

## Experience Rating Contribution Rates

The New York State Unemployment Insurance Law provides for a system of experience rating whereby qualified employers have their UI contribution rates determined annually based upon their prior employment and unemployment experience. This system does not apply to nonprofit organizations, governmental entities and Indian Tribes that have elected the benefit reimbursement option. (Those employers may refer to our publication, Benefit Reimbursement, form IA 318.13.)

### General

The Unemployment Insurance (UI) wage base is the portion of remuneration subject to contribution. On January 1, 2014 several provisions of the recent UI reform legislation went into effect. These provisions affect the UI wage base. The UI 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 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.

Once a contribution rate is established for a calendar year, it may only be changed:

- In cases of fraud
- With a transfer of experience
- Upon removal of experience rating charges as a result of a decision by an administrative law judge, Appeal Board or Court
- If estimated wages were included in the rate calculation (due to the employer's failure to file required returns) and the subsequent receipt of actual wages results in a higher contribution rate

The assigned rate includes these three elements:

1. The **normal contribution rate**, which is based on an employer's individual experience in the unemployment insurance system **and**
2. The **subsidiary contribution rate**, which is based on an employer's individual experience in the unemployment insurance system **and**
3. The **Re-employment Service Fund rate**, which is assigned to all employers and is not based on an employer's individual experience

Unless otherwise indicated, contribution rates referred to in this publication are normal contribution rates.

## Newly Liable Employers

Newly liable employers (who, with any previous owners of the business, are liable for fewer than five completed calendar quarters as of December 31, 2022) are assigned the normal contribution rate from the positive "less than 1.0%" bracket on the Normal Contribution Rate Table for this year's Size-of-Fund Index (This rate cannot exceed 3.4%).

The New Employer normal contribution rate for 2023 is 3.4%.

## Qualified Employers

To qualify for a 2023 contribution rate based on experience, an employer or the employer and any predecessor must have:

1. Been in the system during the five calendar quarters ending on the computation date (December 31, 2022) and
2. Paid some remuneration to employees in the payroll year (October 1, 2021 through September 30, 2022) preceding the computation date

## Payroll Averaging

We use the employer's payroll subject to contribution, (the total of all reported and/or estimated wages subject to contribution paid to all employees) to compute the contribution rate. We determine the average payroll subject to contribution effective December 31. We total the employer's payroll subject to contribution for the last five payroll years (October 1 through September 30) and divide the total by the number of payroll years in which the employer was liable.

## Employer Accounts

If you are an employer liable for contributions, we set up an individual account as a bookkeeping device to measure your account percentage. We use this to determine the contribution rate.

## Account Balance

We calculate your account balance on December 31 (the statutory computation date). We use your account balance to determine the account percentage that sets the normal contribution rate for the next year.

Your account balance is:

1. The sum of all contributions credited to your account
2. Less all benefits paid to former employees and charged to the account

We credit all normal contributions you pay when due. We debit all benefits chargeable to the account that are paid to former employees. We do not credit contributions we receive more than 60 days after the due date or after determination and demand by the Commissioner of Labor. If you make a late payment, it may result in an interest assessment, and it may adversely affect your future contribution rate. We assess interest at a rate of 1% per month on late payments and we do not credit interest payments to your account.

## **Positive Account Balance Employers**

We base your contribution rate on your positive account percentage when the contributions that you pay (and we credit to your account) exceed the benefits charged.

We assign you a Qualified Positive Account Balance normal contribution rate for 2023 (from the Normal Contribution Rate Table) based on your individual experience rating account percentage on December 31, 2022 and this year's Size-of-Fund Index (see page 12), if you:

- Have a positive experience rating account balance on December 31, 2022
- Are liable for five or more calendar quarters
- Paid remuneration for the previous payroll year and
- Have had no negative balance transfers to the General Account on December 31, 2019, 2020 or 2021

## **Negative Account Balance Employers**

We assign you a Qualified Negative Account Balance normal contribution rate for 2023 (from the Normal Contribution Rate Table) based on your individual experience rating account percentage on December 31, 2022 and this year's Size-of-Fund Index, if you:

- Have a negative experience rating account balance on December 31, 2022
- Are liable for five or more calendar quarters
- Paid remuneration for the previous payroll year and
- Have had no negative balance transfers to the General Account on December 31, 2019, 2020 or 2021

If you are assigned a Qualified Negative Account Balance normal contribution rate for 2023 and you filed returns for the three payroll years (October 1, 2018 - September 30, 2021), you will have your negative experience rating account percentage improved by four percentage points if:

- Your total wages from the current payroll year (October 1, 2021 - September 30, 2022) equal or exceed 80% of your prior three payroll year's average wages subject to contribution (October 1, 2018- September 30, 2021)

We use the resulting improved negative experience rating account percentage to assign your Qualified Negative Account Balance normal contribution rate for 2023. The normal contribution rate cannot be less than 6.1%.

## Employers with Negative Balance Transfers

If the benefits charged to your account exceed the contributions paid and credited to your account, you will have a negative experience rating account balance, and a negative experience rating account percentage. If your negative experience rating account balance exceeds 21% of your payroll subject to contributions for the previous payroll year (October 1 -September 30), we transfer the amount over the 21% as a charge to the General Account.

When this happens, if you are liable for five or more completed calendar quarters, we base your normal contribution rate for the next year on the negative experience rating account percentage **before** the amount over 21% is transferred as a charge to the General Account. You must pay the maximum normal contribution rate for the next three years.

If you had a transfer to the General Account on December 31, 2019, 2020 or 2021, you are assigned the maximum normal contribution rate from the Normal Contribution Rate Table for this year's Size-of-Fund Index. The Negative Balance Transfer normal contribution rate for 2023 is **8.9%**.

You can change this rate through a voluntary contribution. If you make a voluntary payment by March 31 that equals or exceeds the amount transferable there will be no transfer or mandatory assignment of the maximum normal contribution rate for the next three years.

## Voluntary Contributions

You can reduce your contribution rate by making non-refundable voluntary payments, in addition to the regular required contributions. You cannot make voluntary payments if any of the following conditions exist:

- You have not paid all contributions due
- You failed to file all required returns
- You did not make your voluntary payment by March 31<sup>st</sup>
- You failed to submit any requested information

If we cannot accept your voluntary payment, we will apply it to outstanding liabilities. If there are no liabilities or the payment exceeds the liabilities, the remaining payment may be refunded.

Direct any questions to the Employer Hotline at (888) 899-8810.

## Non-Payment of Remuneration

If you, along with the previous owner of the business, paid no remuneration for the payroll year prior to December 31, 2022, (October 1, 2021 – September 30, 2022) we assign you the normal contribution rate from the positive "less than 1.0%" bracket of the Normal Contribution Rate Table for this year's Size-of-Fund Index (except that this rate cannot exceed 3.4%). The No Remuneration normal contribution rate for 2023 is 3.4%.

## Subsidiary Contributions

We determine your 2023 subsidiary contribution rate using your individual account percentage, UI experience, and the General Account Balance on the computation date (December 31, 2022). Items that go into the General Account include:

- Interest earned on the Unemployment Insurance Fund
- Balances of employer accounts that have lapsed
- Contributions paid late
- Certain monies credited to the Unemployment Insurance Fund by the United States Government and
- Benefit charges that exceed employer's contributions by more than 21% of their wages subject to contributions during the payroll year (October 1, 2021 - September 30, 2022) after the computation date (December 31, 2022)

We credit subsidiary contributions to the General Account, not to the employer individual account.

**Subsidiary Contribution Rate Table (General Account Balance in Millions):**

Employer's Account Percentage	Less than \$0	\$0 or more but less than \$75	\$75 or more but less than \$150	\$150 or more but less than \$225	\$225 or more but less than \$300	\$300 or more but less than \$375	\$375 or more but less than \$450	\$450 or more but less than \$525	\$525 or more but less than \$600	\$600 or more but less than \$650	\$650 or more
Less than 0.0% (Negative)	<b>.925%</b>	.825%	.725%	.625%	.525%	.425%	.325%	.225%	.125%	.025%	.000%
0.0% or more but less than 5.5%	<b>.625%</b>	.625%	.625%	.525%	.425%	.325%	.225%	.125%	.025%	.000%	.000%
5.5% or more but less than 7.5%	<b>.625%</b>	.625%	.525%	.425%	.325%	.225%	.125%	.025%	.000%	.000%	.000%
7.5% or more but less than 9.0%	<b>.625%</b>	.525%	.425%	.325%	.225%	.125%	.025%	.000%	.000%	.000%	.000%
9.0% or more	<b>.525%</b>	.425%	.325%	.225%	.125%	.025%	.000%	.000%	.000%	.000%	.000%

If we assign you a New Employer contribution rate for 2023 you pay the subsidiary contribution rate from the "0.0% or more but less than 5.5%" bracket on the Subsidiary Contribution Rate Table for this year's General Account Balance. A new employers' subsidiary contribution rate for 2023 is .625%.

If we assigned you a normal contribution rate for 2023 in these categories:

- No Remuneration
- Negative Balance Transfer
- Qualified Negative Account Balance or
- Qualified Positive Account Balance

Then you pay a subsidiary contribution rate from the Subsidiary Contribution Rate Table based on your individual experience rating account percentage on December 31, 2022, and this year's General Account Balance.

## Re-Employment Service Fund

If you are liable for unemployment contributions then you must contribute to the Re-employment Service Fund each calendar quarter:

- The amount is 0.075% of the quarterly payroll subject to contribution
- These contributions are not credited to your account or the General Account
- These payments cannot be used as a credit on IRS Form 940

This does not apply to non-profit or government employers and Indian Tribes who have chosen the benefit reimbursement option.

The Re-employment Service Fund pays for job search help for claimants and follow-up to assure they are trying to find work.

## Charging of Benefits

We establish a base period when a person files a claim for benefits. The base period is the first four of the last five completed calendar quarters before they file the benefit claim. If the claimant does not qualify using this base period, they may choose to qualify based on wages paid during the last four completed calendar quarters.

We will send all employers a *Notice of Potential Charges* (LO 400) when a person qualifies for benefits who last worked for you or worked for you in the base period. The LO 400 shows your share of their total base period wages, and your maximum potential charges. You **MUST** return the LO 400 within the time frame prescribed on the Notice with any corrected wages and/or information that may affect the claimant's eligibility to receive unemployment benefits and to ensure your account is properly charged.

## Charging Formula

First, we charge the last employer (prior to the filing of the claim) an amount equal to seven times the weekly benefit rate. Then, we apply the remaining charges proportionally to all base period employers. The ratio is based on the amount of wages the employers paid as a percent of the total base period wages. This includes the last employer, if they paid wages during the base period.

Normally, we can charge an employer for no more than 26 full weeks of benefits. During periods of high unemployment, claimants can receive Extended Benefit payments. Normally, your account is charged for half of these weekly Extended Benefit payments; the federal government reimburses the state for the other half. The federal government does not reimburse any Extended Benefits charged to the accounts of government entities or Indian Tribes; they are charged the full weekly payment.

Claimants who are eligible for benefits while attending a training course approved by the NYS Department of Labor may qualify for up to 26 additional weeks of benefit payments if the regular benefits expire while they are in training. These additional benefits are not chargeable to employers.

## **Separation from Employment**

Claimants will not be eligible for benefits if they lose a job with any employer under disqualifying conditions unless they worked in subsequent employment and earned at least ten times their weekly benefit amount. If a claimant qualifies, there may be charges to the accounts of all base period employers. (See Exceptions to the General Charging Formula for details.)

Disqualified claimants may re-qualify when they have worked and earned remuneration equal to at least ten times their weekly benefit rate. Once a claimant re-qualifies for benefits, the base period employers may be charged for any benefits we pay. An employer's account will not be charged if it is determined the claimant lost their employment with that employer due to misconduct or that the claimant voluntarily left that employment without good cause, based on timely information provided by the employer. Employer will **not** be relieved of charges when it or its agent fail to timely or adequately submit requested information for determination of a claim. (See Exceptions to the General Charging Formula for details.)

For questions about a specific claimant's separation, call the Employer Hotline at (888) 890-5090.

## **Exceptions to the General Charging Formula**

If a claimant continues to be employed by a chargeable employer, your account will not be charged for a claimant's benefits if:

1. They worked for you on a part-time basis and
2. The part-time employment included work during the four weeks before the filing of the claim and
3. They continue to work for you on a part-time basis without significant break and to the same extent as during the period just before they filed the claim

## **Interstate Plan for Combining Wage Credits**

Claimants who have employment and earnings in more than one state that participates in the Interstate Plan for Combining Wage Credits may have their claims determined on the basis of combined employment and earnings in all participating states. Their entitlement to benefits is then determined under the laws and regulations of the state where they file the claim for benefits.

To determine entitlement to benefits, New York State and other states that participate in the plan share employment and wage data (as allowed by law). The paying state will bill each participating state for benefits in the same proportion as the claimant's employment they bear in the total earnings used to determine benefits. (See Examples of Charging Formula on page 7) The benefits charged to New York State under this plan are charged to the experience rating accounts of the claimant's New York State employers.

## **Benefits paid to Federal Civilian Employees and Military Personnel**

New York State acts as an agent for the federal government to pay unemployment compensation to former federal workers.

Persons who have base period employment and earnings covered under the New York law, as well as federal civilian or military service, are entitled to unemployment insurance benefits in line with their combined base period employment and earnings. The federal government reimburses New York for benefits paid to these claimants in the same proportion as the claimant's federal civilian or military earnings they bear to the total earnings used to determine the claim. The remaining portion of the benefits paid to these claimants is then charged to the experience rating accounts of the other base-period employers.

## **Claimant Disqualified Due to Misconduct or Voluntarily Leaving Employment without Good Cause**

An employer's account will not be charged for a claimant's benefits if the claimant:

- Was separated from employment with you
  - Filed a claim for benefits and
  - Was disqualified from receiving benefits because we determined that the employment was lost due to:
    - Misconduct or
    - Voluntarily leaving without good cause
- And then the claimant:**
- Is eligible for benefits after loss of subsequent employment under qualifying circumstances

A claimant who loses a job under disqualifying conditions will not be eligible for benefits unless they work in subsequent employment and earn at least ten times their weekly benefit amount.

## **Claimant was Enrolled in a Work Release Program**

We will not charge your account for a claimant's benefits if:

- A claimant worked for you while an inmate of a correctional institution and was enrolled in a work release program
- and**
- That employment was terminated solely because the inmate moved to another area:
    - As a condition of parole or
    - Voluntarily, immediately after release from the correctional institution

## **Notification of Charges**

We use a Notice of Experience Rating Charges (IA 96) to inform you monthly of all charges made against your account. Every benefit payment charge to your experience rating account may increase your contribution rate in future years.

If you believe that benefits were improperly paid or charged to your account because of an issue with the claimant's separation from your employment, notify us in writing at PO Box 15130, Albany, NY 12212-5130 or fax to (518) 485-7377.

If you have work available for the claimant, contact the claimant directly. The claimant's address is on the Notice of Potential Charges (LO 400). If the claimant refuses the job, does not report to work, or is unable to be contacted notify us in writing at the above address.

Include the following information:

- Claimant's name and social security number
- The date the claimant refused the job, or the date the claimant was to start the job
- The kind of work offered
- The days and hours work was available
- The rate of pay
- The name of the person who offered the claimant the job
- If the claimant refused the job, the reason given



You should contact the Liability and Determination Section at (518) 457-2635 if you believe the charges are incorrect because:

- The claimant was not your employee
- The claimant is currently working or
- You believe the charges to be incorrect for any other reason

This will protect your experience rating account and assist us in paying only qualified claimants.

## Charges During Hearing and Appeal Process

There is an appeal process to follow if you object to the payment of unemployment benefits to a former employee, or to the imposition of benefit charges against your account. During the appeal process benefits continue to be payable and chargeable. If your appeal is successful, we will remove charges and make necessary contribution rate adjustments.

## Examples of Charging Formula

We charge benefits we pay to a claimant first to the last employer prior to the filing of the claim in an amount equal to seven times the benefit rate. We charge the remaining weekly benefit payments proportionally to all base period employers, (including the last employer if that employer is a base period employer) based on each base period employer's wages paid as a percent of the total base period wages. The base period is the first four quarters of the last five completed calendar quarters prior to the filing of the benefit claim. (If the claimant does not qualify using this base period, the claimant may qualify, or choose to qualify, based on wages paid during the last four completed calendar quarters).

### Example 1

Employer	Base Period Wages	% of Base Period Wages	x	Weekly Benefit Rate	x	Benefits Chargeable to Employer's Account	=	Maximum Chargeable Amount
A (Last)	---	---	x	\$150	x	7 weeks	=	\$1,050
B (Base)	\$3,000	30%	x	\$150	x	19 weeks	=	\$855
C (Base)	\$7,000	70%	x	\$150	x	19 weeks	=	\$1,995
<b>TOTAL</b>	<b>\$10,000</b>	<b>100%</b>	<b>x</b>	<b>\$150</b>	<b>x</b>	<b>26 weeks</b>	<b>=</b>	<b>\$3,900</b>

Employer A, the last employer, is charged for the first seven weekly benefit payments. In this example, Employer A did not employ the claimant during the base period. Employers B and C, the base period employers, are charged proportionally for the remaining nineteen weekly benefit payments, with Employer B charged 30% (\$45) and Employer C charged 70% (\$105) of each \$150 weekly benefit payment.

Example 2

Employer	Base Period Wages	% of Base Period Wages	x	Weekly Benefit Rate	x	Benefits Chargeable to Employer's Account	=	Maximum Chargeable Amount
A (Last)	---	---	x	\$150	x	7 weeks	=	\$1,050
A (Base)	\$2,000	20%	x	\$150	x	19 weeks	=	\$570
B (Base)	\$3,000	30%	x	\$150	x	19 weeks	=	\$855
C (Base)	\$5,000	50%	x	\$150	x	19 weeks	=	\$1,425
<b>TOTAL</b>	<b>\$10,000</b>	<b>100%</b>	<b>x</b>	<b>\$150</b>	<b>x</b>	<b>26 weeks</b>	<b>=</b>	<b>\$3,900</b>

Employer A, the last employer, is charged for the first seven weekly benefit payments. In this example, Employer A also employed the claimant during the base period. Employers A, B and C, the base period employers, are charged proportionally for the remaining nineteen weekly benefit payments, with Employer A charged 20% (\$30) and Employer B charged 30% (\$45) and Employer C charged 50% (\$75) of each \$150 weekly benefit payment.

### Transfer of Experience

If all or part of an employer's organization, trade or business is transferred to another employer, the transferee takes over the employer's account and other aspects of the experience, in proportion to the payroll or number of employees assigned to the transferred organization. The account taken over remains chargeable for benefits paid that are based on employment in the business prior to the transfer.

With respect to the calendar year in which the transfer occurred, the contribution rates for the transferring employer and the transferee are determined or re-determined as of the computation date--December 31--in the preceding year. Such rates apply to wages paid from the date of the transfer to the end of the calendar year in which the transfer occurred.

A transfer of business occurs when an employer transfers or sells all or part of an organization, trade or business to another employer, **and** at least one of the following conditions exists:

1. The transferee assumes any of the transferring employer's obligations
2. The transferee acquires any of the transferring employer's goodwill
3. The transferee continues or resumes the business of the transferring employer either in the same establishment or elsewhere
4. The transferee employs substantially the same employees as the transferring employer in connection with the organization, trade, business, or part thereof transferred

Employers are required to notify the Unemployment Insurance Division of any business transfer in whole or part. Notice of the transfer may be entered on the Quarterly Report of Contributions or sent directly to the Liability and Determination Section. If you want the business transfer to be recognized for experience rating purposes, you must give notice of the transfer before the end of the year following the calendar year in which the transfer occurred.

## Joint Accounts

Two or more qualified employers who are in the same or related kinds of business, or who have a common financial interest can set up a joint account. For experience rating purposes, a joint account is treated as though the account belonged to a single employer. All firms in the joint account have the same contribution rate. Each employer must continue to file a separate Quarterly Report of Contributions.

We compute the contribution rate for the joint account as of the computation date in the last calendar year. This applies to wages paid from the first day of the calendar quarter in which the application is made to the end of that calendar year. We compute the contribution rate for the next calendar year as of the computation date that falls within the calendar year in which the application is made.

A joint account must be maintained for at least two calendar years after the year in which it is set up. One or more employers may apply to dissolve a joint account once prior notice has been given to the other employers in the joint account. This dissolution is effective on the computation date in the year in which the application to dissolve is filed.

Employers who wish to set up or dissolve a joint account should file an *Application for Joint Account* (IA 95) or apply in writing to the Liability and Determination Section, State Office Campus, Albany, NY 12240.

## Computation of Individual Contribution Rates

### Experience Rating Account

We set up an individual employer experience rating account for every employer, as a bookkeeping device. This measures the account percentage to determine the normal computation rate. We credit all timely **normal** contributions to the experience rating account. We debit all benefits paid to former employees that are chargeable to the account.

Late Payments: We cannot credit late **normal** contributions to the experience rating account. We must credit those to the General Account if they arrive:

1. More than 60 days after the due date prescribed by regulation and
2. After determination and demand for payment has been made by the Commissioner of Labor

We charge benefits to the last employer first. The charge is equal to seven times the claimant's weekly benefit rate. Then we divide the remaining charges proportionally among all base period employers according to their percentage of the total wage period. (This includes the last employer, if that employer was a base period employer.)

### Account Percentage

The normal contribution rate depends upon the account percentage in relation to the Size-of Fund Index. The account percentage, either positive or negative, is based on the balance in the experience rating account on December 31. This is expressed as a percentage of the average payroll subject to contribution for the last 5 payroll years. (A payroll year is the period from October 1 through September 30.) The calculation is carried two decimal places. We disregard any remaining fraction.

Account Balance on December 31 ÷ Average Payroll subject to contribution for Last 5 Payroll Years = Employer's Account Percentage

## Benefit Equalization Factor

On December 31, we multiply the account percentage by the benefit equalization factor to find the equalized account percentage. We do this if:

- **The experience rating account balance is positive** and
- You have been liable for the contributions between 5 and 21 calendar quarters

This gives both new employers and established employers an equal opportunity to earn rate reductions.

Benefit Equalization Factor Table:

Number of Quarters of Employer Liability	Employer's Benefit Equalization Factor	Number of Quarters of Employer Liability	Employer's Benefit Equalization Factor
5	3.00	10	1.40
6	2.50	11	1.25
7	2.05	12	1.12
8	1.75	13	1.04
9	1.55	14 through 21	1.00

## Size-of-Fund Index

We base the normal contribution rate on the overall condition of the Unemployment Insurance Fund. The law sets up various schedules of rates for qualified employers (refer to the Contribution Rate Table available at <https://dol.ny.gov/employer-contribution-rate-table>).

The Size-of-Fund Index determines which schedule to use for a calendar year. This index is the ratio of the balance in the Fund as of December 31 to whichever is the higher: (1) total payrolls subject to contribution for all employers in the last payroll year, or (2) the average of total payrolls subject to contribution for all employers for the last five payroll years. The Size-of-Fund Index for 2022 applies to the **"less than 0%"** bracket on the Normal Contribution Rate Table. For Size-of-Fund Index percentages for other years, call the Employer Hotline at (888) 899-8810.