Pennsylvania Unemployment Compensation

Employer Responsibilities

What are the responsibilities of employers in PA Unemployment Compensation (UC)?

Employers who pay wages for employment **covered** under the UC Law are required to:

- Register with the department
- Maintain certain employment records
- File quarterly reports of wages paid and contributions due
- Pay the employer contributions due on such quarterly reports
- Withhold and remit any employee contributions due on such quarterly reports for quarters during which employee contributions are in effect
- Respond timely and adequately to the department's request for information regarding an individual's eligibility for compensation
- Report an acquisition
- Report new hires

What is an employer?

According to Section 4(j)(1) of the UC Law, an “employer” is defined as

“the Commonwealth of Pennsylvania, its political subdivisions, and their instrumentalities and every individual, copartnership, association, corporation (domestic or foreign), or other entity, the legal representative, trustee in bankruptcy, receiver or trustee of any individual, copartnership, association, corporation, or other entity, or the legal representative of a deceased person, who or which employed or employs any employee in employment subject to this act for some portion of a day during a calendar year, or who or which has elected to become fully subject to this act, and whose election remains in force.”

Covered Employment Under the PA UC Law

Section 4(l) of the Pennsylvania UC Law states in part:

(1) “Employment” means all personal service performed for remuneration by an individual under any contract of hire, express or implied, written or oral, including service in interstate commerce and service as an officer of a corporation.

Remuneration: The total compensation paid for work or services

Corporate officer wages are taxable if the officer is performing services for the business.

Covered Employment Under the PA UC Law

(2) The term “Employment” shall include an individual's entire service performed within or both within and without this Commonwealth, if

(A) The service is localized within this Commonwealth, or

(B) The service is not localized in any state but some of the service is performed within this Commonwealth and (a) the base for operations or place from which such service is directed or controlled is in this Commonwealth, or (b) the base for operations or place from which such service is directed or controlled is not in any state in which some part of this service is performed, but the individual's residence is in this Commonwealth . . .“

What state you pay UC tax for each is employee is based primarily on where the employee performs their services.

Who is exempt from UC Tax?

Sole proprietorships/Partnerships –

- Owners of an individual entity (a sole proprietorship) and partners in a partnership are considered self-employed businesspersons**.**

Family Employment in Sole proprietorships/Partnerships

- an individual is employed by a son, daughter, or spouse, or
- a child under the age of 18 is employed by a parent.
- For partnerships, the family member exemption is only met if the individuals meets the criteria for each partner.

In addition to blood relatives, "family" also includes

- Stepchildren and their parents
- Foster children and their parents
- Adopted children and their parents.

The family employment exemption does not apply to LLCs or corporations (or any other type of entity).

Independent Contractor vs Employee

“Employee” applies to every individual who is performing or has performed services for which the individual is receiving remuneration from an employer, unless specifically excluded from coverage under the law.

“Independent contractor” is a person who performs services meeting two conditions. The individual must be:

- Free from control or direction over the performance of the services involved; and
- customarily engaged in an independently established trade, occupation, profession or business.

Independent Contractor vs Employee

The Office of UC Tax Services also enforces the Construction Workplace Misclassification Act (Act 72 of 2011), which provides additional requirements if a worker performs services in the construction industry.

In these cases, a worker will be designated as an independent contractor only if the worker

(1) has a written contract to perform such services,
(2) is free from direction or control over performance of the services both under the contract of service and in fact, and
(3) is customarily engaged in an independently established trade, occupation, profession or business.

What are wages?

Wages means all remuneration paid by an employer to an individual with respect to his/her employment unless specifically excluded under Section 4(x) of the UC Law.

Wages include not only salary, commissions, bonuses and tips, but also sick or accident disability payments (except workers' compensation payments) made by an employer or a third party (i.e., insurance company) and certain fringe benefits.

The cash value of payment made in a medium other than cash, such as lodgings, meals, etc., is also considered wages

Registration

Businesses that provide employment covered under the Pennsylvania (PA) UC Law provisions must register with the Commonwealth for UC coverage within 30 days of paying wages. Failure to file required registration documentation can result in civil and criminal penalties for employers. Employers must file the registration through https://mypath.pa.gov. The employment information provided by the business will provide the basis for determining whether such employment is covered under the PA UC Law.

PA Online Business Tax Registration in myPATH

myPath is administered by the PA Department of Revenue

For assistance with myPATH please see their Frequently Asked Questions or call 717-425-2495 Ext. 72841

Financing UC Coverage

If employment is covered under the Pennsylvania UC Law, employers are responsible for UC coverage of their employees. Most employers use the Contributory financing method. However, political subdivisions and 501(c)3 nonprofit employers have a choice of two methods of financing this coverage.

These are:

- **Contributory** - Liability is determined by multiplying taxable payroll by a contribution rate. Contributing employers pay on the first $10,000 of covered wages paid to each employee., or

- **Reimbursable** - employers may elect, if qualified, to reimburse the UC Fund for the amount of benefits chargeable to their account on a dollar-for-dollar basis. For additional information please visit www.uc.pa.gov, search “UCP-16.”

The Employer's Contribution

- The Office of UC Tax Services reviews an employer's unemployment history and calculates, based on formulas in the PA UC Law, a rate each calendar year from the employer's experience through June 30 of the preceding year.
- By December 31st each year, employers will be sent a Contribution Rate Notice (Form UC-657) showing the rate effective for the following calendar year.
- This rate notice serves to notify employers of their contribution rate and explains each of the factors comprising the total rate.
- An employer may appeal a contribution rate within 90 days of the rate notice date.
- This rate/percentage is to be applied to taxable wages paid to determine the amount of employer contributions due.
- The taxable wages base since 2018 is the first $10,000 in wages paid by the employer to each employee in a calendar year.

pennsylvania
DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF UNEMPLOYMENT COMPENSATION TAX SERVICES

PENNSYLVANIA UNEMPLOYMENT COMPENSATION (UC) CONTRIBUTION RATE NOTICE
FOR CALENDAR YEAR 2023
(RETAIN FOR YOUR RECORDS)

DATE		
Month	Day	Year
12	31	2022

UC Account Number: [redacted]

[redacted]

YOUR EMPLOYER CONTRIBUTION RATE EFFECTIVE 01/01/2023 IS 0.017466.

Multiply this rate by the amount of **taxable** wages paid to each PA employee to determine the amount of UC employer contributions you owe. The components of this rate are indicated in the chart below:

For an explanation of the components of your employer contribution rate and your UC employer experience record, visit the website shown below.

RESERVE RATIO FACTOR		0.003
BENEFIT RATIO FACTOR	+	0.000
STATE ADJUSTMENT FACTOR	+	0.0075
BASIC RATE	=	0.0105
INCREASE FOR UC DELINQUENCY	+	
SURCHARGE ADJUSTMENT	+	0.000966
ADDITIONAL CONTRIBUTIONS	+	0.0060
INTEREST FACTOR	+	0.0000
TOTAL CONTRIBUTION RATE	=	0.017466

The last day to appeal this rate notice is

March 31, 2023

See Page 2 for appeal instructions.

You qualify for an experience based rate.

THE EMPLOYEE CONTRIBUTION RATE FOR 2023 IS 0.000700.

Withhold employee contributions at this rate from the **gross** wages paid to each PA employee in calendar year **2023**. Employee contributions are not credited to your reserve account.

YOUR EMPLOYER EXPERIENCE RECORD

The following information is derived from your record as an employer under the PA UC Law. (If you acquired some or all of a predecessor employer's experience, that experience is included in your record and is reflected below.) If you have a Group Number, this information was used to calculate the Reserve Ratio Factor and Benefit Ratio Factor in your employer contribution rate.

12-MONTH PERIODS (FISCAL YEARS)	TAXABLE WAGES *	BENEFIT CHARGES	CONTRIBUTION PAYMENTS *
2020 (7-1-19 - 6-30-20)	$80,620.04	$0.00	$2,277.13
2021 (7-1-20 - 6-30-21)	$43,326.04	$0.00	$1,561.52
2022 (7-1-21 - 6-30-22)	$4,958.77	$0.00	$199.88

AVERAGE ANNUAL TAXABLE WAGES	AVERAGE ANNUAL BENEFIT CHARGES	RESERVE ACCOUNT BALANCE * 6-30-2022	EMPLOYER PERCENTAGE	GROUP NUMBER
$42,968.28	$0.00	$10,709.54	24.9	3

* See back of form for explanations

YOU MAY APPEAL YOUR CONTRIBUTION RATE

If you disagree with the contribution rate reflected on this contribution rate notice, you may appeal. If you do not appeal, the rate assigned to you will become conclusive and binding. If you choose to appeal, you may do so by accessing your employer self-service portal at www.uctax.pa.gov or sending a letter to the Office of UC Tax Services, PO Box 68568, Harrisburg, PA 17106-8568. Your appeal must be received electronically or postmarked within 90 days from the date of this notice and must specify the reason or reasons why the rate assigned to you is incorrect. If the ninetieth day from the date of this notice falls on a Saturday, Sunday or legal holiday, an appeal received electronically or postmarked on the next business day will be accepted as timely.

NOTE: THE PA UC LAW REQUIRES CONTRIBUTIONS TO BE PAID AT THE RATE ASSIGNED BY THE DEPARTMENT WHILE A RATE APPEAL IS PENDING.

YOU MAY ADJUST A NEGATIVE RESERVE ACCOUNT BALANCE

If you have a negative (debit) Reserve Account Balance, and that balance - when converted to a positive amount - is more than 20% of your Average Annual Taxable Wages, you may elect to adjust your Reserve Account Balance to a negative balance equal to 20% of your Average Annual Taxable Wages. You may exercise this election by accessing your employer self-service portal at www.uctax.pa.gov or sending a letter to the Office of UC Tax Services, PO Box 68568, Harrisburg, PA 17106-8568. Your election must be received electronically or postmarked by **April 30, 2023**, and is irrevocable after 10 days from the date it is filed. If your election is approved, you will receive the maximum experience-based Basic Rate for **2023, 2024 and 2025**.

YOU MAY MAKE A VOLUNTARY CONTRIBUTION TO REDUCE YOUR RATE

If you make a voluntary contribution to the UC Fund, your Reserve Account Balance is increased by the amount of the contribution. A higher Reserve Account Balance can reduce your employer contribution rate.

- If you have a Group Number and your Reserve Ratio Factor is greater than .000, you can reduce your Basic Rate by making a voluntary contribution in an amount that will lower your Reserve Ratio Factor.
- If you do not have a Group Number, your Basic Rate is .0920, and you did not elect to adjust a negative (debit) reserve account balance as of **June 30, 2020**, or later, you can reduce your Basic Rate to .0540 by making a voluntary contribution in the amount necessary to increase your negative reserve account balance to a zero or positive balance.

You are responsible to determine the amount of a voluntary contribution necessary to reduce your rate. A voluntary contribution must be made within 30 days from the date of this notice but in no case later than 120 calendar days from the beginning of the calendar year, **whichever is sooner**. A voluntary contribution may not be refunded or applied toward the amount of contributions you owe under the PA UC Law. If you choose to make a voluntary contribution, access your employer self-service portal at www.uctax.pa.gov or submit the remittance with a cover letter, to the Office of UC Tax Services, PO Box 68568, Harrisburg, PA 17106-8568. If the 30-day period due date or the 120-day period due date falls on a Saturday, Sunday or legal holiday, a voluntary contribution received electronically or postmarked on the next business day will be accepted as timely.

*** ADDITIONAL EXPERIENCE RECORD INFORMATION**

Only wages reported and contributions paid by September 30th of the year preceding the contribution rate notice year are used for rate calculation purposes.

Contribution Payments are reduced by the amount attributable to the Interest Factor. Accordingly, the Reserve Account Balance does not include contribution amounts reduced by the Interest Factor.

The Employee's Contribution

- All employers (whether using contributory or reimbursable financing method) are required to withhold employee contributions at the time wages are paid.
- The employee contribution rate is determined annually according to a formula contained in the trigger mechanism of the UC Law.
- Employee contributions are based on an individual's total (gross) wages. The employer's annual contributory wage tax limit ceiling does not apply to employee contributions.
- These monies are a trust fund obligation and must be remitted to the Office of UC Tax Services with quarterly contribution reports. Failure to withhold employee contributions and to promptly remit such contributions withheld in trust to the UC Fund can result in criminal prosecution of the employer and/or personal liability, including the filing of liens against the employer and officers and agents of the employer.
- The Employee Contribution rate for 2023 is .07% (.0007)

Unemployment Compensation Management System (UCMS)

www.uctax.pa.gov

The Unemployment Compensation Management System, or UCMS, is the Tax portion of the Unemployment Compensation (UC) program. It allows real-time, 24-hour access to employer account data in a secure environment.

The Department of Labor & Industry requires that employers file UC quarterly tax and wage reports electronically through UCMS. Paper UC quarterly tax forms are not mailed.

Failure to file a quarterly wage report when due and in the manner prescribed by the department will result in a penalty equal to the greater of $125 or 15% of the contributions dues for the quarter, up to a max of $450

UC Quarterly Tax and Wage Reports

UC Quarterly Tax Reports can be submitted by selecting the “File Quarterly Report" option in the Quarterly Reporting section of UCMS.

The employer is responsible for reporting wages paid to employees and remitting any resulting contributions based on those wages.

Legal action may be pursued if an employer does not file the required information and/or remit any resulting contributions.

Changes to previously filed reports can be made by selecting the "Amend Quarterly Report" option in the Quarterly Reporting section of UCMS. If no wages are paid for a quarter, a “none“ (no wages paid) report must be filed.

Due Dates for UC Quarterly Tax and Wage Reports

Quarterly tax and wage reports and payment are due at the end of the month following the calendar quarter.

Quarter Covering	Due On Or Before
1st Quarter (January, February, March)	April 30th
2nd Quarter (April, May, June)	July 31st
3rd Quarter (July, August, September)	October 31st
4th Quarter (October, November, December)	January 31st

If a due date falls on a Saturday, Sunday or legal holiday, the report will become due on the next business day.

Payments of Amounts Due

- Interest is charged on unpaid contributions for each month, or fraction of a month, from the date the contributions become due through the date they are paid, in accordance with Section 308 of the Law. ***The current interest rate is 12 percent.***

- Payments are required to be remitted electronically (ACH Debit, ACH Credit or Credit Card) if the total liability for a payment period is, or at any point was, $5,000 or more. Failure to make payment electronically will result in a penalty equal to the greater of $25 or 10% of the remittance amount, up to a maximum of $500.

- A penalty is charged for a remittance that is not honored by the financial institution on which it is drawn. The penalty is the greater of $25 or 10% of the amount of the remittance, up to a maximum of $1,000. A separate penalty is charged for each occurrence.

Ceasing Employment

Employers who cease paying wages in Pennsylvania should promptly inactivate their UC Tax account by accessing their account in UCMS (www.uctax.pa.gov) and selecting "Close Account" on the "Profile Maintenance" screen.

When inactivating the account, the employer will need to know and enter the date of the last paycheck issued.

Transfers

In cases where one employer entity transfers all or part of its organization, trade, business or workforce to a successor employer, both the predecessor employer and successor employer must report the transfer to the Department within 30 days of the date of the transfer.

The transfer/acquisition can be reported by completing the Predecessor/Successor Information section of the Business Tax registration. This form can be found on www.uc.pa.gov, search "Section 14."

Types of Transfers

Acquisition of an Existing Enterprise: Occurs when operations are continued by a new owner, for example, a purchase of all or part of the enterprise.

Change in Legal Structure: Occurs when the form of an organization changes; for example, when a sole proprietorship incorporates, or forms a partnership.

Consolidation: Occurs when a new business entity is formed by combining two or more entities which then cease to exist.

Gift: Occurs when the title to the property is transferred without consideration.

Merger: Occurs when one business entity is absorbed by another.

IRC Section 338 Election: Occurs when a stock purchase is treated as an asset purchase under the Internal Revenue Code Section 338.

Applying for a Predecessor's Experience Record

To determine if it is beneficial to apply for a predecessor's UC experience record and reserve account balance, the successor should consider the following:

- Comparison of the predecessor's rate for the year the transfer occurred to the applicable newly liable rate; and
- Any adverse effect that the transfer of the predecessor's experience record and reserve account balance, and any potential benefit charges attributable to the predecessor, would have on future years' rate calculations.

Mandatory Transfer of Experience

The Office of UC Tax Services may determine that a transfer of experience from a predecessor to the successor will be mandatory if one of the following two conditions exist:

- There is common ownership, control, and/or management, either directly or indirectly, between the predecessor and the successor by legally enforceable means or otherwise; or
- An outside source controls both the predecessor and successor, either directly or indirectly, by legally enforceable means or otherwise.

Note: Civil penalties may be imposed if the department finds that an employer willfully failed to report a transfer of experience from a predecessor to a successor account.

Transfers may affect the rates of the predecessor and successor businesses.

Application for PA UC Experience Record

To determine if it is beneficial to apply for a predecessor's UC experience record and reserve account balance, the successor should consider the following:

- Comparison of the predecessor's rate for the year the transfer occurred to the applicable newly liable rate; and
- Any adverse effect that the transfer of the predecessor's experience record and reserve account balance, and any potential benefit charges attributable to the predecessor, would have on future years' rate calculations.
- This application is available on www.uc.pa.gov, search "UC-15"

Bulk Sale

The UC Law requires that any entity selling in bulk, fifty-one percent or more of their assets, including but not limited to stock, fixtures, machinery, equipment, or realty, must provide the department with a ten-day notice of the sale.

UC Benefit Appeals

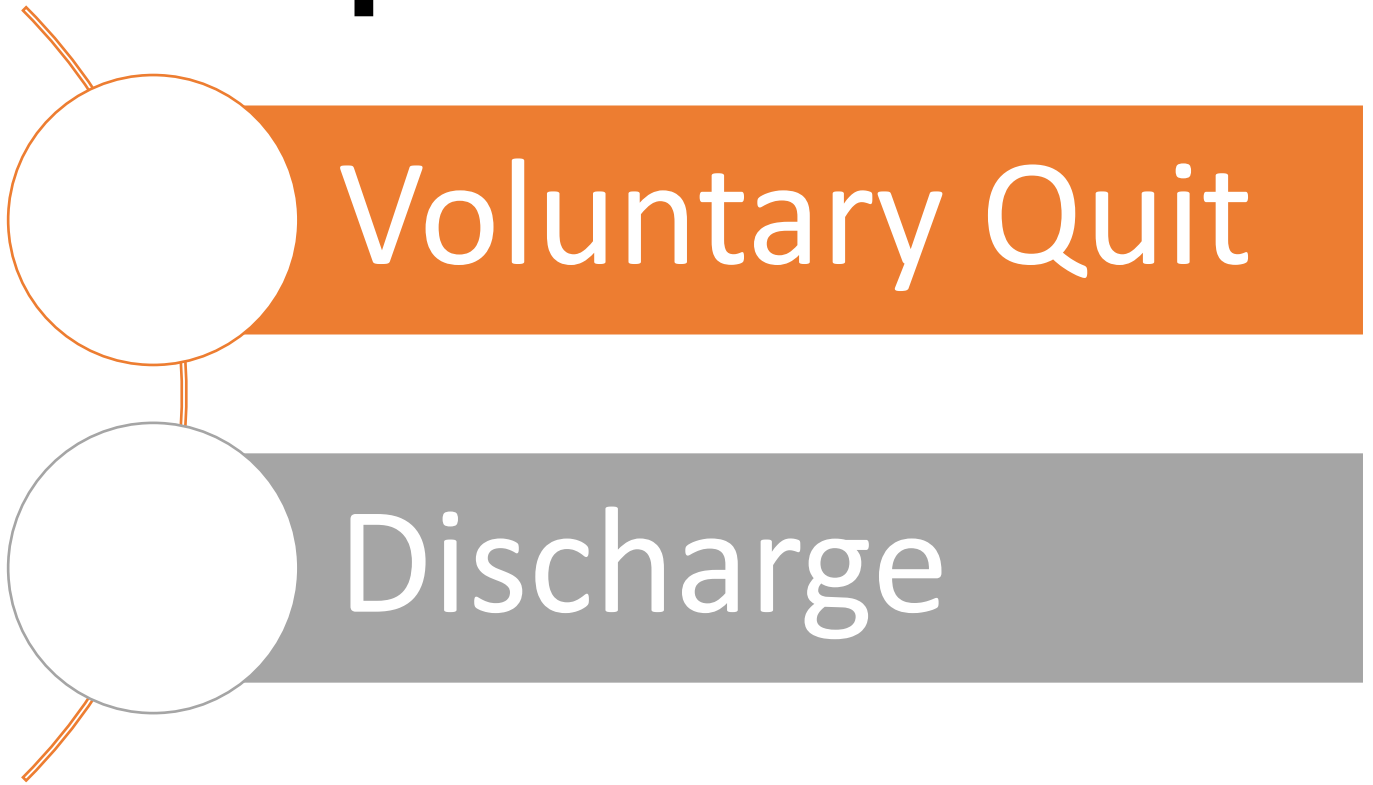
Claimants and employers may appeal a determination of eligibility issued by the Department of Labor & Industry by requesting a hearing before a UC appeals referee no later than 21 calendar days after the determination date provided on the notice of the determination.

A contributory employer may apply for relief from charges. A reimbursable may apply for relief from charges only if they paid and have an approved Solvency Fee election for the year of the claim's Application for Benefits Date.

If you wish to appeal, read each notice carefully in order to appeal in a proper and timely manner.

Unemployment Compensation Eligibility

Separation Issues



Voluntary Quit

Necessitous and Compelling

- A situation in which a reasonable person would have no other choice but to quit.
- It must be **demonstrated** that quitting was consistent with prudence and ordinary common sense and based on factors that are real, substantial, reasonable, and not trifling or whimsical in nature.

Relief from Charges

Voluntarily Quit Work

Left work without a good cause *attributable* to the claimant's employment.

For example, voluntarily leaving work to obtain another job.

A voluntary quit is adjudicated under ***section 402(b)*** *of the Law.*

Discharge

Willful Misconduct

- The wanton and willful disregard of the employer's interest.
- Deliberate violation of known rules.
- Disregard of standards of behavior an employer can rightfully expect of an employee.
- Negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard of employer's interests or the employee's duties and obligations.

Relief from Charges

Discharged by the Employer

Was discharged by the employer for willful misconduct.

The misconduct must be work related and rise to **willful** by evidencing at least one of four key elements:

(1) disregard of employer's interests, (2) deliberate violation of rule(s), (3) disregard of standards of behavior, or (4) negligence manifesting culpability or wrongful intent.

A discharge for willful misconduct is adjudicated under ***section 402(e)*** *of the Law.*

Burden of Proof

Voluntary Quit

Claimant must show quit was of a necessitous and compelling nature.

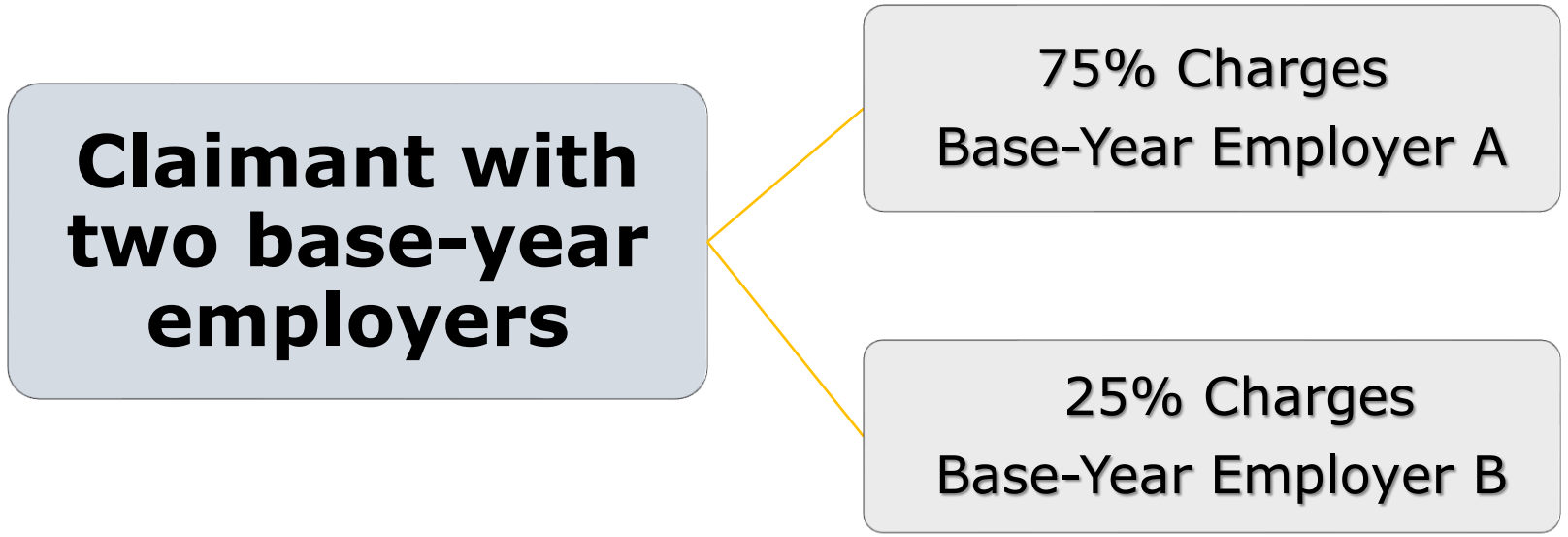
Discharge

Employer must show dismissal was for reason(s) considered willful misconduct.

Benefit Charges

Divided Proportionately

The employers that paid wages to the claimant in the base year are charged for the claimant's benefits. The percentage of benefits charged to each employer is equal to the percentage of base year wages paid by the employer.



Relief from Charges

To request relief from charges the employer must:

- Complete and submit Form UC-44FR, Request for Relief from Charges; or
- If you do not have a UC-44FR Request for Relief from Charges, you may request relief from charges by mailing a letter using your company letterhead.

Please make sure that you include the following information:

- Claimant's name and social security number
- Employer name and account number
- Last day of work
- Reason for separation from employment
- Authorized signature

Requests can be directed to uiempcharge@pa.gov

Reporting New Hires

Employers must report all employees who reside or work in Pennsylvania to the Pennsylvania Department of Labor and Industry. Visit Pennsylvania Career Link's New Hire Reporting on their site www.pacareerlink.pa.gov.

Separating Employees

Employers are required to provide a completed Form 1609, Employer Information Form, to separating employees and/or employees working reduced hours.

The UC-1609 provides accurate information for use when unemployment claims are filed.

If wrong information is given on a claim, it can create delays that can lead to a wrong financial determination, which could increase your tax rate.

This form can help your company save money by reducing inaccurate claims, and subsequently, inaccurate charges to your account -- charges that would require extra time and energy on your part to remove.

The UC-1609 form can be found on the UC Website at https://www.uc.pa.gov/forms/Pages/Forms---Miscellaneous.aspx.

The UC Law specifically provides that an employer's books and records may be audited by the Department.

An employer, whether or not liable for UC, must maintain the listed records and, when necessary for review, make these records available to the Department.

This list is also available on www.uc.pa.gov. Search “Records to be Kept.”

Unemployment Compensation Regulations, Section 63.64, Records to be kept by employer, provides as follows:

(a) Content of Records. Each employer, whether or not liable for the payment of contributions, shall keep clear, accurate and complete employment and payroll records. Such records shall include the following information on each worker:

(1) Social security account number.

(2) Full name.

(3) Wage rate (hourly, daily or piece rate, weekly, monthly or annual salary).

(4) Total remuneration paid for each pay period by type of payment (cash and fair market value of non-cash remuneration).

(5) Traveling or other business expenses actually incurred and accounted for, and the dates such expenses were incurred and were paid by the employer.

(6) Place of employment.

(7) All scheduled hours and hours worked.

(8) Daily attendance record, showing the dates on which the worker actually worked, and time lost due to reasons other than lack of work.

(9) If separated, the date and the reasons for separation.

(10) Number of credit weeks.

(11) Documentation of payments made to the worker, including bank statements, cancelled checks, copies of cancelled checks, check stubs and electronic funds transfer records.

(12) If the worker is covered by an arrangement described in section 4(j)(2.1) of the Law (43 P.S § 753(j)(2.1)), the contact between the employer and the other party to the arrangement.

(13) Any contract between the employer and the worker.

(14) If the employer considers the worker to be an independent contractor or otherwise not an “employee” under the Law, all records, documentation and evidence supporting that position.

(15) Federal and state tax returns for the periods when the worker was employed.

(b) Location and retention of records.

(1) All employment and payroll records required by subsection (a) shall be retained either at the place of employment or at an established central record keeping office at least six years after contributions relating to such records have been paid.

(2) Daily attendance records need not be retained for more than two years.

(3) The department's authorized representatives may inspect, transcribe or photocopy all employment and payroll records required by subsection (a) and all other business records, including, without limitation, cash books, journals, ledgers and corporate minutes. The employer or entity in possession of the records shall keep the records in such a condition that the information required may readily be obtained by representatives of the department.

Resources

- UC Website: www.uc.pa.gov
- Employer's Reference Guide to Unemployment Compensation, available on www.uc.pa.gov, search "UCP-36"
- PA UC Tax Employer Contact Center: 866-403-6163
- (Benefits) Employer UC Resource Center: 833-728-2367
- New Unemployment Compensation System (UC Benefits): www.benefits.uc.pa.gov
- Unemployment Compensation Management System (UC Tax): www.uctax.pa.gov