



Florida Unemployment Compensation Law

What employers need to know

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What is Unemployment Compensation?

Unemployment compensation gives partial, temporary income to workers who lose their jobs through no fault of their own, and are able and available for work. The purpose is to provide assistance to jobless workers, their families, and the business community.

Who Pays for It?

You, the employer, pay for unemployment compensation through a tax managed by the Florida Department of Revenue. It is one of your business costs. Workers do not pay unemployment tax and employers must not make payroll deductions for this purpose. The consumer bears this cost in the price of the goods or services you sell. Thus, the burden of unemployment is shared by all. Your payments go into a fund from which monies are paid to eligible claimants. After a qualifying period, employers with a stable employment history will receive a lowered tax rate.

Who Is Liable?

A new business must report its initial employment in the month following the calendar quarter in which employment begins. You can register to collect and/or report tax through our Internet site. The site will guide you through an application interview that will help you determine your tax obligation. If you do not have Internet access, you can complete a *paper Application to Collect and/or Report Tax in Florida* (Form DR-1).

You are liable if you meet any of the following conditions:

- You have quarterly payroll of \$1,500 or more in a calendar year.
- You have one or more employees for a day (or portion of a day) during any 20 weeks in a calendar year.
- You are an agricultural employer and have five or more workers for a day (or portion of a day) during any 20 weeks in a calendar year, or a \$10,000 cash payroll in any calendar quarter.
- You are a domestic employer with a cash payroll of \$1,000 or more in a calendar quarter.
- You are liable for federal unemployment tax.
- You purchase all or part of a liable business, or the combination of your payroll or employment and that of the business you purchased meets the liability criteria.
- You are a nonprofit organization as defined in section (s) 3306(c)(8) of the Federal Unemployment Tax Act and s. 501(c)(3) of the Internal Revenue Code and have four or more employees for a day (or portion of a day) during any 20 weeks in a calendar year.
- You are a state, county, city, or joint governmental unit.
- You are an Indian tribe or tribal unit.

Nonprofit organizations, governmental agencies, and Indian tribes are given the option of paying their unemployment insurance costs by the tax-paying method or the reimbursable method. The

reimbursable employer must repay benefits paid to former employees on a dollar-for-dollar basis. Regardless of the method of payment, these employers must submit tax and wage reports each quarter. If an employer chooses to change the method of paying, it must sign a special election form and stay with the chosen method for at least two years.

A liable employer must display the poster To Employees (Form UCT-83) where all employees can see it. Posters are available in Spanish (Form UCT-83SP).

Voluntary Coverage

You may apply for voluntary coverage for your employees. Voluntary coverage is for a minimum of one calendar year and subject to approval.

Who Are Employees?

These definitions will help you understand who is considered an employee.

- **Employment** - Any service done by an employee for the employer.
- **Employee** - A person who is subject to the will and control of the employer as to what must be done and how it is done.
- **Casual Labor** - Work that is not in the course of the employer's regular trade or business and which is occasional, incidental, or irregular. Do not confuse casual labor with temporary or part-time employment. A corporation cannot have casual labor, as covered in the Internal Revenue Code.
- **Independent Contractor** - A person not subject to the will and control of the employer. The employer does not control or direct the manner or method of job performance. The general public is aware that the person is an independent contractor.
- **Officers of a Corporation** - Any officer of a corporation performing services for the corporation is an employee of the corporation during tenure of office, even when no compensation is received for such services. Compensation, other than dividends upon shares of stock and board of director fees, is presumed to be payment for services performed.
- **Limited Liability Company (LLC)** – A limited liability company is treated the same as it is classified for federal income tax purposes. A person performing services for an LLC, treated as a corporation for federal income tax purposes, is an employee. A person, other than a partner or exempt employee of a partnership, performing services for an LLC treated as a partnership for federal income tax purposes, is an employee. A person, other than the sole proprietor or an exempt employee of a sole proprietorship, performing services for an LLC, treated as a sole proprietorship for federal income tax purposes, is an employee. A single member LLC may be treated as a corporation or a sole proprietorship for federal income tax purposes.
- **S Corporation** - Salaries paid to corporate officers are considered wages. All or part of the distribution of income paid to corporate officers who are active in the business and are performing services for the business can be considered wages.
- **Employee Leasing Company** - An employee leasing company is an employing unit that has a valid and active license under Chapter 468, Florida Statutes (F.S.).
- **Salesperson** - Any individual paid solely by commission under your direction and control is an employee. The law provides exemption for insurance agents, real estate agents, and barbers who are paid solely by commission. If they are paid by salary only or salary and commission, both are taxable and exemption does not apply. There is no federal unemployment tax exemption for barbers paid solely by commission.

- Agricultural Labor - Any service performed on a farm in the employ of the owner, tenant, or any other operator of a farm in connection with the production or harvesting of any agricultural or horticultural commodity or in connection with the maintenance or operation of farm equipment or grounds.

Employment Not Covered

Some types of work are not covered and some wages paid for services are not subject to unemployment taxes. These exemptions include:

- Employees of a church, or convention or association of churches; or of organizations operated for religious purposes that are operated, supervised, controlled, or principally supported by a church, or convention or association of churches.
- Services performed by aliens in agricultural labor, who have entered the United States pursuant to s. 1184(c) [formerly s. 214(c)] and s. 1101(a)(15)(H) [formerly s. 101(a)(15)(H)] of the Immigration and Nationality Act.
- Services performed by nonresident aliens, who are temporarily present in the United States as nonimmigrants under subparagraph (F) or (J) of s. 1101(a)(15) [formerly s. 101(a)(15)] of the Immigration and Nationality Act.
- Services for a school, college, or university by a student enrolled and attending classes there.
- Work on a fishing vessel under ten net tons.
- Services performed as a student nurse in a hospital or nurses' training school, a medical school intern in a hospital, or a hospital patient.
- Students working for credit in a school program such as CBE or DCT.
- Persons under age 18 delivering or distributing newspapers.
- Service for government by elected officials; members of the legislature and judiciary; those serving on a temporary basis in cases of fire, storm, etc.; or serving in an advisory capacity that ordinarily does not require more than eight hours per week.
- Services performed for a son, daughter, or spouse; or by children under the age of 21 for their father or mother. When the employing unit is a partnership, an exempt relationship must exist to all partners or there is no exemption. This exemption does not apply to corporations.
- Direct sellers who are contracted to sell or solicit consumer goods in homes or places other than a permanent retail establishment, and whose substantial remuneration is directly related to sales.
- Speech, occupational, and physical therapists who are not salaried and working pursuant to a written contract with a home health agency as defined in s. 400.462, Florida Statutes.
- Service performed by an individual for remuneration for a private, for-profit delivery or messenger service, if certain conditions are met.
- Service performed by an inmate of a penal institution (work release programs).

Wages

Wages are payments for services in employment, including commissions, bonuses, back pay awards, and the cash value of all payments in any medium other than cash. The cash value of meals and lodging will be exempt if it is included as a condition of employment for the convenience of the employer.

Sick and accident disability payments paid by an employing unit to an employee in the six calendar months after the calendar month the employee stopped working are wages. Payments made under a workers' compensation law are not wages. Tips are covered wages if received while performing services that constitute employment and are included in a written statement furnished by the employee to the employer.

Reporting Wages

Wages must be reported on an *Employer's Quarterly Report* (Form UCT-6).

The report must list total wages paid to covered workers, excess wages, taxable wages, and tax due and show each employee's name, social security number, and total wages paid during the period. If an employer is operating two business units and the secondary unit(s) has a cumulative total of at least ten employees, a *Multiple Worksite Report* (Form BLS-3020) must be submitted.

Annual Filing Option

An employer liable for unemployment tax may select an annual filing option if all the employees exclusively perform services that constitute domestic service and the employer is eligible for an earned tax rate. An *Application to Select Filing Period for Employers Who Employ ONLY Employees Who Perform Domestic Services* (Form UCT-7A) must be submitted by December 1 to qualify for annual filing in the next calendar year.

Electronic Filing and Payment

You must file Form UCT-6 and pay the tax electronically if you are an employer who employed ten or more employees in any quarter during the preceding state fiscal year (July 1 – June 30). You must file Form UCT-6 electronically if you are a person who prepared and reported for 100 or more employers in any quarter during the preceding state fiscal year (July 1 – June 30). We will mail instructions on complying with these requirements to filers who meet the threshold for electronic filing and payment. The penalty for failure to file a report by electronic means is \$10. The penalty for failure to pay the tax electronically is \$10 for each remittance. You can obtain a waiver from electronic filing if you have a valid business reason. There is no waiver from electronic payment.

How Much Do You Pay?

The tax rate for new employers is .0270 (2.7 percent). The first \$7,000 in wages paid to each employee during a calendar year is taxable. Any amount over \$7,000 for the year is excess wages and is not subject to tax. Excess wages can never be greater than gross wages.

Effective from January 2010 through December of 2014, the first \$8,500 in wages paid to each employee during a calendar year is taxable. Any amount over \$8,500 for the year is excess wages and is not subject to tax.

When a business is transferred, the successor may count wages paid to an employee by the predecessor when determining the taxable wage figure. The wages of employees who work in another state and are transferred to Florida are counted when calculating taxable wages reportable to Florida.

Important to Report Timely

Employers have one month after the end of each quarter to file reports and pay tax. To avoid penalty and interest, you must report and pay your tax on time. Unpaid tax will affect your future

tax rate. Reports and payments sent by mail are considered filed and paid as of the postmark date.

Late filing penalty is charged at \$25 per month or fraction of a month that a report is delinquent. Interest is charged at 1% per month on the unpaid tax from the original due date until the tax is paid. For employers who must file electronically, failure to do so will result in a penalty of \$10 per report. The penalty for failure to submit a payment electronically is \$10 per submission.

Your Tax Rate

Only taxable wages that are reported by the end of the quarter immediately preceding the quarter for which the rate is calculated can be used in the tax rate calculation. When a new employer becomes liable for the tax, the rate is .0270 (2.7 percent) and will stay that until the employer has reported for 10 quarters (11 quarters in some cases). The account will then be rated by dividing the total benefits charged to the account (6 quarters) by the taxable payroll reported for the first 7 of the last 9 quarters immediately preceding the quarter for which the rate is effective.

The one exception would be employers liable by succession and who choose to accept the tax rate of the previous employer, along with the responsibility of paying any outstanding amounts due. At that time, a tax rate will be calculated using the employment record and the rating factors, which are built into the unemployment compensation law.

The maximum tax rate allowed by law is .0540 (5.4 percent), except for employers participating in the Short Time Compensation Program. Rate notices are mailed to all employers that have a tax rate. You may appeal the tax rate within 20 days from the date of notification (date printed on the rate notice).

Termination of Coverage

You will be eligible for termination if you have not met any liability criteria for an entire calendar year or if the business closes (which is different than just selling assets, just selling stock, or merging into another business to be the continuing entity). If you qualify, because you have not paid wages for a year, you must apply for termination of coverage by April 30 of the following year. Contact the Department in writing to close the account of a closed business after the final wages have been paid. Once liability is terminated, you must reestablish liability in the same manner as any new employing unit.

Claims for Benefits

Unemployed workers who are covered under the Florida unemployment compensation law will receive benefits if they are eligible and qualified. Prompt and accurate information from employers is vital to the establishment of a claimant's right to benefits. You must furnish information timely when requested. This is to your advantage because it helps protect your tax rate. Information must be complete, accurate, and factual.

For more information about the claims process, including qualification requirements and disqualification reasons, contact the Agency for Workforce Innovation.

Protest and Appeal

One of the concepts of the unemployment compensation law is to provide a fair and impartial hearing to resolve disputes. The Department of Revenue will make every attempt to resolve informal protests. If not resolved, formal protests and appeals should be directed to the Agency for Workforce Innovation. Appeals must be filed within 20 days from the date printed on the

notice you have received, must be in writing, and must clearly state your reasons for appealing. For more information, contact the Agency for Workforce Innovation.

Change of Address or Business Status

If you move, sell, or close your business; or change your business structure, you must notify the Department. You can submit the information online or download an *Employer Account Change Form* (Form UCS-3) from our Internet site.

Reference Material

Tax Laws – Our online Tax Law Library contains statutes, rules, legislative changes, opinions, court cases, and publications. Search the law library for Chapter 443, Florida Statutes; Rules 60BB-2 and 60BB-3, Florida Administrative Code.

The Florida Unemployment Compensation Employer Handbook is available on our Internet site.

For Information and Forms

For unemployment tax information and forms, except Form BLS-3020:

Visit our Internet site at www.myflorida.com/dor

Call Taxpayer Services, Monday through Friday, 8 a.m. to 7 p.m., ET, at 800-352-3671. Persons with hearing and speech impairments may call our TDD line at 800-367-8331 or 850-922-1115.

To obtain Form BLS-3020, contact the Agency for Workforce Innovation, Labor Market Statistics at 800-672-4664.

For claims and benefits information, contact the Agency for Workforce Innovation at 850-617-0410.

For appeals information, contact the Agency for Workforce Innovation at 850-921-3511.

How Are We Doing?

Please give us your feedback on this publication by taking our one-minute survey. Go to www.myflorida.com/dor and click on "Surveys."