



**Employer Responsibilities  
Under the  
Unemployment Compensation Law  
Of  
New Mexico**

**NEW MEXICO DEPARTMENT of WORKFORCE SOLUTIONS  
WORKFORCE TRANSITION SERVICES DIVISION  
UNEMPLOYMENT INSURANCE BUREAU  
TAX SECTION**

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**Statements in this booklet are intended for general information and do not have the effect of law. For additional information or assistance you may contact a Tax Representative through most Workforce Centers or you may write to the Department.**

**The Unemployment Compensation Law (ACT) places responsibility for compliance upon the employers. This responsibility cannot be delegated to an employee, a public accountant, or any other agent, except through a legally enforceable instrument in writing.**

## TABLE OF CONTENTS

<b>NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS.....</b>	<b>4</b>
Workforce Transition Services Division.....	4
Unemployment Insurance Bureau .....	4
Tax Section .....	4
<b>DETERMINE LIABILITY .....</b>	<b>5</b>
Registration/Status Report .....	5
Liability Requirements .....	5
Period of Liability .....	5
Election of Coverage .....	6
<b>TAXABLE WAGES.....</b>	<b>6</b>
Exceptions .....	6
<b>EMPLOYMENT .....</b>	<b>7</b>
Employment Exclusions .....	7
Multi-State Workers .....	8
<b>REPORTING REQUIREMENTS.....</b>	<b>8</b>
Filing Your Quarterly Wage & Contribution Report .....	8
Zero Wage Reporting .....	9
Due Dates .....	10
Interest & Penalties .....	10
<b>TAX RATES .....</b>	<b>10</b>
Employer's Experience Account.....	10
Eligibility for an Experience Rate.....	11
Determination of an Experience Rate .....	11
Factors that may cause an increase in tax rate .....	12
House Bill 247 .....	12
<b>CHANGE OF OWNERSHIP .....</b>	<b>13</b>
Total Transfer of Experience History.....	13
Transfer of Favorable Employment History from Other States.....	13
Partial History Transfer .....	14
<b>SAVE MONEY ON UNEMPLOYMENT TAXES .....</b>	<b>14</b>
Voluntary Contributions .....	14
How You Can Save Money.....	15
How Much Money is Saved.....	15
Calculating A Voluntary Contribution .....	15
<b>REIMBURSABLE COST BASIS FINANCING .....</b>	<b>16</b>
Elect to make payments.....	16
<b>NEW MEXICO AGENCIES.....</b>	<b>16</b>
State Agencies and School Districts .....	16
County and Municipal .....	17
<b>SUSPENSION OF ACCOUNT.....</b>	<b>17</b>
<b>TERMINATION OF LIABILITY .....</b>	<b>17</b>
<b>EMPLOYMENT AND PAYROLL RECORDS.....</b>	<b>18</b>
Changes to Records.....	18
What Employment & Payroll Records Should Include.....	18
<b>NOTICE TO EMPLOYEES POSTER .....</b>	<b>19</b>
<b>TEMPORARY SERVICE/REDUCED EMPLOYMENT .....</b>	<b>19</b>
<b>BENEFIT NOTICES AND CHARGES .....</b>	<b>19</b>

## **NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS**

The legislature passed House Bill 1280 to improve the effectiveness of the workforce service and delivery system. The bill combines all functions and staff of the Governor's Office of Workforce Training & Development with all functions and staff of the New Mexico Department of Labor and creates a brand new government agency called the New Mexico Department of Workforce Solutions. All Offices of Workforce Training & Development and New Mexico Department of Labor employees will work for this new department effective July 1, 2007.

The New Mexico Department of Workforce Solutions will continue the successful programs of the previous agencies and concentrate heavily on aligning workforce-training programs with the current and emerging needs of the business community and the New Mexico economy. New Mexico is experiencing the most rapid business and economic growth in the history of the State and we are looking forward to the successful operation of this progressive customer-focused agency.

### **WORKFORCE TRANSITION SERVICES DIVISION** (formerly Employment Security Division)

Workforce Transition Services Division is responsible for operating a Workforce Solutions exchange program and administering the Unemployment Compensation Laws of the state. It facilitates the Workforce Solutions exchange process by assisting and preparing job seekers and helps employers find qualified applicants. Service to the public is provided through the One Stop Career Centers (OSCC) and Workforce Development Centers located throughout the state.

### **UNEMPLOYMENT INSURANCE BUREAU**

The Unemployment Insurance Bureau is responsible for administering the provisions of the Unemployment Compensation Law of New Mexico and related federal programs. The Bureau accomplishes this task through the subordinate sections, which provide for payment of benefits to unemployed workers who meet the provisions of the law and or collection of taxes from liable employers to pay these benefits. Sections/Units under Unemployment Insurance Bureau are the Claims Section, UI Benefit Payment Control Section, UI Quality Control Section, UI Technical Support Unit, Actuarial Research Unit, and the Tax Section.

### **TAX SECTION**

The Tax Section enforces the UI Law in the collection of unemployment insurance taxes due from employers, ensures proper and legal reporting of employees wages by employers and disseminates UI tax information to the public. It has two operating Sub-sections: The Office Sub-section houses three Units: Accounts which processes wage reports and makes monetary adjustments, Status which registers employers with the New Mexico Department of Workforce Solutions and conducts history transfers, and Experience Rating/Records, which applies UI experience rates, determines the UI tax rates of individual employers, maintains employers records, files, and distributes the mail.

The Field Sub-section has the responsibility of securing compliance with the Unemployment Compensation Law in all its aspects from employers, claimants, and other assignments as the need might arise. Its Representatives are stationed in Albuquerque and in some of the Workforce Development Centers. The Field Sub-section is also responsible for helping the employer with any problems arising in activities related to the Law.

## **DETERMINE LIABILITY**

### **Registration/Status Report**

Each employing unit or business entity doing business in New Mexico must inform the Division within ten (10) days after beginning a business and request a status report, Form ES-802. The Status Report, Report to Determine Liability, must be filed with the Division within **thirty (30) days from the commencement of the business** even if the employing unit or business entity does not have employees performing services subject to coverage under the Act.

Employers may mail form ES-802, Status Report, to PO Box 2281, Albuquerque, NM 87103 OR visit the website at [www.dws.state.nm.us](http://www.dws.state.nm.us).

Issuance of an Employer Account Number depends on Liability Requirements. If wages have not been paid at the time of submission of Form ES-802, a letter of Non Liable status will be issued.

### **Liability Requirements**

An employer becomes liable and must file quarterly wage reports and pay contributions if they fall under the following:

#### **1. Liable Employment Categories:**

**a. NON-AGRICULTURAL EMPLOYMENT**--The total payroll for any calendar quarter for New Mexico employment is \$450 or more, or if there are one or more persons (part-time workers included) in employment in any part of the week in each of 20 weeks within a calendar year.

**b. AGRICULTURAL EMPLOYMENT**--The total payroll for any calendar quarter for New Mexico employment is \$20,000 or more, or if there are ten or more persons (part-time workers included) in employment at any time in each of 20 weeks within a calendar year.

**c. DOMESTIC EMPLOYMENT**--The total payroll for any calendar quarter for New Mexico employment is \$1000 or more.

#### **2. Other ways liability is determined:**

**a. HISTORY TRANSFER**--The employer acquires the business from another employer who was subject to the Act at the time of the acquisition.

**b. FUTA**--The employer is liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

### **Period of Liability**

Once an employer is determined liable, all wages must be reported for employment during the entire calendar year and pay the taxes due thereon. This is true regardless of the number of persons employed or the amount of the payroll for any particular quarter.

## **Election of Coverage**

An employer who is not subject to pay unemployment (see employment exclusions) may elect unemployment coverage.

Form ES-803, Election of Employer Liability, must be completed and accompany Form ES-802, Status Report. Both must be signed on behalf of the employing unit.

A designated representative of the New Mexico Department of Workforce Solutions must approve the form ES-803, Election of Employer Liability.

## **TAXABLE WAGES**

Wages are all remuneration for services including commissions, bonuses, the cash value of meals, lodging, or other remuneration paid in a medium other than cash (example--an apartment provided for a manager).

The taxable base wage is computed annually and provided to employers annually on their Notice of Employer Contribution Rate (ES-952) and their Quarterly Reports (Form ES-903A).

Successor employers may use wages paid to individuals by a predecessor employer and reported under the Unemployment Compensation Law, provided the predecessor's history was transferred to the successor.

## **Exceptions**

- An employer reports but does not pay quarterly taxes on wages in excess of the taxable amount paid to a single individual within a calendar year. Wages paid to individuals in another state by the employer and reported under the unemployment compensation law of that state may be used in computing taxable wages for the same individual in New Mexico.
- An employer need not report or pay taxes on payments to an approved retirement or death fund, if it is not a reduction of an employee's normal taxable wages or remuneration.
- An employer needs not report or pay taxes on wages taxable under the Railroad Retirement Act.
- An employer need not report any remuneration for agricultural employment paid in any medium other than cash.
- An employer need not report any payment made to or on behalf of an employee or an employee's beneficiary under a cafeteria plan within the meaning of Section 125 of the Internal Revenue Code of 1986.
- An Employer need not report any payment under an arrangement to which Section 408(p) of the IRS Code applies.
- An employer need not report any payment to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under Section 106 of the IRS Code.

- An employer need not report the value of meals or lodging furnished if at the time of such benefit it is reasonable to believe that the employee will be able to exclude such items from income under Sections 119 and 129 of the IRS Code.
- An employer need not report any payment made to a survivor or estate of a former employee after the calendar year in which such employee died.

## **EMPLOYMENT**

Employment is any service, including service in interstate commerce performed for wages or under any contract of hire, written or oral, expressed or implied.

Service performed for wages constitutes employment, unless and until it is shown to the satisfaction of the Department that:

- a. The individual is free from control or direction; and
- b. The service is outside the usual course of business of the employer, or performed outside of all the places of business of the employer; and
- c. The individual is customarily engaged in an independently established business of the same nature as that involved in the contract service.

**Note:** In connection with disputes as to the "employment" status of alleged "independent contractors" or "self-employed" individuals, the possible employer is required to produce evidence showing his/her contentions to be correct.

### **Employment Exclusions**

- Licensed insurance and real estate agents paid solely by commission.
- Newspaper carriers under the age of 18.
- A person in the employ of his/her son, daughter, spouse, or by a child under the age of 18 working for a parent.
- Students in the employ of the school, college or university in which they are enrolled and regularly attending classes at such school.
- Services performed by an inmate of a custodial or penal institution.
- Patients in the employ of a hospital.
- A full-time student enrolled in a work-study program if academic instruction is combined with work experience.
- Churches or church-sponsored organizations operated primarily for religious purposes.
- Service in the employ of the U.S. Government - federal and military employees are excluded from state coverage but are covered under federal unemployment compensation programs.

- Landsmen performing services for a private for profit person or entity.
- Individuals officiating sporting events for a non-profit or governmental entity.
- Service for which UI coverage has been established through an act of Congress.
- Service by a duly ordained minister in the exercise of his ministry.
- As part of an unemployment work relief or work training program assisted by any federal agency, state or political sub-division.
- Service covered by an election approved by the agency charged with administration of any other state or federal UI Law.
- Service in the employ of a foreign government.
- Product demonstrators provided that they satisfy the requirement specified in Section 51-1-42 (11) (q).
- Agricultural or domestic services, if the employing unit has not met the requirements to be classified as an employer as defined under the definition of subject employers.

### **Multi-State Workers**

An individual's wages should be reported to New Mexico if only part of his/her service is performed in New Mexico.

1. His/her base of operations is in New Mexico.
2. The place from which he/she is directed or controlled is in New Mexico.

If an individual's services are partly performed in some other state is incidental to that in New Mexico.

## **REPORTING REQUIREMENTS**

Employers are required to submit a quarterly wage report (Form ES-903A) listing wages paid to all workers and pay a tax at the rate applicable to that particular account. The wage report and payment are due on or before the end of the month following the close of each calendar quarter. Liable employers, registered with the Department, are mailed an annual packet of forms for filing each quarterly wage report. Forms may also be obtained upon request or from the website at [www.dws.state.nm.us](http://www.dws.state.nm.us).

**EXCEPTION:** Any "final" report with payment becomes due not later than thirty days after removal, discontinuance, sale, or other transfer of the employer's business whereby it has ceased to employ individuals in employment.

### **Filing Your Quarterly Wage & Contribution Report**

Employers may file their quarterly contribution report (schedule A&B) with one of the following methods:

## **Paper & Mail**

- Mailing your completed, pre-printed paper form (ES-903A&B) or it's equivalent.
- Mailing a file (3.5" Floppy Diskettes, CD's or Cartridges) in the acceptable fixed length format.

New Mexico Department of Workforce Solutions  
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Albuquerque, NM 87103

**Electronically** - through the NMWebFile Services at the following address:

<https://efile.state.nm.us>.

- **Directly on-line filing** – Enter your employer and employee (schedule A&B) data directly on line.
- **Bulk Filing** This feature allows you to upload your file through the web using one of the three acceptable formats, fixed length, XML, or CSV (required for employers with 250 or more employees).

Before filing on-line you must create an account through the Unified Login Service. Once an account has been established and a password has been provided, you may file the quarterly report electronically.

For additional information visit our web site at [www.dws.state.nm.us](http://www.dws.state.nm.us), Unemployment Insurance Tax. For personal assistance, call 505-841-8576 or e-mail at [TRD-NMWebFile@state.nm.us](mailto:TRD-NMWebFile@state.nm.us).

## **Zero Wage Reporting**

Quarterly wage and contribution reports must be submitted even though no wages were paid for the quarter.

Employers reporting zero wages can file these reports by touch tone telephone using the Department's Customer Service Line (505) 841-2000.

## **DUE DATE FOR QUARTERLY WAGE REPORTS**

### **QUARTERS**

January, February & March  
April, May & June  
July, August & September  
October, November & December

### **DUE DATES**

April 30  
July 31  
October 31  
January 31

**Make Your Checks Payable To:  
New Mexico Department Of Workforce Solutions**

**(Write your employer account number on your check)**

### **Interest and Penalties**

Interest of one percent per month accrues on all taxes not paid by the due date (the end of the month following close of quarter).

Quarterly contribution (tax) reports and payments not made and filed by the due date are subject to penalties as follows:

- Late Report Penalty, Fifty Dollars (\$50)
- Late Payment Penalty, Twenty Five Dollars (\$25) or Five Percent (5%) whichever is greater
- Dishonored Check Penalty, Twenty Five Dollars (\$25). A late payment penalty will also apply to checks not honored by the bank.

The Department may estimate the amount of tax due for an employer who fails to timely file a quarterly report. In addition, a delinquent non-profit organization may lose its option to make payments in lieu of contributions.

The Act provides for criminal prosecution of those employers who make false statements, fail to disclose information, or fail to file quarterly reports.

## **TAX RATES**

The standard tax rate for new employers is two percent (2%) for four years of the total taxable wages.

### **Employer's Experience Account**

A separate unemployment account is established for each individual, partnership, association, trustee, estate, corporation or other form of employing unit who becomes an employer.

Each account is credited with tax payments made on its behalf and charged (exceptions are explained below) with benefits paid to former employees based on wages reported under that account.

The amount by which the tax credit exceeds the benefits charged is referred to as the “account balance.” The account balance divided by the average annual payroll for three preceding fiscal years is the “reserve.”

### **Eligibility for an Experience Rate**

An employer must file reports and pay tax at the rate of 2% for a minimum of 16 to a maximum of 19 quarters before becoming eligible for an experience rate. However, an employer may become eligible by legally acquiring an experienced account from a predecessor who meets this requirement.

Employers eligible for a computed rate, which is based on their experience history, are assigned a rate for each calendar year based on the schedule in effect for that year. The maximum experience rate is 5.4%.

An account may lose its eligibility for an experience rate if it has been inactive for a period of nine (9) consecutive calendar quarters. Such an account may again become eligible for an experience rate only when the conditions for eligibility are met as explained above.

### **Determination of an Experience Rate**

On or before January 31 of each year, active employers are mailed a Notice of Employer Contribution Rate (Form ES-952), notifying them of their tax rate for the year. This notice should be preserved so that it can be compared with subsequent notices.

If an employer has met the requirements for an experience rate, the account’s reserve ratio is determined and compared to the tax rate schedule in affect for that year.

The unemployment tax rate assigned to each employer is based on the following:

1. Average Annual Taxable Payroll – This amount is obtained by adding the taxable wages reported for the last three fiscal years and divided by three.
2. Contributions Paid – This amount includes all contributions (unemployment tax paid) for the last three fiscal years. Prior year amount is all contributions paid prior to the last three fiscal years.
3. Benefit Charges – Includes all benefits charged to an employer’s account through the previous period ending June 30<sup>th</sup>. The prior year total reflects benefits charged prior to the period ending June 30<sup>th</sup>.
4. Reserve Ratio – This is the percentage ratio of your account balance divided by the average amount of taxable payroll.
5. Computation Date for each calendar year means the close of business on June 30<sup>th</sup> of the preceding calendar year.

Employers who have elected to make payments in lieu of contributions are not eligible for computed tax rates.

### **Factors that may cause an increase in tax rates**

Benefits charged to an employers account are the most likely factor to cause an increased tax rate. However, when determining an experience rate, a significant change in payroll and contributions could cause an increase in tax rate regardless if benefits were not charged to the account. The change in tax rate could also be solely as a result of change in tax rate schedule.

**TABLE OF EMPLOYER RESERVES AND CONTRIBUTION RATE SCHEDULES**

<b>EMPLOYER RESERVE RATIO</b>	<b>CONTRIBUTION SCHEDULES 0 - 6</b>						
	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
10% AND OVER	0.03%	0.05%	0.1%	0.6%	0.9%	1.2%	2.7%
9.0% - 9.9%	0.06%	0.1%	0.2%	0.9%	1.2%	1.5%	2.7%
8.0% - 8.9%	0.09%	0.2%	0.4%	1.2%	1.5%	1.8%	2.7%
7.0% - 7.9%	0.1%	0.4%	0.6%	1.5%	1.8%	2.1%	2.7%
6.0% - 6.9%	0.3%	0.6%	0.8%	1.8%	2.1%	2.4%	2.7%
5.0% - 5.9%	0.5%	0.8%	1.1%	2.1%	2.4%	2.7%	3.0%
4.0% - 4.9%	0.8%	1.1%	1.4%	2.4%	2.7%	3.0%	3.3%
3.0% - 3.9%	1.2%	1.4%	1.7%	2.7%	3.0%	3.3%	3.6%
2.0% - 2.9%	1.5%	1.7%	2.0%	3.0%	3.3%	3.6%	3.9%
1.0% - 1.9%	1.8%	2.0%	2.4%	3.3%	3.6%	3.9%	4.2%
0.0% - 0.9%	2.4%	2.4%	3.3%	3.6%	3.9%	4.2%	4.5%
(-0.1%)-(-0.5%)	3.3%	3.3%	3.6%	3.9%	4.2%	4.5%	4.8%
(-0.6%)-(-1.0%)	4.2%	4.2%	4.2%	4.2%	4.5%	4.8%	5.1%
(-1.1%)-(-2.0%)	5.0%	5.0%	5.0%	5.0%	5.0%	5.1%	5.3%
UNDER (-2.0%)	5.4%	5.4%	5.4%	5.4%	5.4%	5.4%	5.4%

### **House Bill 247**

Effective July 1, 2007, House Bill 247 passed, therefore, one-half (50%) of the contributions paid by an employer based on their tax rate will be deposited into the UI Compensation Fund and one-half (50%) will be deposited into the State UI Trust Fund. Employers will pay one amount and the contributions will automatically be deposited into the separate funds by the department. In 2009, the contributions will be distributed on a 60/40 percentage, 2010 will be distributed on a 70/30 and in 2011, 100% of your contributions will go into the UI Compensation Fund. More information will be provided on respective year Notice of Employer Contribution Rate.

House Bill 247 created the state unemployment insurance trust fund. A portion of the tax you currently pay will be used to fund the trust. The principal balance in the fund is earmarked for the payment of UI benefits in the event the federal unemployment trust fund drops below a solvent level. The interest earned on the fund will provide additional dollars to support New Mexico's workforce programs, to provide training for high-demand skills, and to provide intensive job search services to assist individuals to return to work quickly. Payments made to the state trust fund will not be used to calculate your future tax rates and cannot be reported on your Annual Federal Unemployment Tax Form (940).

## **CHANGE OF OWNERSHIP**

### **Total Transfer of Experience History**

The Division must be promptly notified when a change in ownership occurs. The successor employer must notify the Division of the acquisition on or before the due date of their first Quarterly Wage and Contribution Report or it shall be subject to a **penalty of fifty dollars (\$50)**. The predecessor must file his final report within 30 days after the effective date of transfer. The experience history of an employing enterprise will be transferred to a successor owner and operator if determined by the Division that:

1. The successor has acquired all of the business enterprises of his predecessor;
2. All taxes, interest and penalties due from the predecessor have been paid;
3. Notice of the transfer has been given within the same year of the transaction.

As a result of the SUTA Dumping laws that have been implemented and included in the Unemployment Compensation Law of New Mexico, the Department of Workforce Solutions requires the following in addition to the above criteria:

1. Form ES-802, completed in its entirety and must include predecessor information.
2. Form ES-THT, Request for Total History Transfer, completed in its entirety to include signatures of BOTH predecessor and successor.
3. A copy of the legal business transaction confirming such acquisition took place.

The successor will pay at the tax rate of 2.0% until such transfer has been affected. The predecessor and successor will be notified of the determination made by the Division. The determination shall become conclusive and binding fifteen (15) days from the date of notification, unless appealed.

### **Transfer of Favorable Employment History From Other States**

An employer that, at the time of establishing an account, is in the same business in another state or states and that is not currently doing business in New Mexico may elect to transfer their experience history if they relocate to New Mexico.

Consideration for Out of State Transfer will be made only if:

1. The initial registration and application is made within 30 days of commencing business within the state of New Mexico.
2. The out of state employing enterprise must have been in operation for at least 3 full calendar years in the predecessor state.
3. The out of state employing enterprise must physically close its operation entirely in the predecessor state and complete all liquidation within six months of opening the New Mexico operation.
4. The out of state employing enterprise will submit a full and complete account history for at least the immediate three calendar years.
5. The account history must be validated, certified and exemplified by the monitoring agency of the predecessor state where the wages were reported: it shall include certified copies of tax rate notices from the predecessor state for each of the last four years in which the employing enterprise was in business in the predecessor state.
6. At any time during the application process, until the close of the 15 day appeal period after determination the employing enterprise may withdraw its application for an out of state history transfer and accept New Mexico's rate for new employers.

7. The initial registration must specify that the employing enterprise seeks an out of state experience history transfer. No retroactive requests will be entertained.

### **Partial History Transfer**

The applicable experience history may be transferred to the successor in the case of a partial transfer of an employing enterprise. A partial transfer results for a successor acquiring one or more of the predecessors employing enterprises but not all of them. In order for the transfer to be applicable, the employing enterprise acquired operated as follows:

1. Predecessor had to operate the enterprise as a separate store, factory, shop or other employing enterprise; and
2. Predecessor has maintained and preserved payroll records that can be separated by the parties from the enterprises retained.

A partial experience history transfer will be made only if:

1. The successor notified the division of the acquisition, in writing, not later than the due date of the successor's first quarterly wage and contribution report due after the effective date of transfer.
2. All taxes, interest and penalties due by the predecessor have been paid.
3. The successor files an application provided by the Division containing the endorsement of the predecessor within 30 days from the delivery or mailing of such application by the Division.
4. The successor must file, along with the application, Forms ES-903A or its equivalent to include the name, social security number, wages paid, and the contributions paid for each employee. ES-903As must be filed for the three and one-half year period preceding the date of computation, plus any quarters up to the effective date of transfer, or such lesser period as the enterprise(s) transferred may have been in operation. Forms ES-903A must be completed by quarter showing only those employees for the enterprise(s) being transferred. The predecessor's permanent employment records that must be available for audit by the Division and must support the application and ES-903A information.

## **SAVE MONEY ON UNEMPLOYMENT TAXES**

### **Voluntary Contributions**

A small voluntary contribution to your unemployment (UC) account could cause your overall UC tax bill to go down by hundreds of dollars per year. This is accomplished by shifting your tax bracket from a higher tax rate to a lower rate.

Look at your most recent "Notice of Employer Contribution Rate." This form will provide you with the information needed to determine whether you can save money with a voluntary contribution.

### **How You Can Save Money**

Listed below is a partial UC tax table. Notice that the tax rate decreases as the “reserve percentage” bracket increases.

Reserve Ratio	▲	Tax Rate	▼
4.0% - 4.9%		0.8%	
3.0% - 3.9%		1.2%	
2.0% - 2.9%		1.5%	
1.0% - 1.9%		1.8%	
0.0% - 0.9%		2.4%	
(-0.1%)-(-0.5%)		3.3%	
(-0.6%)-(-1.0%)		4.2%	

Example: XYZ Company has an annual taxable payroll of \$100,000 and it has \$3,950 in its reserve account. This creates a reserve percentage of 3.9%. The tax rate is 1.2%. If XYZ Company makes a voluntary contribution of an extra \$50 to its account, it would have \$4,000 reserve, creating a reserve ratio of 4.0%. The new tax rate is 0.8%. This lowers the tax rate of XYZ Company by 0.4%.

### **How much money is saved?**

Multiply the \$100,000 payroll by the 0.4% saved and this creates a \$400 savings for XYZ Company. Saving \$400 by spending \$50 is a net savings of \$350 for the year.

If your business' taxable payroll is more, you save even more. If your reserve ratio is even closer to the next lower bracket, you spend even less to get your savings. If your account reserve is negative, but only slightly, a voluntary contribution pays an exceptional windfall.

### **Calculating A Voluntary Contribution**

To calculate the amount of voluntary contribution necessary to lower your tax rate:

1. Multiply your average annual payroll by the starting reserve ratio percentage of the next lowest tax bracket. (If your current reserve ratio percentage is 3.9%, the next lowest tax bracket would start with a reserve ratio percentage of 4.0%) This tells you how much your balance should be to achieve the next lowest tax rate.
2. From this subtract your current balance to determine the necessary amount of voluntary contribution.

The New Mexico Department of Workforce Solutions, on or before March 1, must receive your voluntary payment in order to have your contribution credited to your account for purposes of recalculating your current tax rate. Voluntary payments processed are not refundable. Voluntary payments postmarked after March 1 will not be accepted.

If you did not receive or have misplaced your “Notice of Employer Contribution Rate” call the New Mexico Department of Workforce Solutions, Experience Rating Unit.

## **REIMBURSABLE COST BASIS FINANCING**

Non-profit organizations, hospitals, schools, municipalities, counties (agencies thereof) are eligible to apply for reimbursable cost basis financing. In order for non-profit organizations to be eligible for reimbursable cost basis financing, they must be eligible for exemption under Section 501(c) (3) of the Internal Revenue code. The certificate of exemption provided by the Internal Revenue Service should be submitted as evidence of eligibility.

An organization electing reimbursable cost basis financing files quarterly reports of wages paid to its employees, but does not pay a quarterly tax. However, in the event of a claim for benefits against its account, the organization must reimburse the Unemployment Compensation Fund the full amount attributable to the employer that has been paid out for such claim.

Each reimbursable employer is notified before each calendar quarter of the amount that must be paid on or before January 10, April 10, July 10 and October 10. The prepayment amount due is either 25% of the previous fiscal year's charges or .125% of the previous calendar year's taxable payroll. Prepayments are applied to benefits charged during the quarter, and any additional amounts owing must be paid within 30 days from the date of billing. Prepayments not used will be refunded and cannot be applied to subsequent quarters.

Each reimbursable employer, excluding governmental entities and group accounts, is also required to post a surety bond or other type of surety. The amount of the bond is 2.0% of taxable wages paid during the four calendar quarters immediately proceeding the effective date of election. If there were no taxable wages paid during the preceding four (4) quarters, the required amount of the bond will be 2.0% of taxable wages estimated by the Division to be paid during the following year.

If these organizations do not apply for reimbursable cost basis financing, they will be assigned a contributing employer number and be required to pay tax on a quarterly basis.

### **Elect to make payments**

All employers who have elected to make payments in lieu of contributions are required to make quarterly prepayments at the beginning of each quarter to cover potential benefit charges.

## **NEW MEXICO AGENCIES**

### **State Agencies and School Districts**

State Agencies and School Districts must register through the Risk Management Division of the General Services Department and must make payments in lieu of contributions (reimbursable cost basis financing) through that agency.

## **County and Municipal**

Counties and Municipalities have several options from which to choose:

**OPTION I** May register through the Risk Management Division and make payments in lieu of contributions through that agency.

**OPTION II** Must register directly with the Workforce Transition Services Division and choose one of the following:

1. Pay taxes (tax rated)
2. Elect to make payments in lieu of contributions, directly to the Workforce Transition Services Division.
3. Elect to join a group formed to make payments in lieu of contributions directly to the Workforce Transition Services Division.

## **SUSPENSION OF ACCOUNT**

If an employer ceases to have employees for any reason, the employer's account can be placed on inactive status (suspended) until it again pays wages.

An employer desiring suspension of its account should do one of the following:

1. Complete the change sheet provided in the Employer's Quarterly Wage and Contribution Report packet and include the last date wages were paid.
2. Write a letter requesting such action, stating the reasons.
3. Write: "**Final – No longer paying wages**" on wage report and indicate date of last wages.
4. IF business was sold, please include the name and address of the successor.

Suspension of an account simply relieves the employer of the responsibility of filing quarterly wage reports until it again pays wages.

## **TERMINATION OF LIABILITY**

An employer subject to the Unemployment Compensation Law may be released from liability and coverage with the Department when the employer submits an application for Termination of Coverage (ES-804 Form). This application is provided upon request and must be submitted by March 15 of the year in which an employer desires termination of coverage. The application must show that, during the preceding calendar year, liability was not established. Termination of coverage causes an employer to lose its account number, experience history, and eligibility for an experience rate. If an employer's account is transferred to its successor, the predecessor's liability will be terminated.

## **EMPLOYMENT AND PAYROLL RECORDS**

### **Changes To Records**

In order for the Department to maintain an accurate record of the employing unit's account, it is imperative that the employer keep the Department informed of any changes to his/her account.

**If the employing unit's FEIN, Legal Name, and Corporate Structure is changed, the employer must complete an ES-802 Form and mail it to the Department. The employer must indicate on the "Remarks" section of the form the reason for change. A copy of the Articles of Amendment or IRS documentation must be submitted as proof of changes.**

The employer must write to the Department on change of address and telephone number.

### **What Employment and Payroll Records Should Include**

Each employing unit shall keep true and accurate employment and payroll records that shall include:

1. Name and address of the employing unit.
2. Name and address of each branch, division or establishment operated, owned or maintained by each employing unit.
3. All disbursements for services rendered to the employing unit include:
  - a. Individual's name, address and social security number
  - b. Dates on which individuals performed services and state or states in which such services were performed;
  - c. Total amount of payment for service for each separate payroll period and date each payment was made;
  - d. Notation of individuals working less than full time and if so, the hours and dates worked; and
  - e. Reason for separation of individuals.
4. Verification of ownership or change in ownership.
5. Address where records are available for inspection or audit.
6. Any non-cash remuneration given for services and the cash value of the remuneration.

The employment and payroll records shall be readily accessible to authorized representatives of the Department of Workforce Solution's Tax Section. If these records are maintained out-of-state, the employing unit is responsible for expenses and cost incurred to travel out of New Mexico to inspect and/or audit these records.

If records are kept on diskette, CD or cartridge, it shall be the obligation of the employing unit to reproduce such record information on readable hard copy form.

**Employers shall preserve the records for a period of four years.**

## **NOTICE TO EMPLOYEES POSTER**

The law requires each employer to post and maintain the Notice to Employees poster in a place readily accessible to individuals in his/her service. The poster is mailed to all employers upon registration. Additional copies may be obtained from the New Mexico Department of Workforce Solutions/Workforce Transition Services Division upon request.

The poster will display a label with the legal name, account number and address of the employer. In addition, the poster has information on how to get assistance concerning a claim for unemployment insurance.

## **TEMPORARY SERVICE/REDUCED EMPLOYMENT**

New Mexico Statute 51-1-52 (1) (D)

A temporary service employer shall provide an employee, at the time of hiring, with written notice that the employee is required to contact the temporary services employer for reassignment upon the completion of an assignment and that failure to do so may result in denial of unemployment benefits.

Regulation 11.3.300.309 B:  
Notice of Reduced Employment

On the next payday after any week for which an employee's work has been reduced to less than four full days or the equivalent hours, his employer shall notify him that he may file a claim at the nearest employment office for a week of partial unemployment. This notice, and similar notices required for weeks of reduced employment thereafter, may be in such written form as the employer may select unless the Commission should some time disapprove the same as being insufficient. The first notice and each subsequent notice should show the employee's total wages for the week in order to establish what, if any benefits may be due him. On notice from the Commission, the employer shall furnish as may be directed such other information as may be necessary in any case to insure the proper payment of benefits. [7-12-09]

## **BENEFIT NOTICES AND CHARGES**

When an individual files a claim for benefits, his/her last employer is sent a notice. This notice is a copy of the claim for benefits and is mailed to the address of the employer furnished by the claimant. The purpose of this notice is to obtain the employer's information affecting the claimant's eligibility for payments. An employer must notify the Workforce Transition Services Division/Claim Section within ten (10) calendar days, if the worker was separated for any reason other than lack of work.

When it has been determined that a worker who has filed a claim for benefits has sufficient wages to be eligible, each base period employer of the claimant is notified unless it is the last employer.

Within 90 days from the end of each calendar quarter, a Quarterly Determination of Potential Benefit Charges will also be mailed to each taxing employer. Benefits may be no-charged against a base period contributing employer's account, if the employer's report of the circumstances under which the separation occurred is filed with the Division within fifteen (15)

days from the date of the Notice to Employer of Claim Determination, and it is determined that the employee:

1. Quit his/her work with that employer voluntarily for any reason not attributable to the fault of the employer.
2. Was discharged by the employer for misconduct connected with his/her work.

If an employer is both the last and a base period employer, in some cases, this employer may receive two notices.

1. The ES-442 Notice To The Last Employer is the notice used to obtain information regarding a claimant's eligibility.
2. The ES-957 notice is provided only for the information of the employer.

If a prior final determination has been issued, it remains final and binding for the purpose of making a determination on benefit chargeability.

An employer may protest the benefit charges against its account by filing an appeal within fifteen (15) days from the date of determination issued by a claims examiner.

Within 90 days from the end of each calendar quarter, a Quarterly Determination of Potential Benefit Charges will also be mailed to each taxpaying employer.