services being performed, and to verify the ownership of the business. This pre-audit interview will also help the Unemployment Insurance Field Representative to better understand the financial records that will be examined.

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

# UNEMPLOYMENT INSURANCE BENEFITS

## DETERMINATION OF ELIGIBILITY

The Job Service North Dakota Benefits Section will issue a determination of eligibility, either awarding or denying benefits, following a thorough assessment of the claim. All employers with wages in the base period, plus the last or most recent employer, will be asked to provide details regarding the reasons for the employee's separation. Both parties will also be asked to provide information regarding any separation payments received after the individual's last day of work.

All interested parties have the right to appeal an eligibility determination that awards or denies benefits.

## AMOUNT OF UNEMPLOYMENT INSURANCE BENEFITS

A claimant's unemployment insurance benefit amount is based on wages paid during the "base period." The base period is the 12-month period consisting of the first four of the last five completed calendar quarters preceding the date the claim was filed. The chart below illustrates how a base period is established.

Base Period Quarter 1	Base Period Quarter 2	Base Period Quarter 3	Base Period Quarter 4	Lag Quarter	Quarter In Progress When Claim Is Filed
Included	Included	Included	Included	Not Included	Not Included

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

An individual's benefit year begins the Sunday prior to the day the individual filed their claim for unemployment insurance benefits. An individual has a 52-week period called "benefit year" to collect the maximum amount entitled. If the individual collects all benefits before that year has ended, a new North Dakota claim cannot be started. If the individual has earnings in another state, the individual may be eligible to file a claim against that state. The number of weeks an individual may be allowed to receive benefits can range from 12 to 26 weeks.

## BASIC ELIGIBILITY REQUIREMENTS

Claimants must meet the following eligibility requirements in order to be eligible for unemployment insurance benefits:

- Have been separated from employment through no fault of their own or have had their work hours significantly reduced.
- Be able to work.
- Be available for work.
- Be actively seeking employment.
- Follow a reemployment plan established with Job Service.
- Be monetarily eligible based on work performed during the base period.

The reason for separation from the “most recent employer” determines if an individual can *qualify* for unemployment insurance benefits. In general, claimants are eligible for unemployment insurance benefits if they are unemployed through no fault of their own. It is possible to quit employment and still be eligible for benefits if the claimant can show that the reason for quitting is attributable to the employer. Some factors considered are the degree of risk to the employee’s health, safety, and morals, or whether there was a substantial change in the conditions of employment, such as, driving distance, wages, hours, etc.

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

## NOTIFICATION TO EMPLOYER/PROMPT APPEAL

When an employee, or a former employee, files for unemployment insurance benefits, Job Service North Dakota must obtain information from that individual, as well as from employer(s) for which they worked. If the claimant has sufficient prior earnings, the claimant’s most recent employer and all employers who paid wages on which the claim is based are notified that a claim has been filed through a **Notice of Claim**. If the claimant has been separated for any reason, other than lack of work, the employer should provide full details about the separation. To protect your appeal rights, the notice should contain complete, factual and accurate information.



## Assigning Benefit Charges

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



## CHARGES TO AN EMPLOYER'S ACCOUNT

Whether or not an employer's account is charged for unemployment insurance benefits depends on several factors as outlined below.

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

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

### TAX-RATED EMPLOYERS

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

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

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

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

## STATEMENT OF BENEFITS PAID

Job Service North Dakota mails quarterly *Statement of Benefits Paid* notices to employers (except certain government and non-profit entities) whose accounts had unemployment insurance benefit payment activity in the past quarter.



These notices are mailed at the beginning of the second week following the end of the quarter. The notice includes the name and Social Security Number of each person who received unemployment insurance benefits during the quarter, which were based on wages earned in employment from this employer. The notice also lists the amount of benefits that were paid to the claimant and the amount of those benefits that have been charged to the employer's account.

The Statement of Benefits Paid notice is neither a bill nor a request for payment. Employers should use the information contained in the statements to monitor the status of their unemployment insurance accounts.

## DISQUALIFICATIONS

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

### VOLUNTARY QUIT

Employees, who voluntarily quit work without good cause attributable to an employer, will be disqualified from benefits until they obtain subsequent employment and earn wages equal to or greater than eight times their current weekly benefit amounts.

### MISCONDUCT

Employees who are fired for misconduct associated with their work will be disqualified from benefits until they obtain subsequent employment and earn wages equal to or greater than ten times their weekly benefit amounts.

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

## **LABOR DISPUTE**

For any week with respect to which it is found that the individual's unemployment is due to any kind of labor dispute, including a strike, sympathy strike, or lockout; provided, that this subsection does not apply if it is shown that:

- a. The individual is not participating in or directly interested in the labor dispute; and
- b. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the labor dispute occurs, any of whom are participating in or directly interested in the labor dispute; provided, that if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department must, for the purpose of this subsection be deemed to be a separate factory, establishment, or other premises.

## **REFUSAL TO ACCEPT SUITABLE WORK**

Claimants who refuse to accept suitable work when it is offered, or claimants who fail to apply for jobs when directed, will be disqualified until such time as they obtain subsequent employment and earn wages equal to or greater than ten times their current weekly benefit amount.

# APPEALS

North Dakota Unemployment Compensation Law provides that determinations and decisions be subject to appeal. In general, parties affected by a determination or decision may appeal any determination or decision that:



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

## TIME LIMIT

Each Job Service North Dakota notice, determination, or decision contains information relating to appeal rights. An appeal must be in writing, detailing the reason for the appeal, and must be filed online, faxed to 701-328-1882, delivered in person to any Job Service office, or mailed to Job Service North Dakota, Appeals Section, PO Box 5507, Bismarck, ND 58506-5507 within the specified time limits. If an appeal is not made within the time limits, the determination or decision becomes final and binding.

## HEARING

When an employer or claimant submits an appeal within the appropriate time frame, a hearing is scheduled with a Job Service North Dakota Appeals Referee. Appeal hearings are conducted by telephone conference call. Participating parties provide testimony and evidence at the appeal hearing after which the appeals referee issues a written decision.

Appeals referee decisions may be appealed to the Job Service North Dakota Executive Director. Executive Director decisions may be appealed to district court.

# CONTROLLING UNEMPLOYMENT INSURANCE COSTS



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

Job Service cares that your business does well. Consider the following to help manage unemployment insurance costs:

## STABILIZE EMPLOYMENT

- Screen prospective employees carefully: evaluate skills, training, prior work experience and check references before hiring the individual for the job.
- Have sound, written policy statements concerning employee conduct in place.
- Transfer employees to other job sites when necessary and feasible.
- Offer job openings to laid-off employees, if possible, or contact other employers to find work for them. Report any refusals to accept work to Job Service North Dakota.
- Use regular employees for repairs and maintenance during slack periods.

## MINIMIZE ACCOUNT CHARGES

- Keep accurate records of employment agreements, employee performance, dates and details of warnings, and other disciplinary measures.
- Monitor new employees' progress carefully especially during their probationary periods. Benefit costs will increase proportionately to the length of time individuals are employed.
- Provide Job Service North Dakota with specific reasons for employee separations. Eligibility determinations are based on statements employers and claimants provide. Provide facts, not conclusions.
- Carefully read and reply to all Job Service North Dakota notices concerning benefit claims and requests for information.
- Take the time to appeal if you disagree with a determination.
- Submit all appeals within the appeal period provided by law.

## **MAINTAIN A STABLE TAX RATE**

- Submit timely quarterly wage reports to avoid penalties.
- Pay taxes promptly to obtain the maximum Federal Unemployment Tax credit.
- Promptly report all changes to your business status and structure.
- Consider a voluntary payment to lower your tax rate, if feasible.
- Notify Job Service North Dakota of job refusals by individuals who you know or believe to be currently collecting unemployment insurance benefits.
- Review options for assuming an experience rating history account when acquiring a business.
- Use electronic filing options to pay unemployment insurance taxes and to file quarterly unemployment insurance tax reports.
- Notify Job Service North Dakota of an impending layoff as soon as possible. (Individuals may be placed in temporary or full-time employment prior to drawing unemployment insurance benefits.)

# INFORMATION, FORMS, AND ASSISTANCE

Visit [jobsnd.com](http://jobsnd.com) for unemployment insurance information, forms, and [field representative contact information](#).

You may also contact:

Job Service North Dakota  
Unemployment Insurance  
PO Box 5507  
1000 East Divide Ave.  
Bismarck, ND 58506-5507

Phone: (701) 328-2814 Fax: (701) 328-1882

TTY Relay ND 1-800-366-6888

Email: [jsuits@nd.gov](mailto:jsuits@nd.gov)

## **JOB SERVICE NORTH DAKOTA**

Employer's Handbook  
Unemployment Insurance  
PO Box 5507  
1000 East Divide Ave.  
Bismarck, ND 58506-5507



UNEMPLOYMENT INSURANCE  
JSND-4036 (R. 1-19)

Job Service is an equal opportunity employer/program provider.  
Auxiliary aids and services are available upon request to individuals with disabilities.