

WE ARE YOUR DOL



Department
of Labor



Unemployment Insurance Employer Guide

QUESTIONS AND ANSWERS



A Division of the New York State Department of Labor

Employer Guide to Unemployment Insurance

As someone doing business in New York State, you are a vital part of our community and our economy. Your hard work creates jobs, supports our neighbors and makes New York the great state that it is. We are proud of the forward-thinking climate, world-class infrastructure, creative incentives and lower taxes that make New York right for business.

Unemployment Insurance helps ensure that eligible out-of-work New Yorkers can continue to participate in the economy while meeting their basic needs. We have compiled this informational booklet to help you more easily understand your responsibilities under the law, how Unemployment Insurance works and how you can keep costs down.

The New York State Department of Labor looks forward to helping you keep your business healthy, growing and in compliance with the Unemployment Insurance Law.

Quick Start Guide

Now that you're liable for Unemployment Insurance contributions, the following are basic requirements. Please make sure to read the entire Employer Guide, as it explains the program in more detail and will answer many of your questions.

Your Employer Registration Number is on the Liability and Determination Notice you received. Please use this number on all correspondence with the Unemployment Insurance Division.

1. Fill out the NYS 100: If you have not already done so, fill out the NYS 100 online. Go to www.labor.ny.gov and choose "Businesses," "Unemployment Insurance," then "Registering."
2. File the NYS 45 quarterly: Report your employees' earnings each quarter by filing the NYS 45. File online at www.tax.ny.gov.
3. Pay contributions: When you file your NYS 45 and you owe Unemployment Insurance contributions, pay them on time to avoid penalties and interest.
4. Sign up for Online Services: View your account information and more. Visit www.labor.ny.gov/EmployerLogin.
5. Post required posters: Post the enclosed Unemployment Insurance Notice to Employees (IA 133) in an area where your employees can see it. Household employers do not receive this notice.
6. Review notices: Review the Notice of Potential Charges (LO 400) immediately. You will get a LO 400 if someone who worked for you files a claim for benefits. Make sure you review this notice. Respond within 10 calendar days of the date on the notice if the wages shown are incorrect or you know of any reason the claimant should not collect benefits.
7. Designate an agent: If you want to designate an agent or representative to handle your Unemployment Insurance matters, submit the Power of Attorney (IA 900) form. Visit www.labor.ny.gov/formsdocs/ui/IA900.pdf.
8. Contact us: If you have questions, go to www.labor.ny.gov or call our Employer Hotline at (888) 899-8810.

This guide offers general information but its statements do not have the effect of law or regulation. You may review the New York State Unemployment Insurance Law (Article 18 of the New York State Labor Law) on our website www.labor.ny.gov/legal/ or at your local library.

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1. What is Unemployment Insurance?

The Unemployment Insurance program is an insurance fund that employers pay into based on their payroll. This fund is used to pay benefits to qualifying workers who have lost work through no fault of their own. Most employers pay quarterly contributions into the fund. Contributions cannot be funded through deductions from employee wages.

An employers' contribution rate is based on their experience in the Unemployment Insurance system. This calculation is called an experience rating. Based on experience ratings, employers that have more former employees who receive Unemployment Insurance benefits usually pay contributions at a higher rate than employers with fewer employees who receive benefits. For example, seasonal employers that have an annual mass layoff often pay more than similarly sized employers that operate year-round

If you have not done so already, you must register for Unemployment Insurance, withholding and wage reporting. Fill out the NYS 100, New York State Employer Registration for Unemployment Insurance, Withholding, and Wage Reporting form by going to www.labor.ny.gov/ui/employerinfo/registering-for-unemployment-insurance.shtm. General Business Employers and Household Domestic Employers file the form online. If you are unable to file online, you can also access a PDF of the NYS 100 forms at this link.

2. Your Responsibilities

Even if you work with a payroll company or other agent, you are still responsible for ensuring that your business meets all requirements of the law.

If you would like to designate an agent or other representative to handle your business' Unemployment Insurance matters, submit form IA 900, Power of Attorney. Some of the matters designated representatives may handle include:

- Address/status changes;
- Unemployment Insurance rate information;
- Experience rating charges;
- Under/overpayment information;
- Elements used to calculate Unemployment Insurance rates;
- Information specific to any claim for Unemployment Insurance benefits;
- Audit investigations and enforcement actions; and
- Unemployment Insurance administrative proceedings and court appeals.

To access the form, visit www.labor.ny.gov/formsdocs/ui/IA900.pdf. To access instructions for this form, visit www.labor.ny.gov/formsdocs/ui/IA900.1.pdf.

File the NYS 45 quarterly

You must file and pay your Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return (NYS 45) on time.

You should file all employment and wages timely and report them correctly. Errors and lateness can cost employers through penalties and increased Unemployment Insurance rates.

You must electronically file your NYS 45 return and pay your contributions quarterly. You must file even if you owe no contributions. Failure to file on time may result in penalties and interest, as well as increased contribution rates and loss of credit on IRS Form 940.

Filing due dates are:

- First calendar quarter (January 1 through March 31) – due April 30
- Second calendar quarter (April 1 through June 30) – due July 31
- Third calendar quarter (July 1 through September 30) – due October 31
- Fourth calendar quarter (October 1 through December 31) – due January 31

For more information, visit the Department of Taxation and Finance Online Service Center at www.tax.ny.gov.

Pay contributions at the correct rate

The majority of new employers pay Unemployment Insurance contributions at the rate of 4.0 percent. Please see the Notice of Unemployment Insurance Contribution Rates (IA 98) form included with this guide for more information. Each year, you will receive a rate notice showing your Unemployment Insurance contribution rate for that year. The rate takes effect on January 1, for the NYS 45 due on April 30.

Contributions are due on the NYS 45 quarterly filing due dates. Failure to pay contributions on time can result in penalties, interest and higher contribution rates.

Post required posters

You are required to post the Unemployment Insurance Notice to Employees (IA 133) in an area visible to employees. Only employers of employees in personal or domestic service are exempt from this requirement. The notice is included in this packet and is available for free upon request.

The notice is also available in Spanish, Chinese, Russian, Haitian-Creole, Italian, Polish and Korean if you want additional posters in other languages for your employees.

To request a poster, call the Employer Hotline at (888) 899-8810. You may also fill out an order form, found at www.labor.ny.gov/formsdocs/ui/IA132.pdf. Fax it to (518) 485-8010 or mail it to:

NYS Department of Labor
Unemployment Insurance Registration Section
State Office Campus
Building 12, Room 363
Albany, NY 12240

Provide notice to employees leaving the job

An employer must give written notice to any employee who goes off the payroll regardless of:

- The reason for separation, or
- Whether it is a temporary or permanent separation.

The notice must include:

- Employer's name;
- New York State Employer Registration Number;
- Mailing address where payroll records are kept; or
- Instructions to employees to give the information on the form to the Unemployment Insurance Claims Center.

You may print the Record of Employment (IA 12.3) form from our website at www.labor.ny.gov/formsdocs/ui/IA12_3.pdf.

The information on this form helps ensure that:

- We mail notices and requests to you promptly and to the correct address; and
- Experience rating charges are accurate.

3. Unemployment Insurance Benefit Charges to Employer Accounts

How does Unemployment Insurance affect my business?

The New York State Unemployment Insurance Program provides weekly income for people who are out of work through no fault of their own. When someone works for you and is let go, you must help pay for these benefits. The following section will explain how a former worker becomes qualified for benefits, how you will be charged for those benefits and how you can contest the benefits or the charges.

How does a claimant qualify for Unemployment Insurance benefits?

To qualify for Unemployment Insurance benefits, claimants must:

- Have lost employment through no fault of their own;
- Have enough prior earnings from employment to establish a claim;
- Be ready, willing and able to work; and
- Be actively seeking work and keeping a record of the work search.

The requirement to actively seek work may be waived by the Department of Labor under certain conditions.

How will I know if a former employee has filed a claim?

When we determine that a claimant filing for benefits is entitled, we send the following notices to all employers whose experience rating accounts might be charged:

- Notice of Potential Charges (LO 400);
- Notice of Protest (LO 400P).

What must I do when I receive a Notice of Potential Charges?

It is important for you to respond to these notices timely and adequately if:

- There is incorrect wage information; or
- You know of any reason why the claimant should not collect benefits.

If you do not respond in a timely or adequate manner, it could result in unnecessary costs for you. Your experience rating account may not be completely credited for any incorrect payments made to a claimant. If you provide late information that disqualifies a claimant, your account will be charged until the date we make a determination that disqualifies the claimant. If you provide late information that lowers a claimant's benefit rate, your account will be charged at the higher benefit rate until the date we make a determination that lowers the rate. However, if the new information you provide results in a higher benefit rate, the adjustments will be retroactive to the start of the claim.

How is my account charged when an employee is granted Unemployment Insurance benefits?

Unemployment Insurance benefits could potentially be charged to all employers for whom a claimant worked in their base period. The base period is either the first four of the last five completed calendar quarters prior to the quarter in which the claim is filed or last four completed calendar quarters prior to the quarter in which the claim is filed.

First, we charge benefits to the account of the last employer for whom the claimant worked before they filed the Unemployment Insurance claim. The last employer is charged for seven weeks of benefits (or the equivalent monetary amount). Next, we charge benefits to all base period employers in proportion to how much of the claimant's total base period wages were paid by each employer.

You **could** be entitled to a credit of benefit charges if you:

- Are the last employer; and
- Paid the claimant an amount equal to or less than six times the claimant's benefit rate.

Any base period employer may contest these charges if the claimant was discharged due to misconduct or voluntarily quit without good cause.

If you believe you are due a credit or wish to contest charges, return the Notice of Potential Charges (LO 400) within 10 days of receipt. Include the amount of wages paid to the employee.

Will I be notified when charges are made to my account?

We send a Notice of Experience Rating Charges (IA 96) to employers monthly. This notice shows all benefit payments to former employees that are charged to the employer account. The charges shown represent weekly payments.

We notify employers that select the Benefit Reimbursement Option on the Notice of Benefit Reimbursement Charges (IA 96R). See Choose the Benefit Reimbursement Option under the How can I keep my Unemployment Insurance costs down? section for more information.

What are the reasons that I can contest a former employee's Unemployment Insurance benefits?

Your former employee may not be eligible for Unemployment Insurance benefits if he or she:

- Is still working, for you, for another employer or for themselves.
- Quit voluntarily without good cause.
- Was dismissed for job-related misconduct.
- After filing a claim, refused suitable work. Suitable work is work that:
 - The claimant is capable of doing

If a former employee is eligible for benefits, is there anything I can do to prevent charges to my account?

You could offer work to the claimant. If you are able to reemploy a claimant, contact the claimant directly. The claimant's address appears on the initial Notice of Potential Charges (LO 400). If the claimant is no longer unemployed, they will no longer be eligible for benefits. If the claimant refuses rehire or fails to report to work, they may become ineligible for benefits. If this happens, notify us in writing at:

NYS Department of Labor
PO Box 15130 or fax to: (518) 402-6175
Albany, NY 12212-5130

You may also communicate with us through your Online Services Account. (see *Unemployment Insurance Online Services Account* under the *Web Services for Employers* section).

When you notify us, provide:

- The date the claimant refused work or failed to report to work;
- The type of employment offered; and
- The wages offered for the position.

Your offer of employment must pay at least the Unemployment Insurance cutoff wage (10% lower than the Unemployment Insurance prevailing wage) for similar work, even if:

- The amount is less than the claimant earned on the last job; or
- The amount is less than the salary desired.

After collecting 10 full weeks of Unemployment Insurance benefits, the claimant may also be required to accept any employment that he or she is capable of performing if:

- It offers the Unemployment Insurance cutoff wage; and
- The pay is at least 80% of the claimant's base period high quarter wages.

If your employment offer does not meet the above conditions, the claimant may refuse it without becoming ineligible for Unemployment Insurance benefits. You can find the Unemployment Insurance prevailing wage and cutoff wage for your area and the position you are offering at www.labor.ny.gov/stats/uiwages.shtm.

What if I disagree with a decision the Department makes?

If you disagree with any determination the Department of Labor issues to you, you have the right to request a hearing. The matter will be reviewed by an independent Administrative Law Judge. You must make this request within 30 days of the date of the determination notice. Find out more about how to request a hearing, how the hearing process works and how to prepare for a hearing at www.labor.ny.gov/ui/aso/hearing2.shtm.

4. How to Keep Your Unemployment Insurance Costs Down

Several factors affect your Unemployment Insurance costs. They are:

- Unemployment Insurance benefits paid to former employees;
- The balance of the Unemployment Insurance Trust Fund; and
- Your reporting history.

You can take steps to keep your Unemployment Insurance costs as low as possible:

Submit your quarterly returns and payments on time

Make sure the returns are complete and accurate. Missing or late returns or payments can affect your Unemployment Insurance costs in several ways.

- You may be charged penalties for failure to file returns or failure to file complete, accurate, and timely returns.
- You will be charged interest on overdue Unemployment Insurance contributions.
- Late contributions (paid more than 60 days after their due date) cannot be credited to your account when calculating Unemployment Insurance rates, which can increase your rate.
- If you fail to file all required returns by December 31, the Department will estimate wages to calculate your Unemployment Insurance rate, which can increase your rate.
- Employers may take a Federal Unemployment Tax Act (FUTA) credit on IRS Form 940. If you pay your Unemployment Insurance contributions late (after January 31), your FUTA credit is decreased. You may not take a FUTA credit at all if you have not paid your Unemployment Insurance contributions.

Review notices of benefit entitlement or payment

These notices give you the opportunity to let us know if we have incorrect wage information, if a claimant should not be eligible to collect Unemployment Insurance benefits, or if any Unemployment Insurance benefit payments were charged to your account incorrectly. Return these notices within 10 days from the date on the notice in order to maximize savings to your account.

Reply promptly to requests for employment and wage data

Complete and return requests for information within 10 days of the mailing date on the form. This information is used to determine Unemployment Insurance benefit rights of former employees and to ensure correct experience rating charges. Your response must be timely and accurate or your account may not be relieved of charges if the claimant improperly receives benefits.

The fastest way to respond is electronically through SIDES. SIDES is free and easy to join. See *State Information Data Exchange System (SIDES)* under the *Web Services for Employers* section.

Provide the Department of Labor with proper mailing addresses

The Department can maintain several business addresses for an employer. It is important that you promptly notify the Department of an address change. Update your address using your online account (see *Unemployment Insurance Online Services Account* under the *Web Services for Employers* section). You may also use the Change of Business Information form (IA 15), available at www.labor.ny.gov/formsdocs/ui/IA15.pdf, to ensure accurate processing.

Make voluntary contributions

You may be able to reduce your Unemployment Insurance rate by making a non-refundable voluntary payment if you have one or more of the following at the end of the calendar year:

- A negative account percentage
- A current or prior year excess negative balance, which was transferred to the general fund, or
- A positive account percentage, less than 10.5%

For more information, see How to Keep Your Unemployment Insurance (UI) Costs Down at www.labor.ny.gov/formsdocs/ui/IA318.60.pdf or call the Employer Hotline at (888) 899-8810.

Choose the benefit reimbursement option (available to nonprofit, governmental employers and Indian Tribes)

You have the option of reimbursing Unemployment Insurance benefits paid to your former employees and charged to your account if you are:

- A nonprofit organization organized and operated exclusively for religious, charitable, scientific, literary or educational purposes (those exempt under Section 501(c)(3) of the Internal Revenue Code);
- A governmental entity; or
- An Indian Tribe.

When you choose the Unemployment Insurance benefit reimbursement option, you do not pay quarterly contributions on your payroll and you are not required to contribute to the Reemployment Service Fund. For more details, including application requirements, review the Benefit Reimbursement pamphlet (IA 318.13). It is available online at www.labor.ny.gov/formsdocs/ui/IA318.13.pdf or call the Employer Hotline at (888) 899-8810 to request a copy.

Avoid layoffs using the Shared Work Program

Shared Work is a voluntary program that gives an alternative to layoffs for employers who have at least two employees and who face a temporary decline in business. You can reduce the hours and wages of all or a group of employees, rather than lay off a percentage of your workforce to cut costs. Your employees whose hours and wages are reduced can receive partial Unemployment Insurance benefits to supplement their lost wages.

The Shared Work Program helps you avoid some of the burdens that follow layoffs. If you keep employees during a temporary slowdown, you can quickly gear up when business conditions improve. This spares employers the expense of recruiting, hiring, and training new employees and spares employees the hardships of full unemployment. For more information, see the Shared Work Fact Sheet (SW 1) at www.labor.ny.gov/formsdocs/ui/SW1.pdf or call (518) 457-2635.

Report Unemployment Insurance fraud

Unemployment Insurance fraud increases the financial burden on employers who pay into the system. Report suspected instances of fraud to the 24-hour toll-free hotline at (866) 435-1499.

5. Web Services for Employers

Unemployment Insurance Online Services Account

Sign up for an online account at www.labor.ny.gov/EmployerLogin.

Through your online account, you can:

- View your Unemployment Insurance Employer Information Page, including:
 - Contribution rates for the current year and prior years.
 - Contributions overpaid and underpaid on your account.
 - Charges to your account for former employees' Unemployment Insurance benefits.
- Apply for Shared Work;
- Apply for State Information Data Exchange System (SIDES);
- File a NYS 45, Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return;
- Upload a Wage Reporting File;
- File a NYS 1, Return of Tax Withheld;
- Report a Change of Address;
- Communicate through secure email; and
- Assign an Online Services Filing Representative.

New York State employers that are registered with the Department of Taxation and Finance's On-Line Services (OLS) do not need to register for Unemployment Insurance Online Services. Use your OLS username and password to login to the Unemployment Insurance Online Services. The Master Business Administrator of the OLS account must be the first to log in and accept the Terms and Conditions for access to Unemployment Insurance Online Services. The Administrator can then give the necessary permissions for their employees.

State Information Data Exchange System (SIDES)

SIDES is an online system that allows the Department of Labor and employers to communicate directly and efficiently when an individual files a new Unemployment Insurance claim. The system transmits questions from the Labor Department regarding new Unemployment Insurance claims by former employees directly to you, so that you can respond quickly and we can process claims promptly while protecting against fraud in the system.

First, you must sign up for an Unemployment Insurance Online Service account. Once your online account is set up, call the Employer Hotline at (888) 899-8810 and choose Option 1, then Option 4. A representative will review your account and sign you up for SIDES.

6. Unemployment Insurance Contact Information

You can get more information about Unemployment Insurance programs on our website at www.labor.ny.gov or by calling the Employer Hotline at (888) 899-8810. Have a question that is not answered here? Find contact information for our offices at www.labor.ny.gov/EmployerContacts.

Find the full text of the Unemployment Insurance Law online at www.labor.ny.gov/ui/dande/article18.shtm.

7. Other Resources

Department of Labor services for employers

The Department of Labor offers many no-cost services for businesses, including job posting on the New York State Job Bank, access to our job seeker Talent Bank, customized recruitments and career fair services, hiring and training incentives and workforce development and human resource services. For more information, see our Services for Businesses factsheet at www.labor.ny.gov/formsdocs/factsheets/pdfs/p469.pdf. To reach a Business Services Representative, call (888) 708-6712 or email DEWS.Business.Services@labor.ny.gov.

New York Business Express

Introducing the New York Business Express website: www.businessexpress.ny.gov! Visit New York's new comprehensive guide for all of your business and professional needs. Quickly and easily find information related to licensing, regulation, incentives and support to start or grow your business.

Workers' compensation insurance and disability insurance coverage

New York State workers' compensation insurance covers employees for work-related accidents, injuries or illness. If you have one or more employees working in New York State, you are required to carry workers' compensation insurance coverage. If you fail to secure workers compensation coverage for your employees, you may be charged with a felony or a misdemeanor, in addition to monetary penalties.

New York State statutory disability benefits insurance coverage is totally different from and is not included in workers' compensation insurance coverage. Statutory disability benefits insurance covers employees for off-the-job accidents, injuries or illnesses. If you have one or more employees for 30 days in a calendar year, you are required to obtain New York State disability benefits insurance coverage providing disability benefits and paid family leave benefits.

You can obtain both workers' compensation and disability benefits/paid family leave benefits coverage through private insurance carriers authorized to write such coverage in New York, the New York State Insurance Fund, or Workers' Compensation Board-approved self-insurance.

Find more information about these requirements at the Workers' Compensation Board website, www.wcb.ny.gov, or access their Employer Handbook at www.wcb.ny.gov/content/main/Employers/EmployerHandbook.pdf.

Paid Family Leave

Effective January 1, 2018, nearly all private employers in New York State must secure Paid Family Leave coverage for their employees. It provides wage replacement and job protection to employees who need time away from their jobs to bond with a new child, care for a loved one with a serious health condition or to help take care of family matters when a family member is called to active military service.

Generally, Paid Family Leave coverage will be included under an employer's existing disability benefits policy. It is funded by employee payroll contributions.

Please check with your broker, agent or carrier to ensure that your disability benefits/paid family leave benefits policy complies with the Disability Benefits and Paid Family Leave Benefits Law requirements. Find out more at www.ny.gov/paidfamilyleave or call (844) 337-6303.

Domestic Violence and the Workplace Handbook

The New York State Office for the Prevention of Domestic Violence has created a free Domestic Violence and the Workplace Handbook. The Handbook is designed to help create an informed and supportive culture that can address domestic violence. The Handbook addresses common questions such as:

- Why is domestic violence a workplace concern?
- What are my legal responsibilities as an employer?
- What does domestic violence look like in the workplace?
- Does my business need a domestic violence and the workplace policy?

Visit www.opdv.ny.gov/publications/index.html to order free copies or go to www.opdv.ny.gov/professionals/workplace/dv-workplace-handbook.pdf to download the Handbook.

8. Additional Information

Employer Guide (NYS 50)

The Employer's Guide to Unemployment Insurance, Wage Reporting and Withholding Tax (NYS 50) provides details on Unemployment Insurance, including:

- What constitutes employment under the Unemployment Insurance Law;
- Who is a liable employer;
- Record-keeping requirements;
- Reporting requirements;
- Your right to a hearing on Unemployment Insurance determinations;
- How we compute Unemployment Insurance rates; and
- How you can control Unemployment Insurance costs.

Download a copy of this publication at www.tax.ny.gov/pdf/publications/withholding/nys50.pdf.

Unemployment Insurance forms, publications and guides

Forms and Publications:

SW 1 Shared Work

IA 12.3 Record of Employment

IA 15 Change of Business Information

IA 116.3 Jurisdiction of Employment

IA 318D Householder's Guide for Unemployment Insurance

IA 318.10 The Relationship of NYS Contributions and FUTA

IA 318.11 Agricultural Employment

IA 318.12 Experience Rating

IA 318.13 Benefit Reimbursement

IA 318.14 Independent Contractors

IA 318.15 Reporting Meals, Lodging, Tips and Other Forms of Remuneration

IA 318.60 How You Can Help Keep Your Unemployment Insurance Costs Down

IA 900 Power of Attorney

Guidelines for determining worker status:

IA 318.16 Guidelines for Organized Camps

IA 318.17 Performing Artists

IA 318.18 Life Insurance Sales Industry

IA 318.20 Translating and Interpreting Industry

IA 318.21 Tour Guide Industry

IA 318.23 Magazine Publishing Industry

IA 318.24 Messenger Courier Industry

IA 318.25 Landsman Industry

IA 318.29 Independent Contractors in the Construction Industry

You can download forms and publications from our website at www.labor.ny.gov/EmployerForms.

You can also request copies of forms and publications by emailing a request to DataProcessing.UIRegistration@labor.ny.gov,

calling the Employer Hotline at (888) 899-8810, faxing a request to

(518) 485-8010 or mailing a request to:

NYS Department of Labor
Registration Subsection
State Office Campus
Albany, NY 12240-0339

