

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS
PO Box 2281, Albuquerque, New Mexico 87103 * (505) 841-8574

ESU-18
REV. 07/07

GENERAL INFORMATION REGARDING TOTAL TRANSFERS OF EXPERIENCE HISTORY

A **Total** History Transfer or Consolidation is when the successor company acquires 100% of a predecessor company. This information only applies to transactions that will result in transferring ALL of the predecessor's experience history to the successor's account and termination of predecessor's account. If you acquired only a portion of your predecessor's business, you must refer to instructions for Partial History Transfer.

Request for transfer of experience history applies for any change in entity type (for example, change from a proprietorship to a corporation, a corporation to an LLC, etc.) and Form THT and Legal Documents are still required.

DEFINITIONS:

1. Successor – any individual or type of organization that acquires an employing enterprise and continues to operate such entity.
2. Predecessor – the owner/operator of an employing enterprise immediately prior to the transfer of such enterprise.
3. Employing Enterprise – a business activity engaged in by a contributing employing unit in which one or more persons have been employed within the current or three preceding calendar quarters.
4. Employing Unit – any individual or type of organization, including any partnership, association, cooperative, trust, estate, joint-stock company, agricultural enterprises, insurance company or corporation whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, household, fraternity or club, the legal representative of a deceased person or any state or local government entity, which has in its employ one or more individuals performing services for it within this state.

FREQUENTLY ASKED QUESTIONS

What Section of the Unemployment Compensation Law applies?
NMSA 1978 Section 51-1-11G

Are total transfers of experience history required by law?

Section 51-1-11G of the UC Law of NM mandates the transfer of a predecessor's experience history to the successor employer provided that:

- Successor acquired an employing enterprise.
- Successor gives timely notification of the acquisition to the department.
- Predecessor is not delinquent in the payment of contributions (tax), interest or penalties.

What procedures are required to obtain total transfer of experience history?

1. The predecessor must file his final report 30 days after effective date of sale.
2. The predecessor must submit all contributions, interest and penalties due prior to the transfer of experience history.
3. The successor must notify the department of the acquisition on or before the due date of its first wage and contribution report. If successor completes this task timely, no penalties will be assessed. However, if the department does not receive the notification timely, a penalty of fifty dollars (\$50) will be applied. The successor's notice of transfer must be made to the department within the same year of acquisition.

4. Transfer of experience history will still be affected if there are Unemployment Compensation benefits charged to the predecessor's account. The benefit charges will become the responsibility of the successor.

What will be transferred to the successor from the predecessor's account?

1. Record of Wages Paid
2. Record of Contributions Paid
3. Record of Benefit Charges

There was no change in ownership or transfer of assets; the company is changing from a proprietorship to a corporation, or corporation to an LLC, or vice versa, etc. is Form THT still required?

Yes. Legal Proof of Transaction is required along with completion of the Form THT. The new entity will sign as successor and the old entity will sign as predecessor.

Will the successor acquire the Tax Rate of the predecessor?

The successor is acquiring the history of its predecessor, therefore, may be eligible for a computed tax rate depending on the predecessor's liability date and how much history is being transferred. The successor usually obtains the same tax rate established for the predecessor for a certain year, however, the department cannot guarantee the successor will receive the same tax rate. In the case of a consolidation or merger, where both predecessor and successor has established history with the Department, the tax rate cannot be determined until the transaction is complete. This also holds true for total history transfers that involve multiple predecessors.

How will the employers involved be notified of approval or denial of transfer of experience history?

All parties involved, including both predecessor(s) and successor, will receive written notification of determination made regarding transfer of experience history.

Can an employer appeal the Department's decision?

Yes, either party may file an appeal for review and redetermination of the decision made. The party appealing has fifteen (15) days from the date of the notice. The appealing party will provide to the department, in writing, their appeal and must state with particularity any alleged errors and provide additional evidence or facts as necessary.

Who does the employer contact if they have any questions?

The employer can contact the Department of Workforce Solutions Status Unit at 505-841-8574 or send a letter to PO Box 2281, Albuquerque, NM 87103.

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

ESU-18THT
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INSTRUCTIONS TO REQUEST TOTAL HISTORY TRANSFER

PLEASE READ THE FOLLOWING INFORMATION & INSTRUCTIONS CAREFULLY.

You must complete in its entirety Form ES-802, Status Report AND Form ES-THT, Request for Total History Transfer. These forms must be submitted together along with a copy of the business transaction.

NOTE: If you submitted a completed Form ES-802, a copy of this form will be returned to you to resubmit with all of the requested/required information. If applicable, Department of Workforce Solutions will establish an employer account number (EAN) for the successor. The successor will pay at the new employer tax rate of 2.0% until such transfer is affected. Department of Workforce Solutions will not abate any penalties or interest incurred if contributions are paid at the wrong rate. If we are unable to establish an EAN for the successor the original ES-802 will be returned to the successor for completion. Department of Workforce Solutions WILL NOT maintain a copy of this form if no EAN was established. It is the responsibility of the successor to return that form to us along with all other required information and documentation.

All fields on Form ES-THT are required. The purpose of this form is to ensure that such transaction has taken place and to review for possible SUTA Dumping attempts. Signatures of owners/officers **MUST BE** witnessed. Only the authorized owner or officer of either company may sign this form. We will not accept signatures by CPA's, Bookkeepers, etc, or regular employees of either company.

Once all information is received, it will be reviewed and a proper determination will be made in conjunction with the information provided to you on Form ESU-18.

Upon approval of Total History Transfer, ALL predecessors' experience history will be transferred to the successor account. This transaction is **FINAL** and any request to reverse history, for any reason, will be denied. The predecessor's account will be terminated. Should the predecessor start business again, they must complete Form ES-802, Status Report, and pay at the new employer tax rate of 2.0%.

Your request for Total History Transfer may be denied if:

- You did not acquire an employing enterprise.
- The predecessor's account is delinquent with Department of Workforce Solutions.
- Request for such transfer was not submitted within the same year of the transaction.

Your request may also be denied if:

- A copy of the business transaction was not provided to Department of Workforce Solutions
- There are unauthorized signatures on Form ES-THT
- Form ES-THT is incomplete
- Form ES-802 is incomplete

Should the request for Total History Transfer be denied, the party appealing has fifteen (15) days from the date of the notice. The appealing party will provide to the department, in writing, their appeal and must state with particularity any alleged errors and provide additional evidence or facts as necessary.