

## Amendments to State Unemployment Insurance Laws

U.S. DEPARTMENT OF LABOR  
Employment and Training Administration  
Washington, D.C. 20210

### REPORT ON STATE LEGISLATION

REPORT NO. 2  
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**ALASKA**            HB 490            ENACTED and EFFECTIVE June 29, 2004  
                          (CH 130)

#### Administration

Provides that upon the written request by a state district attorney, a municipal agency/attorney, a United States attorney, or the Federal Bureau of Investigation, the department may release to the requestor certain information for the investigation or prosecution of a crime or to enforce an order of a court in a criminal matter, including enforcing probation or parole conditions.

#### Appeals

Permits each member, manager, or employee of a limited liability company, including a limited partnership and a limited liability partnership, who is required to pay the contributions and interest owed by the limited liability company, including the limited partnership and the limited liability partnership, to appeal individually their duty to pay.

#### Coverage

For purposes of collecting delinquent contributions, provides that the term "employer" also includes a member, manager, or employee of a limited liability company, including a limited partnership and a limited liability partnership, who, as manager, is under a duty to pay the required contributions.

#### Financing

Excludes from the term "wages" the amount of payment made, or benefit furnished, by the employer under a plan to provide educational assistance to or for the benefit of an employee if, at the time of the payment or the furnishing, it is reasonable to believe that the employee will be able to exclude the payment or benefit from income.

**CALIFORNIA**            AB 664            ENACTED and EFFECTIVE September 28, 2004  
                          (CH 827)

#### Financing

Amends state law to include SUTA dumping prevention provisions which:

- mandate transfer of experience from one employer to another when there is substantially common ownership, management, or control; apply to both total and partial transfers;
- prohibit transfer of experience if a person becomes an employer by acquiring an

existing business and if the purpose of the acquisition is to obtain a lower contribution rate; apply to persons, who prior to the acquisition of the business, (a) had no employees and (b) had some employees but not enough to be an employer for state law purposes; provide meaningful civil and criminal penalties for knowingly violating or attempting to violate the law's requirements, and for knowingly advising to violate the law; and establish procedures to identify the transfer or acquisition of a business for purposes of the law.

**CALIFORNIA** SB 595 ENACTED and EFFECTIVE June 30, 2004

Administration

Requires the director to furnish quarterly, instead of annually, to each employer an itemized statement of the charges to the reserve account, and a statement of the reserve account activities.

**CALIFORNIA** AB 2028 ENACTED and EFFECTIVE September 25, 2004

Coverage

Clarifies that payments to an individual by an employer for failure to provide the advance notice of a facility closure required by the Worker Adjustment and Retraining Notification Act are not wages or compensation for personal services for purposes of unemployment insurance.

Nonmonetary Eligibility

Prohibits the denial or reduction of unemployment insurance for receipt of payments due to an employer failing to provide the advance notice of a facility closure required by the Worker Adjustment and Retraining Notification Act.

**CALIFORNIA** AB 2412 ENACTED and EFFECTIVE September 27, 2004  
(CH 808)

Administration

Assesses a penalty against employers if found that any employer or employee, officer, or agent of any employer, in submitting a written statement concerning the reasonable assurance of a claimant's reemployment, willfully makes a false statement or representation or willfully fails to report a material fact concerning the reasonable assurance of that reemployment in an amount not less than 2 nor more than 10 times the weekly benefit amount of that claimant; provides the collection of the penalty and requires the deposit of the penalties in the contingent fund.

**CALIFORNIA** AB 1643 ENACTED and EFFECTIVE September 28, 2004  
(CH 828)

Administration

Requires the department to:





## Coverage

Defines "temporary help firm" as a firm that hires its own employees and assigns them to clients to support or supplement the clients' workforce and "temporary employee" as an employee assigned to work for the clients of a temporary help firm.

## Financing

Increases the state taxable wage base from \$8,000 in 2004 to \$11,000 in 2005, 2006, and 2007; to \$12,000 in 2008 and thereafter subject to the following:

The taxable wage base increases by \$1,000 (instead of \$500) if the unemployment compensation trust fund balance is less than or equal to \$350 million on September 30.

The taxable wage decreases by \$500 the subsequent year if the unemployment compensation trust fund balance equals or exceeds \$650 million (instead of \$450 million) on September 30.

For 2008, base is limited to \$7,000 - \$12,000.

For 2009 base is \$12,500.

For 2010 and thereafter, base is limited to \$7,000 - \$13,000.

Reduces the fund balance amounts which trigger 10 percent, 20 percent, and 30 percent rate increases, effectively increasing employer tax rates.

Provides that the rate increase for employers at the maximum rate is raised from 30 percent to 40 percent for 2005 through 2007.

Increases the fund balance amounts which trigger 7 percent and 12 percent rate decreases, effectively increasing employer tax rates.

Assesses a credit instrument and financing agreement repayment surcharge on each employer if the fund is using moneys from credit instrument proceeds or from the moneys advanced financial agreements or from a combination of both; provides a formula for calculating the surcharge and for calculating each employer's proportionate share.

Provides for a surcharge of 0.25 percent to employers' contribution rates if they have been taxed at the maximum rate for 2 consecutive years or more; adds an additional annual surcharge of 0.25 percent if employers remain at the maximum rate for 3 or more years with total surcharges not to exceed 1.0 percent; adds a 0.5 percent surcharge if employers are still at the maximum rate; limits the maximum surcharge to 1.5 percent in a year.

Charges employers a temporary debt indebtedness assessment beginning in 2005 and expiring the last day of the 4<sup>th</sup> quarter of 2007.

Assesses a surcharge when the state has outstanding Federal loans or credit instruments (bonds).

Authorizes the Board of Unemployment Fund Financing to sell interest-bearing bonds in an amount not to exceed \$450 million less the principal and that mature no later than 3 years after issuance; requires all bonds to be 3 paid off by January 15, 2008; requires

deposit of the proceeds in the state unemployment compensation fund.

### Monetary Entitlement

Increases the wages needed to qualify from \$1,000 in a quarter to \$1,200 in 2005, \$1,300 in 2006, \$1,400 in 2007, and \$1,500 thereafter; requires base period wages equal to 1.5 times high quarter wages, or wages in 2 quarters and base period wages equaling 1.5 times the maximum taxable wage base.

Defines, effective beginning 2007, "partially unemployed" as any week of less than full-time work if wages payable are less than the greater of the individual's weekly benefit amount plus \$20 or the weekly benefit amount plus 20 percent of the weekly benefit amount.

Changes, effective beginning 2007, the earnings disregard from \$20 to the greater of \$20 or 20 percent of the weekly benefit amount.

Modifies the computation of, and the maximum, weekly benefit as follows:

3 ¾ percent of high quarter wages up to \$270 in 2006 and \$280 in 2007  
4 percent of average two highest quarters up to \$300 in 2008, \$310 in 2009,  
and \$320 in 2010 and thereafter.

Provides that beginning in 2008, the 1-week waiting period will become compensable once remaining balance on the claim is less than or equal to the compensable amount for the waiting week, rather than after 9 weeks.

### Nonmonetary Eligibility

Defines "misconduct" as:

an act of wanton or willful disregard of the employer's interest  
a deliberate violation of the employer's rules  
a disregard of standards of behavior which the employer has the right to expect of his or her employee  
negligence in such a degree or recurrence as to manifest culpability, wrongful intent or evil design, or show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer.

Limits the 8-week extension for definite recall dates to a total of 16 weeks.

Provides that suspensions from work for 4 weeks or more will be treated as discharges.

Establishes that misconduct is committed if a claimant is at work with a detectible amount of alcohol or controlled substance in the claimant's system, in violation of employer's policy, and certain conditions are met; provides that claimant's wage credits are subject to cancellation if found to be in violation of such policy.

Deems a temporary employee to have voluntarily quit employment for failing to contact the temporary help firm for reassignment before filing for benefits unless the employee was not informed of the obligation to contact the firm upon completion of the assignment; provides for disqualification of benefits if found to have voluntarily quit

until wages are earned in insured work equal to 10 times the claimant's weekly benefit amount.

Provides that an employer's written notification of an offer of work sent via certified mail to claimant's last known address constitutes an offer of work, and failure to accept the offer of work will disqualify the claimant for benefits until wages are earned in insured work equal to 10 times the claimant's weekly benefit amount.

Changes the disqualification for misconduct from 4-16 weeks and wages equal to 8 times the weekly benefit amount to wages equal to 6 times the weekly benefit amount.

Considers absenteeism or tardiness misconduct if it violates an employer's attendance policy and the claimant knew about the policy in advance.

### Overpayments

Establishes fraud provisions for employers and individuals who intentionally misstate, misrepresent, or fail to disclose material facts leading to improper payment/denial of benefits; requires prompt repayment of improperly paid benefits to the fund; assesses a penalty equal to 25 percent of the amount fraudulently obtained or denied; assesses a penalty equal to 100 percent of the present amount fraudulently obtained if records indicate a prior established fraudulent overpayment /denial; provides that if the employer or individual fails to repay the benefits, the division may offset from any future unemployment benefits or take other steps necessary to recover the overpayment; provides that future benefits may not be used to offset penalties.

Provides that any person or entity perpetrating a fraud or misrepresentation for which a penalty has not been provided is guilty of a class A misdemeanor and will be liable for a civil penalty not to exceed the value of the fraud, and any person or entity who previously pled or found guilty of perpetrating a fraud or misrepresentation and subsequently violates such provision is guilty of a class D felony.

**NEW JERSEY**            AB 3104            ENACTED and EFFECTIVE March 23, 2004  
  (CH 45)  
  SB 1656

### Financing

Modifies the fund reserve ratio of the tax table effectively reducing individual employer tax rates for tax years beginning on or after July 1, 2004; the rates in each schedule remain the same.

Reduces the factor on which the overall 10 percent rate increase is based, if applicable, from a fund reserve ratio of 1.0 percent to 0.5 percent for rate years beginning after July 1, 2004.

Decreases the overall rate reduction from 15 percent to 7 percent from July 1, 2004, until June 30, 2005, except that if an employer has a deficit reserve ratio of negative 35 percent or under, the employer's rate of contribution will not be reduced to less than 5.4 percent.

Extends until June 30, 2005, the requirement that each employer contribute to the health care subsidy fund an amount equal to the amount that the employer's

contribution to the unemployment compensation fund is decreased.

Requires for fiscal year 2005 that all contributions to the health care subsidy fund exceeding \$100 million for this fiscal year be deposited in the unemployment compensation fund.

#### Extensions and Special Programs

Modifies the conditions under which new claims for additional benefits are taken in a year: new claims cease for the year when total benefits paid under the program are greater than 2.0 percent of the sum of December 31 fund balances since the program was enacted; formerly new claims ceased when benefits paid in a single year were greater than 1.5 percent of the December 31 fund balance for the preceding year.

**NEW YORK**      SB 7383      ENACTED and EFFECTIVE July 20, 2004  
                          (CH 176)  
                          AB 11384

#### Nonmonetary Eligibility

Amends the pension offset provision to provide that unemployment benefits will not be reduced by rollover distributions payments.

**NORTH CAROLINA**      SB 20      ENACTED August 2, 2004  
  (S.L. 162)      EFFECTIVE January 1, 2005

#### Coverage

In general statutes, sets forth the requirements and responsibilities of professional employer organizations; those applicable to the UI program include:

Provides that a licensed PEO is the employer of an assigned employee for unemployment insurance purposes, and that the levy and collection of unemployment insurance contributions, or the assignment of discrete employer numbers and the definition of the terms employing unit, employer, or employment have the effect as provided under the state unemployment insurance law.

Requires a licensed PEO to establish the terms of a PEO agreement by a written contract between the PEO and the client company, and that such contract specify that the PEO assumes responsibility for the payment of wages to and for the payment and collection of payroll taxes on assigned employees.

**RHODE ISLAND**      SB 2378      ENACTED and EFFECTIVE June 18, 2004  
  (P.L. 124)

#### Coverage

Provides that a person engaged in the business of providing professional employer services must be registered; establishes registration requirements.

Requires the client company to be considered an employer of its covered employees under any agreement with professional employer organization (PEO) for purposes of unemployment compensation and temporary disability insurance; provides that a client

will have the sole right to direct and control the professional or licensed activities of covered employees of a client's business, unless otherwise expressly agreed to by the client in the professional employer agreement.

#### Financing

Requires the PEO to report and pay all required unemployment contributions using the client company's state employer account number at the client company's experience rate or at the new employer rate if the client company does not qualify for an experience rate; provides that the PEO is responsible for paying wages to covered employees, to withhold, collect, report, and remit payroll-related and unemployment taxes; requires the client company and PEO to be jointly and severally liable for all contributions, fines, interest, penalties, and withholdings due.

#### **TENNESSEE**

SB 2329  
(CH 946)  
HB 3093

ENACTED June 15, 2004  
EFFECTIVE July 1, 2004

#### Coverage

Provides that if:

a person, corporation, or business entity maintains a personnel registry or referral service for companionship-sitters seeking employment opportunities; the sitters do not provide services for hire to non-profit organizations, Indian tribes or state or local governments; and pursuant to applicable federal legislation, the Internal Revenue Service (IRS) determines that a companion sitter is not an employee of the person, corporation or business entity under the typical registry/referral arrangements of such person, corporation or business entity;

then companion-sitters who receive referral under the registry/referral arrangements substantially similar to those in the IRS determination will not be classified as employees of such person, corporation or business entity pursuant to the Tennessee unemployment law.

#### Financing

Permits the commissioner to extend, under certain conditions, the notification period for the transferring/successor employer to provide notification of acquisition of a business transfer and written consent to the department; provides that any modification of premium rates resulting from any such extension will take effect on, and apply prospectively from, the date on which such transfer is accepted by the department; provides that there is no forgiveness or refund of any premiums, fees or other related costs duly imposed prior to the effective date of July 1, 2004.

#### **TENNESSEE**

HB 3503  
(CH 927)  
SB 3393

ENACTED June 7, 2004  
EFFECTIVE July 1, 2004

#### Financing

Modifies the calculation of the industry reserve ratio for new employer rate

determination.

Assigns new employer rates from the Table in effect when the employer's industry reserve ratio is 0.0 percent or less (formerly minus 4.0 percent or less); depending on the Table in effect rates range from 5.0 percent to 10.0 percent (formerly 6.0 percent to 10.0 percent).

**TENNESSEE**

SB 3401  
(CH 510)  
HB 3507

ENACTED and EFFECTIVE April 12, 2004

Financing

Provides that a staff leasing company will not be considered a successor employer to any client and will not acquire the experience rating of any client with whom the staff leasing company has contracted; and that the client, upon terminating its relationship with the staff leasing company, will not be considered a successor employer to the staff leasing company and will not acquire any portion of the experience history of the aggregate reserve account of the staff leasing company.

Provides that a client of a staff leasing company will be jointly and severally liable with the staff leasing company for state unemployment premiums unless such client is relieved of such joint and several liability under the Tennessee Employee Leasing Act.