

WE ARE YOUR DOL



Department
of Labor

Unemployment Insurance Division
Liability and Determination Section
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Unemployment Insurance Coverage for Indian Tribes

The New York State Unemployment Insurance Law conforms to the Federal Unemployment Tax Act (FUTA) by requiring Unemployment Insurance coverage of Indian Tribes. Indian Tribes become liable for Unemployment Insurance purposes as of the first day of the calendar quarter in which they pay remuneration to persons in covered employment.

Indian Tribes can choose to either reimburse the Department for benefits actually paid to their former employees or remit regular Unemployment Insurance contributions.

Benefit Reimbursement versus Contribution Option

To decide whether to select the Benefit Reimbursement option or the Contribution option, you will need to compare the cost of each program.

Contribution Option

Contributions due from those employers electing the contribution option equal the employer's annual total contribution rate multiplied by the Unemployment Insurance wage base for each covered employee. The total rate is made up of the normal rate and, under certain circumstances, a subsidiary rate (both of which reflect the employer's experience in the unemployment insurance system), plus a Re-employment Service Fund rate.

The Unemployment Insurance wage base is the portion of remuneration subject to contribution. On January 1, 2014, several provisions of the Unemployment Insurance reform legislation went into effect. These provisions affect the Unemployment Insurance wage base. The Unemployment Insurance wage base will adjust January 1 of each year as follows:

- Year 2013 and prior \$ 8,500
- January 2014 \$10,300
- January 2015 \$10,500
- January 2016 \$10,700
- January 2017 \$10,900
- January 2018 \$11,100
- January 2019 \$11,400
- January 2020 \$11,600
- January 2021 \$11,800
- January 2022 \$12,000
- January 2023 \$12,300
- January 2024 \$12,500
- January 2025 \$12,800
- January 2026 \$13,000

After 2026, the wage base will adjust on January 1 of each year to 16% of the state's average annual wage, rounded up to the nearest \$100. The state's average annual wage is established no later than May 31 of each year. The annual average wage cannot be reduced from the prior year's level.

We assign an Unemployment Insurance rate to all newly liable employers. This rate includes the normal rate, a subsidiary rate, and a Re-employment Service Fund rate. Employers must pay contributions reflecting the Unemployment Insurance wage base multiplied by a total Unemployment Insurance rate for each covered employee. When an employer qualifies for a normal rate based on experience, the total rate ranges from 2.1% to 9.9%.

We set up an account for each contributory employer as a bookkeeping method to measure the employer's account balance. We calculate each employer's account balance on December 31 (the computation date) of each year. We use the account balance to determine the account percentage. The account percentage is used to determine the employer's normal and subsidiary rates. The account balance is the sum of all contributions credited to an employer account minus all benefits paid to former employees and charged to the account. It does not represent a cash amount available to the employer. The employer cannot use the account to offset benefit payments if an employer changes from the contribution option to benefit reimbursement option. We keep any account balance in the contribution account to be used if the employer returns to the contribution option from the benefit reimbursement option.

Reimbursement Option

Employers that choose the benefit reimbursement option must reimburse the Unemployment Insurance Fund, dollar-for-dollar, for benefits paid to their former employees and charged to their accounts. The weekly benefit rate equals 1/26 of a claimant's highest quarter earnings in all covered employment during the base period used to establish the claim unless the claimant's highest quarter earnings are \$3,575 or less. Then, the weekly benefit rate will be 1/25 of these earnings.

As of January 1, 2014, if the claimant has earnings in all 4-base period (or alternative base period) quarters, the benefit rate will continue to be calculated in the same way. However, if the claimant has earnings in only 2 or 3 base period (or alternative base period) quarters:

- If high quarter is > \$4,000, benefit rate is 1/26 of the average of the two highest quarters
- If high quarter is > \$3,575 and <= \$4,000, benefit rate is 1/26 of high quarter
- If high quarter <= \$3,575, benefit rate is 1/25 of high quarter

The minimum weekly benefit rate is \$124 for claims effective in 2023.

The maximum weekly benefit rate increases the first Monday of October in each year as shown below:

2019	36% of the average weekly wage
2020	38% of the average weekly wage
2021	40% of the average weekly wage
2022	42% of the average weekly wage
2023	44% of the average weekly wage
2024	46% of the average weekly wage
2025	48% of the average weekly wage
2026	and each year thereafter, 50% of the average weekly wage, but in no event, will the maximum benefit amount be reduced from the previous year

For more on charges to employer accounts, request the Unemployment Insurance Benefits - An Employers Guide (IA 318.2), available at www.labor.ny.gov (follow the links to forms and publications) or call the Employer Hotline at (888) 899-8810.

Currently, a claimant is entitled to up to 26 full weekly benefit payments. The first seven full benefit payments are chargeable to the last employer the claimant worked for prior to filing the claim. The remaining 19 full weekly benefit payments are prorated among all employers in the claimant's base period based on the amount of wages paid by them. An additional 13 weeks of Extended Benefits may be payable during periods of high unemployment. Extended benefits are charged to the account of the Indian Tribe.

Other factors to consider:

- How many employees do you expect to qualify for Unemployment Insurance benefits using their employment with you?
- How long are these workers likely to be out of work before they find a job?
- What are the weekly benefit rates of these employees? (This depends on their quarterly earnings in all covered employment during the base period used to establish their claims.)

Requesting the Contribution Option

If you elect the contribution option, review the publication, Experience Rating (IA 318.12) for information on the charging of benefits options. Also, review the Employer's Guide to Unemployment Insurance, Wage Reporting and Withholding Tax (NYS-50) for your filing obligation under the contribution option. Both forms are available at www.labor.ny.gov (follow the links to forms and publications) or call the Employer Hotline at (888) 899-8810.

If you are currently liable under the reimbursable option and you wish to change to the contribution option, you must submit a written request for the change by December 31 of the year prior to the year you want the change to take effect. This request must be sent to the Liability and Determination Section at the address on the front of this form.

Requesting the Benefit Reimbursement Option

There are two ways you can request the benefit reimbursement option:

- You may request the benefit reimbursement option within thirty days of becoming liable under the Unemployment Insurance Law, or
- If you are currently liable under the contribution option and you wish to change to the benefit reimbursement option, you must submit a written request for the change by December 31 of the year prior to the year you want the change to take effect. This request must be sent to the Liability and Determination Section at the address shown on the front of this form.

We may extend the date to change to the benefit reimbursement option if you can show good cause exists for the late request.

If the Commissioner of Labor approves the benefit reimbursement option:

- The tribe must execute and file a surety bond within 90 days after the approval of this election
- The Commissioner must approve the amount and the form of the initial surety bond
- The bond remains in effect while the reimbursement option is in effect
- The Commissioner may annually revise the amount and the form of the bond

Please note: Indian Tribes can request separate elections for the benefit reimbursement option for itself and each subdivision, subsidiary, or business enterprise wholly owned by such Indian Tribe.

Charging of Benefits

We base charges to an employer's account, regardless of whether they are a reimbursable employer or pay on a contribution basis, based upon their standing regarding other employers in the claimant's base period (i.e., the last employer will be charged for the first seven weeks, and the remaining costs are assigned on a prorated basis to all employers in the claimant's base period).

If you choose the benefit reimbursement option, we send you a monthly Notice of Benefit Reimbursement Charges. This lists all charges made to your account for benefits paid to former employees. You should review these charges and advise us if you think benefits have been improperly paid or charged to your account.

Your Obligations

Employers who choose the reimbursement option must reimburse the Unemployment Insurance Fund on a dollar-for-dollar basis for all benefits paid to their former employees and charged to their accounts.

This applies to benefit payments calculated based on remuneration paid to employees on or after the date the election became effective.

If you choose the benefit reimbursement option, we will bill you at the end of each calendar quarter for the amount due. This quarterly bill is for the amount of benefits charged and/or credited to your account in that quarter.

Payment is due:

- By the last day of the month after the close of the calendar quarter, or
- 15 days after the billing date, whichever is later. Interest is assessed on all late payments at the rate of 12% per year.

If you choose the Benefit Reimbursement option, you must file the Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return (NYS-45) (and NYS-45ATT, if applicable).

To satisfy your UI and Wage Reporting requirements complete:

- Part A, line 1
- Part C, columns a, b and c

To determine if you have a withholding requirement, please see Publication NYS-50, Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax available at www.labor.ny.gov or call (888) 899-8810.

Sharing of Benefit Reimbursement Costs

Two or more employers can choose the benefit reimbursement option as a group to share the cost of benefits paid to former employees. The members of the group shall be "severally and jointly" liable for reimbursement. Write to the Liability and Determination Section if you want to set up such a plan.

Ending the Benefit Reimbursement Option

Voluntary Election to End the Benefit Reimbursement Option

You can end the benefit reimbursement option on the first day of any calendar year by filing a written notice with the Liability and Determination Section before the start of that year. You are then liable on a contribution basis. You remain liable for any benefits paid based on remuneration paid to employees up to the date of termination of the benefit reimbursement option.

Loss of the Benefit Reimbursement Option due to late payment or nonpayment

You have 90 days from when you receive a notice of delinquency from the Commissioner of Labor to make payment. If you do not pay in full by December 31, you will lose the benefit reimbursement option for the next calendar year. If you lose the benefit reimbursement option because of late payment or nonpayment, you may ask to have the benefit reimbursement option reinstated after a full calendar year without that option.

You may ask to have the option reinstated as of January 1 of the year after the year you lost the option if:

- All your contributions are timely
- You have no outstanding amounts due

Terminating Coverage for Employees

If, within 90 days of receipt of a notice of delinquency, an Indian Tribe fails to:

- Make required contributions
- Make payments in lieu of contributions
- Make payments of penalties or interest, or
- Post a required surety bond

The Commissioner of Labor may determine that services performed are not in covered employment. This termination of coverage will be effective on the first day of the quarter following the quarter that the notice of termination was mailed.

If the tribe loses coverage because of failure to pay:

- They become liable under FUTA
- The Internal Revenue Service and the United States Department of Labor receive notice of termination of coverage as required by law

Coverage cannot be resumed until the employer has paid all interest, penalties, contributions, and payments in lieu of contributions. At that time, coverage will begin in the quarter following the quarter all monies have been paid.

Continuation of Liability for Reimbursement of Benefit Costs

The Tribe remains liable for the reimbursement of any benefits that are based on remuneration paid to employees before the date the termination or cancellation took effect when:

- The benefit reimbursement option is terminated by the Tribe, or
- Cancelled by the Commissioner of Labor because of failure to make any of the required payments.

Other Considerations for Indian Tribes:

Excluded Employment

The term employment does not include services rendered for an Indian Tribe by:

- An elected official
- A member of a legislative body or of the judiciary
- A member of the State National Guard or Air National Guard (Except a person who renders such services as a regular State employee)
- A person serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency
- A person in a major non-tenured policymaking or advisory position
- A person in a policymaking or advisory position (Their duties cannot ordinarily require more than eight hours per week to perform.)
- An inmate of a custodial or penal institution

Covered Employment

The term employment includes, but is not limited to, services rendered for an Indian Tribe by:

- Daytime students in elementary or secondary schools
- Children under the age of 14
- Babysitters under the age of 18 at the home of the employer
- Golf Caddies
- Persons under the age of 21 performing casual services consisting of yard work and household chores about a residence

Reporting Wages

Indian tribes are not required to report the following payments to employees:

- Dismissal or severance payments
- Sick pay
- Moving expense reimbursement
- Disability payments

Direct any questions about the Benefit Reimbursement Option or Contribution Option to the Liability and Determination Section at the address and telephone number on the front of this form.