
A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the current balance
2 in the unemployment compensation fund allows for adjustments to
3 contributions and benefits. The current balance was created
4 over the past few years by an upswing in the economy, the
5 contributions paid by employers, and the limited changes to
6 statutory language for benefits paid to the unemployed.

7 The legislature further finds that since both employees and
8 employers have contributed to the present balance of the fund,
9 adjustments that will benefit both the employer and employee are
10 appropriate and equitable.

11 One purpose of this Act is to provide an adjustment in 2008
12 and 2009 to the calculation of contributions paid for by
13 employers. The adjustment should provide some relief to
14 employers without unnecessarily depleting the fund.

15 The other purpose of this Act is to adjust certain areas of
16 benefits paid to the unemployed who have gone without
17 substantial changes to the statutory language on benefits for



1 many years. This Act also clarifies that the ineligibility for
2 benefits arises from wilful or wanton misconduct of an employee.

3 SECTION 2. Section 383-22, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) In the case of an individual whose benefit year
6 begins prior to January 5, 1992, the individual's weekly benefit
7 amount shall be, except as otherwise provided in this section,
8 an amount equal to one twenty-fifth of the individual's total
9 wages for insured work paid during the calendar quarter of the
10 individual's base period in which such total wages were highest.
11 In the case of an individual whose benefit year begins after
12 January 4, 1992, the individual's weekly benefit amount shall
13 be, except as otherwise provided in this section, an amount
14 equal to one twenty-first of the individual's total wages for
15 insured work paid during the calendar quarter of the
16 individual's base period in which such total wages were highest.
17 The weekly benefit amount, if not a multiple of \$1, shall be
18 computed to the next higher multiple of \$1. If an individual's
19 weekly benefit amount is less than \$5, it shall be \$5. The
20 maximum weekly benefit amount shall be determined annually as
21 follows: On or before November 30 of each year the total
22 remuneration paid by employers, as reported on contribution



1 reports submitted on or before such date, with respect to all
2 employment during the four consecutive calendar quarters ending
3 on June 30 of the year shall be divided by the average monthly
4 number of individuals performing services in the employment
5 during the same four calendar quarters as reported on the
6 contribution reports. The amount thus obtained shall be divided
7 by fifty-two and the average weekly wage (rounded to the nearest
8 cent) thus determined. For benefit years beginning prior to
9 January 1, 1992, two-thirds of the average weekly wage shall
10 constitute the maximum weekly benefit amount and shall apply to
11 all claims for benefits filed by an individual qualifying for
12 payment at the maximum weekly benefit amount in the benefit year
13 commencing on or after the first day of the calendar year
14 immediately following the determination of the maximum weekly
15 benefit amount. For benefit years beginning January 1, 1992,
16 ~~[and thereafter]~~ but prior to January 1, 2008, seventy per cent
17 of the average weekly wage shall constitute the maximum weekly
18 benefit amount and shall apply to all claims for benefits filed
19 by an individual qualifying for payment at the maximum weekly
20 benefit amount in the benefit year commencing on or after the
21 first day of the calendar year immediately following the
22 determination of the maximum weekly benefit amount. For benefit



1 years beginning January 1, 2008, and thereafter, seventy-five
 2 per cent of the average weekly wage shall constitute the maximum
 3 weekly benefit amount and shall apply to all claims for benefits
 4 filed by an individual qualifying for payment at the maximum
 5 weekly benefit amount in the benefit year commencing on or after
 6 the first day of the calendar year immediately following the
 7 determination of the maximum weekly benefit amount. The maximum
 8 weekly benefit amount, if not a multiple of \$1, shall be
 9 computed to the next higher multiple of \$1.

10	(Column A)	(Column B)	(Column C)	(Column D)
11	High	Basic	Minimum	Maximum
12	Quarter	Weekly	Qualifying	Total Benefits
13	Wages	Benefit	Wages	in Benefit Year
14				
15				
16	\$ 37.50 - 125.00	\$ 5.00	\$ 150.00	\$ 130.00
17	125.01 - 150.00	6.00	180.00	156.00
18	150.01 - 175.00	7.00	210.00	182.00
19	175.01 - 200.00	8.00	240.00	208.00
20	200.01 - 225.00	9.00	270.00	234.00
21	225.01 - 250.00	10.00	300.00	260.00
22	250.01 - 275.00	11.00	330.00	286.00



1	275.01 - 300.00	12.00	360.00	312.00
2	300.01 - 325.00	13.00	390.00	338.00
3	325.01 - 350.00	14.00	420.00	364.00
4	350.01 - 375.00	15.00	450.00	390.00
5	375.01 - 400.00	16.00	480.00	416.00
6	400.01 - 425.00	17.00	510.00	442.00
7	425.01 - 450.00	18.00	540.00	468.00
8	450.01 - 475.00	19.00	570.00	494.00
9	475.01 - 500.00	20.00	600.00	520.00
10	500.01 - 525.00	21.00	630.00	546.00
11	525.01 - 550.00	22.00	660.00	572.00
12	550.01 - 575.00	23.00	690.00	598.00
13	575.01 - 600.00	24.00	720.00	624.00
14	600.01 - 625.00	25.00	750.00	650.00
15	625.01 - 650.00	26.00	780.00	676.00
16	650.01 - 675.00	27.00	810.00	702.00
17	675.01 - 700.00	28.00	840.00	728.00
18	700.01 - 725.00	29.00	870.00	754.00
19	725.01 - 750.00	30.00	900.00	780.00
20	750.01 - 775.00	31.00	930.00	806.00
21	775.01 - 800.00	32.00	960.00	832.00
22	800.01 - 825.00	33.00	990.00	858.00



1	825.01 - 850.00	34.00	1020.00	884.00
2	850.01 - 875.00	35.00	1050.00	910.00
3	875.01 - 900.00	36.00	1080.00	936.00
4	900.01 - 925.00	37.00	1110.00	962.00
5	925.01 - 950.00	38.00	1140.00	988.00
6	950.01 - 975.00	39.00	1170.00	1014.00
7	975.01 -1000.00	40.00	1200.00	1040.00
8	1000.01 -1025.00	41.00	1230.00	1066.00
9	1025.01 -1050.00	42.00	1260.00	1092.00
10	1050.01 -1075.00	43.00	1290.00	1118.00
11	1075.01 -1100.00	44.00	1320.00	1144.00
12	1100.01 -1125.00	45.00	1350.00	1170.00
13	1125.01 -1150.00	46.00	1380.00	1196.00
14	1150.01 -1175.00	47.00	1410.00	1222.00
15	1175.01 -1200.00	48.00	1440.00	1248.00
16	1200.01 -1225.00	49.00	1470.00	1274.00
17	1225.01 -1250.00	50.00	1500.00	1300.00
18	1250.01 -1275.00	51.00	1530.00	1326.00
19	1275.01 -1300.00	52.00	1560.00	1352.00
20	1300.01 -1325.00	53.00	1590.00	1378.00
21	1325.01 -1350.00	54.00	1620.00	1404.00
22	1350.01 and over	55.00	1650.00	1430.00 "



1 SECTION 3. Section 383-23, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§383-23 Weekly benefit for unemployment.** For weeks
4 beginning prior to January 5, 1992, each eligible individual who
5 is unemployed, as defined in section 383-1, in any week shall be
6 paid with respect to that week a benefit in an amount equal to
7 the individual's weekly benefit amount less that part of the
8 wages (if any) payable to the individual with respect to that
9 week which is in excess of \$2. Effective for weeks beginning
10 January 5, 1992, and thereafter, each eligible individual who is
11 unemployed, as defined in section 383-1, in any week shall be
12 paid with respect to that week a benefit in an amount equal to
13 the individual's weekly benefit amount less that part of the
14 wages (if any) payable to the individual with respect to that
15 week which is in excess of \$50. Effective for weeks beginning
16 July 2, 2007, and thereafter, each eligible individual who is
17 unemployed, as defined in section 383-1, in any week shall be
18 paid with respect to that week a benefit in an amount equal to
19 the individual's weekly benefit amount less that part of the
20 wages, if any, payable to the individual with respect to that
21 week which is in excess of \$150. The benefit, if not a multiple
22 of \$1, shall be computed to the next higher multiple of \$1."



1 SECTION 4. Section 383-24, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§383-24 **Maximum potential benefits.** The maximum
4 potential benefits of an eligible individual in a benefit year
5 shall be twenty-six times the eligible individual's weekly
6 benefit amount. For claims filed on or after January 1, 2008,
7 and thereafter, the maximum potential benefits of an eligible
8 individual's weekly benefit amount shall be thirty times the
9 eligible individual's weekly benefit amount."

10 SECTION 5. Section 383-30, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§383-30 **Disqualification for benefits.** An individual
13 shall be disqualified for benefits:

14 (1) Voluntary separation. For any week prior to
15 October 1, 1989, in which the individual has left work
16 voluntarily without good cause, and continuing until
17 the individual has, subsequent to the week in which
18 the voluntary separation occurred, been employed for
19 at least five consecutive weeks of employment. For
20 the purposes of this paragraph, "weeks of employment"
21 means all those weeks within each of which the
22 individual has performed services in employment for



1 not less than two days or four hours per week, for one
2 or more employers, whether or not such employers are
3 subject to this chapter. For any week beginning on
4 and after October 1, 1989, in which the individual has
5 left the individual's work voluntarily without good
6 cause, and continuing until the individual has,
7 subsequent to the week in which the voluntary
8 separation occurred, been paid wages in covered
9 employment equal to not less than five times the
10 individual's weekly benefit amount as determined under
11 section 383-22(b).

12 An owner-employee of a corporation who brings
13 about the owner-employee's unemployment by divesting
14 ownership, leasing the business interest, terminating
15 the business, or by other similar actions where the
16 owner-employee is the party initiating termination of
17 the employment relationship, has voluntarily left
18 employment.

- 19 (2) Discharge or suspension for misconduct. For any week
20 prior to October 1, 1989, in which the individual has
21 been discharged for wilful or wanton misconduct
22 connected with work, and continuing until the



1 individual has, subsequent to the week in which the
2 discharge occurred, been employed for at least five
3 consecutive weeks of employment. For the week in
4 which the individual has been suspended for wilful or
5 wanton misconduct connected with work and for not less
6 than one or more than four consecutive weeks of
7 unemployment which immediately follow such week, as
8 determined in each case in accordance with [~~the~~
9 ~~seriousness of~~] the wilful or wanton misconduct. For
10 the purposes of this paragraph, "weeks of employment"
11 means all those weeks within each of which the
12 individual has performed services in employment for
13 not less than two days or four hours per week, for one
14 or more employers, whether or not such employers are
15 subject to this chapter. For any week beginning on
16 and after October 1, 1989, in which the individual has
17 been discharged for wilful or wanton misconduct
18 connected with work, and until the individual has,
19 subsequent to the week in which the discharge
20 occurred, been paid wages in covered employment equal
21 to not less than five times the individual's weekly
22 benefit amount as determined under section 383-22(b).



1 Wilful and wanton misconduct consists of actions which
2 show a wilful or wanton disregard of the employer's
3 interest. It includes deliberate or intentional
4 violations or deliberate disregard for established
5 standards of behavior which indicate a wrongful intent
6 or evil design. Mere inefficiency, unsatisfactory
7 conduct, poor performance, isolated instances, or good
8 faith errors in judgment or discretion shall not
9 constitute wilful or wanton misconduct.

- 10 (3) Failure to apply for work, etc. For any week prior to
11 October 1, 1989, in which the individual failed,
12 without good cause, either to apply for available,
13 suitable work when so directed by the employment
14 office or any duly authorized representative of the
15 department of labor and industrial relations, or to
16 accept suitable work when offered and continuing until
17 the individual has, subsequent to the week in which
18 the failure occurred, been employed for at least five
19 consecutive weeks of employment. For the purposes of
20 this paragraph, "weeks of employment" means all those
21 weeks within each of which the individual has
22 performed services in employment for not less than two



1 days or four hours per week, for one or more
2 employers, whether or not such employers are subject
3 to this chapter. For any week beginning on and after
4 October 1, 1989, in which the individual failed,
5 without good cause, either to apply for available,
6 suitable work when so directed by the employment
7 office or any duly authorized representative of the
8 department of labor and industrial relations, or to
9 accept suitable work when offered until the individual
10 has, subsequent to the week in which the failure
11 occurred, been paid wages in covered employment equal
12 to not less than five times the individual's weekly
13 benefit amount as determined under section 383-22(b).

14 (A) In determining whether or not any work is
15 suitable for an individual there shall be
16 considered among other factors and in addition to
17 those enumerated in paragraph (3)(B), the degree
18 of risk involved to the individual's health,
19 safety, and morals, the individual's physical
20 fitness and prior training, the individual's
21 experience and prior earnings, the length of
22 unemployment, the individual's prospects for



1 obtaining work in the individual's customary
2 occupation, the distance of available work from
3 the individual's residence, and prospects for
4 obtaining local work. The same factors so far as
5 applicable shall be considered in determining the
6 existence of good cause for an individual's
7 voluntarily leaving work under paragraph (1).

8 (B) Notwithstanding any other provisions of this
9 chapter, no work shall be deemed suitable and
10 benefits shall not be denied under this chapter
11 to any otherwise eligible individual for refusing
12 to accept new work under any of the following
13 conditions:

14 (i) If the position offered is vacant due
15 directly to a strike, lockout, or other
16 labor dispute;

17 (ii) If the wages, hours, or other conditions of
18 the work offered are substantially less
19 favorable to the individual than those
20 prevailing for similar work in the locality;

21 and



1 (iii) If as a condition of being employed the
2 individual would be required to join a
3 company union or to resign from or refrain
4 from joining any bona fide labor
5 organization.

6 (4) Labor dispute. For any week with respect to which it
7 is found that unemployment is due to a stoppage of
8 work which exists because of a labor dispute at the
9 factory, establishment, or other premises at which the
10 individual is or was last employed; provided that this
11 paragraph shall not apply if it is shown that:

12 (A) The individual is not participating in or
13 directly interested in the labor dispute which
14 caused the stoppage of work; and

15 (B) The individual does not belong to a grade or
16 class of workers of which, immediately before the
17 commencement of the stoppage, there were members
18 employed at the premises at which the stoppage
19 occurs, any of whom are participating in or
20 directly interested in the dispute; provided that
21 if in any case separate branches of work, which
22 are commonly conducted as separate businesses in



1 separate premises, are conducted in separate
2 departments of the same premises, each such
3 department shall, for the purpose of this
4 paragraph, be deemed to be a separate factory,
5 establishment, or other premises.

- 6 (5) If the department finds that the individual has within
7 the twenty-four calendar months immediately preceding
8 any week of unemployment made a false statement or
9 representation of a material fact knowing it to be
10 false or knowingly failed to disclose a material fact
11 to obtain any benefits not due under this chapter, the
12 individual shall be disqualified for benefits
13 beginning with the week in which the department makes
14 the determination and for each consecutive week during
15 the current and subsequent twenty-four calendar months
16 immediately following such determination, and such
17 individual shall not be entitled to any benefit under
18 this chapter for the duration of such period; provided
19 that no disqualification shall be imposed if
20 proceedings have been undertaken against the
21 individual under section 383-141.



1 (6) Other unemployment benefits. For any week or part of
2 a week with respect to which the individual has
3 received or is seeking unemployment benefits under any
4 other employment security law, but this paragraph
5 shall not apply (A) if the appropriate agency finally
6 determines that the individual is not entitled to
7 benefits under such other law, or (B) if benefits are
8 payable to the individual under an act of Congress
9 which has as its purpose the supplementation of
10 unemployment benefits under a state law."

11 SECTION 6. Section 383-61, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§383-61 Payment of contributions; wages not included.**

14 (a) Contributions with respect to wages for employment shall
15 accrue and become payable by each employer for each calendar
16 year in which the employer is subject to this chapter. The
17 contributions shall become due and be paid by each employer to
18 the director of labor and industrial relations for the fund in
19 accordance with such rules as the department of labor and
20 industrial relations may prescribe, and shall not be deducted,
21 in whole or in part, from the wages of individuals in the
22 employer's employ.



1 (b) Except as provided in subsections (c) and (d), the
2 term "wages" does not include remuneration paid with respect to
3 employment to an individual by an employer during any calendar
4 year which exceeds the average annual wage, rounded to the
5 nearest hundred dollars, for the four calendar quarter period
6 ending on June 30 of the preceding year.

7 The average annual wage shall be computed as follows: on
8 or before November 30 of each year the total remuneration paid
9 by employers, as reported on contribution reports on or before
10 such date, with respect to all employment during the four
11 consecutive calendar quarters ending on June 30 of such year
12 shall be divided by the average monthly number of individuals
13 performing services in such employment during the same four
14 calendar quarters as reported on such contribution reports and
15 rounded to the nearest hundred dollars.

16 ~~[(c) For the calendar year 1991 only, the term "wages"~~
17 ~~does not include remuneration in excess of \$7,000 paid with~~
18 ~~respect to employment to an individual by an employer.~~

19 ~~— (d) For calendar year 1988 only, the term "wages" as used~~
20 ~~in this part does not include remuneration paid with respect to~~
21 ~~employment to an individual by an employer during the calendar~~
22 ~~year which exceeds:~~

1 ~~(1) One hundred per cent of the average annual wage if the~~
2 ~~most recently computed ratio of the current reserve~~
3 ~~fund to the adequate reserve fund prior to that~~
4 ~~calendar year is equal to or less than .80; or~~

5 ~~(2) Seventy five per cent of the average annual wage if~~
6 ~~the most recently computed ratio of the current~~
7 ~~reserve fund to the adequate reserve fund prior to~~
8 ~~that calendar year is greater than .80 but less than~~
9 ~~1.2; or~~

10 ~~(3) Fifty per cent of the average annual wage if the most~~
11 ~~recently computed ratio of the current reserve fund to~~
12 ~~the adequate reserve fund prior to that calendar year~~
13 ~~is equal to or more than 1.2;~~

14 ~~provided that "wages" with respect to which contributions are~~
15 ~~paid are not less than that part of remuneration which is~~
16 ~~subject to tax in accordance with section 3306(b) of the~~
17 ~~Internal Revenue Code of 1986, as amended.]~~

18 (c) For calendar years 2008 and 2009 only, the term
19 "wages" as used in this part does not include remuneration in
20 excess of \$7,000 paid with respect to employment to an
21 individual by an employer; provided that this subsection shall



1 apply only to the contribution rate paid into the unemployment
2 insurance trust fund.

3 ~~[(e)]~~ (d) If an employer during any calendar year acquires
4 substantially all the property used in a trade or business, or
5 in a separate unit of a trade or business, of another employer,
6 and after the acquisition employs an individual who prior to the
7 acquisition was employed by the predecessor, then for the
8 purpose of determining whether remuneration in excess of the
9 average annual wages has been paid to the individual for
10 employment, remuneration paid to the individual by the
11 predecessor during the calendar year shall be considered as
12 having been paid by the successor employer. For the purposes of
13 this subsection, the term "employment" includes services
14 constituting employment under any employment security law of
15 another state or of the federal government.

16 ~~[(f)]~~ (e) Subsections (b) through ~~[(e)]~~ (d)
17 notwithstanding, for the purposes of this part the term "wages"
18 shall include at least that amount of remuneration paid in a
19 calendar year to an individual by an employer or the employer's
20 predecessor with respect to employment during any calendar year
21 which is subject to a tax under a federal law imposing a tax



1 against which credit may be taken for contributions required to
2 be paid into a state unemployment fund.

3 [~~g~~] (f) In accordance with section 303(a)(5) of the
4 Social Security Act, as amended, and section 3304(a)(4) of the
5 Internal Revenue Code of 1986, as amended, any contributions
6 overpaid due to a retroactive reduction in the taxable wage base
7 may be credited against the employer's future contributions upon
8 request by the employer; provided that no employer shall be
9 given a cash refund."

10 SECTION 7. Section 383-63, Hawaii Revised Statutes, is
11 amended by amending the definition of "adequate reserve fund" to
12 read as follows:

13 "'Adequate reserve fund" means an amount that is equal to
14 the amount derived by multiplying the benefit cost rate that is
15 the highest during the ten-year period ending on November 30 of
16 each year by the total remuneration paid by all employers, with
17 respect to all employment for which contributions are payable
18 during the last four calendar quarters ending on June 30 of the
19 same year, as reported on contribution reports filed on or
20 before October 31 of the same year. "Remuneration", as used in
21 this definition, means wages as defined in section 383-10. For
22 the purpose of determining the highest benefit cost rate, the



1 benefit cost rate for the first twelve-consecutive-calendar-
2 month period beginning with the first day of the first month of
3 the ten-year period and for each succeeding twelve-consecutive-
4 calendar-month period beginning with the first day of each
5 subsequent month shall be computed.

6 Effective for the calendar year 1992 [~~and thereafter,~~] to
7 2007, "adequate reserve fund" means an amount that is equal to
8 one and one-half times the amount derived by multiplying the
9 benefit cost rate that is the highest during the ten-year period
10 ending on November 30 of each year by the total remuneration
11 paid by all employers, with respect to all employment for which
12 contributions are payable during the last four calendar quarters
13 ending on June 30 of the same year, as reported on contribution
14 reports filed on or before October 31 of the same year.

15 Effective for calendar year 2008 and thereafter, "adequate
16 reserve fund" means an amount that is equal to the benefit cost
17 rate that is the highest during the six-year period ending on
18 November 30 of each year by the total remuneration paid by all
19 employers, with respect to all employment for which
20 contributions are payable during the last four calendar quarters
21 ending on June 30 of the same year, as reported on contribution
22 reports filed on or before October 31 of the same year.



1 "Remuneration", as used in this definition, means wages as
2 defined in section 383-10. For the purpose of determining the
3 highest benefit cost rate, the benefit cost rate for the first
4 twelve-consecutive-calendar-month period beginning with the
5 first day of the first month of the ten-year period and for each
6 succeeding twelve-consecutive-calendar-month period beginning
7 with the first day of each subsequent month shall be computed."

8 SECTION 8. Section 383-66, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§383-66 Contribution rates, how determined.** (a) The
11 department, for the nine-month period April 1, 1941, to
12 December 31, 1941, and for each calendar year thereafter, except
13 as otherwise provided in this part, shall classify employers in
14 accordance with their actual experience in the payment of
15 contributions and with respect to benefits charged against their
16 accounts with a view to fixing the contribution rates to reflect
17 this experience. The department shall determine the
18 contribution rate of each employer in accordance with the
19 following requirements:

20 (1) The standard rate of contributions payable by each
21 employer for any calendar year through 1984 shall be
22 three per cent. For the calendar year 1985 and



1 thereafter, the standard rate of contributions payable
2 by each employer shall be five and four-tenths per
3 cent;

4 (2) No employer's rate for the calendar year 1942 and for
5 any calendar year thereafter shall be other than the
6 maximum rate unless and until the employer's account
7 has been chargeable with benefits throughout the
8 thirty-six consecutive calendar month period ending on
9 December 31 of the preceding calendar year, except
10 that, for the calendar year 1956 and for each calendar
11 year thereafter, an employer who has not been subject
12 to the law for a sufficient period to meet this
13 requirement may qualify for a rate other than the
14 maximum rate if the employer's account has been
15 chargeable throughout a lesser period but in no event
16 less than the twelve consecutive calendar month period
17 ending on December 31 of the preceding calendar year.
18 For the calendar years 1985 through 1991, the
19 contribution rate for a new or newly covered employer
20 shall be the sum of the employer's basic contribution
21 rate of three and six-tenths per cent and the fund
22 solvency contribution rate determined for that year



1 pursuant to section 383-68(a), until the employer's
2 account has been chargeable with benefits throughout
3 the twelve consecutive calendar month period ending on
4 December 31 of the preceding calendar year; except
5 that no employer's contribution rate shall be greater
6 than five and four-tenths per cent and no employer
7 with a negative reserve ratio shall have a
8 contribution rate less than the employer's basic
9 contribution rate. For calendar years 1992 and
10 thereafter, the contribution rate for a new or newly
11 covered employer shall be the contribution rate
12 assigned to any employer with .0000 reserve ratio,
13 until the employer's account has been chargeable with
14 benefits throughout the twelve consecutive calendar
15 month period ending on December 31 of the preceding
16 calendar year;

- 17 (3) Any amount credited to this State under section 903 of
18 the Social Security Act, as amended, which has been
19 appropriated for expenses of administration, whether
20 or not withdrawn from the trust fund, shall be
21 excluded from the fund for the purposes of this
22 paragraph. Any advance that may be made to this State



1 under section 1201 of the Social Security Act, whether
2 or not withdrawn from this trust fund, shall be
3 excluded from the fund for the purposes of this
4 paragraph. No employer's rate shall be reduced in any
5 amount that is not allowable as an additional credit,
6 against the tax levied by the federal Unemployment Tax
7 Act pursuant to section 3302(b) of the federal
8 Internal Revenue Code or pursuant to any other federal
9 statute, successor to section 3302(b), which provides
10 for the additional credit now provided for in section
11 3302(b);

- 12 (4) If, when any classification of employers is to be made
13 (which may be after the commencement of the period for
14 which the classification is to be made), the
15 department finds that any employer has failed to file
16 any report required in connection therewith or has
17 filed a report that the department finds incorrect or
18 insufficient, the department shall notify the employer
19 thereof by mail addressed to the employer's last known
20 address. Unless the employer files the report or a
21 corrected or sufficient report, as the case may be,
22 within fifteen days after the mailing of the notice,

1 the maximum rate of contributions shall be payable by
2 the employer for the period for which the contribution
3 rate is to be fixed. Effective January 1, 1987, the
4 director, for excusable failure, may redetermine the
5 assignment of the maximum contribution rate in
6 accordance with this section, provided the employer
7 files all reports as required by the department and
8 submits a written request for redetermination before
9 December 31 of the year for which the contribution
10 rate is to be fixed;

- 11 (5) For the purpose of sections 383-63 to 383-69, if after
12 December 31, 1939, any employing unit in any manner
13 succeeds to or acquires the organization, trade, or
14 business, or substantially all the assets thereof
15 (whether or not the successor or acquiring unit was an
16 "employing unit", as that term is defined in section
17 383-1 prior to the acquisition), or after
18 December 31, 1988 and prior to December 31, 1992,
19 acquires a clearly identifiable and segregable portion
20 of the organization, trade, or business of another
21 that at the time of the acquisition was an employer
22 subject to this chapter, and the successor continues



1 or resumes the organization, trade, or business and
2 continues to employ all or nearly all of the
3 predecessor's employees, or the successor continues or
4 resumes the clearly identifiable and segregable
5 portion of the organization, trade, or business and
6 continues to employ all or nearly all of the employees
7 of the clearly identifiable and segregable portion, an
8 application may be made for transfer of the
9 predecessor's experience record. If the predecessor
10 employer has submitted all information and reports
11 required by the department including amended quarterly
12 wage reports identifying the employees transferred or
13 retained and executed and filed with the department
14 before December 31 of the calendar year following the
15 calendar year in which the acquisition occurred on a
16 form approved by the department a waiver relinquishing
17 the rights to all or the clearly identifiable and
18 segregable portion of the predecessor's prior
19 experience record with respect to its separate
20 account, actual contribution payment, and benefit
21 chargeability experience, annual payrolls and other
22 data for the purpose of obtaining a reduced rate, and



1 requesting the department to permit the experience
2 record to inure to the benefit of the successor
3 employing unit upon request of the successor employing
4 unit, the experience record for rate computation
5 purposes of the predecessor shall thereupon be deemed
6 the experience record of the successor and the
7 experience record shall be transferred by the
8 department to the successor employing unit and shall
9 become the separate account of the employing unit as
10 of the date of the acquisition. Benefits chargeable
11 to the predecessor employer or successor employer in
12 case of an acquisition of a clearly identifiable and
13 segregable portion of the organization, trade, or
14 business, after the date of acquisition on account of
15 employment prior to the date of the acquisition shall
16 be charged to the separate account of the successor
17 employing unit. In case of an acquisition of a
18 clearly identifiable and segregable portion of the
19 organization, trade, or business, the experience
20 record that inures to the benefit of the successor
21 employer shall be determined as follows:



1 (A) Wages, as used in section 383-61, attributable to
2 the clearly identifiable and segregable portion
3 shall be for the period beginning with the most
4 recent three consecutive calendar years
5 immediately preceding the determination of rates
6 under sections 383-63 to 383-69 and through the
7 date of acquisition; and

8 (B) Reserve balance attributable to the clearly
9 identifiable and segregable portion shall be the
10 amount determined by dividing the wages, as used
11 in section 383-61, of the clearly identifiable
12 and segregable portion in the three calendar
13 years (or that lesser period as the clearly
14 identifiable and segregable portion may have been
15 in operation) immediately preceding the
16 computation date of the rating period prior to
17 which the acquisition occurred by the total
18 taxable payrolls of the predecessor for the
19 three-year period (or that lesser period as the
20 clearly identifiable and segregable portion may
21 have been in operation) and multiplying the
22 quotient by the reserve balance of the



1 predecessor employer calculated as of the
2 acquisition date;
3 provided the waiver or waivers required herein are
4 filed with the department within sixty days after the
5 date of acquisition, the successor employing unit,
6 unless already an employer subject to this chapter,
7 shall be subject from the date of acquisition to the
8 rate of contribution of the predecessor or of two or
9 more predecessors if they have the same contribution
10 rate. If there are two or more predecessors having
11 different contribution rates, the successor shall be
12 subject to the rate prescribed for new or newly
13 covered employers under paragraph (2) until the next
14 determination of rates under sections 383-63 to
15 383-69, at which time the experience records of the
16 predecessors and successor shall be combined and shall
17 be deemed to be the experience record of a single
18 employing unit and the successor's rate shall
19 thereupon be determined upon the basis of the combined
20 experience. If the successor at the time of the
21 transfer is an employer subject to this chapter, the
22 rate of contribution to which the successor is then



1 subject shall remain the same until the next
2 determination of rates under sections 383-63 to
3 383-69, at which time the experience records of the
4 predecessor and successor shall be combined and shall
5 be deemed to be the experience record of a single
6 employing unit and the successor's rate shall
7 thereupon be determined upon the basis of the combined
8 experience. For the purpose of determination of rates
9 under sections 383-63 to 383-69 of all successor
10 employing units, waivers as required herein, if not
11 previously filed as hereinabove provided, shall be
12 filed with the department not later than March 1 of
13 the year for which the rate is determined; provided
14 that no waiver shall be accepted by the department for
15 filing unless the employing unit executing the waiver
16 has filed all reports and paid all contributions
17 required by this chapter;

- 18 (6) The department may prescribe rules for the
19 establishment, maintenance, and dissolution of joint
20 accounts by two or more employers, and, in accordance
21 with the rules and upon application by two or more
22 employers to establish such an account, or to merge



1 their several individual accounts in a joint account,
2 shall maintain the joint account as if it constituted
3 a single employer's account. The rules shall be
4 consistent with the federal requirements for
5 additional credit allowance in section 3303 of the
6 federal Internal Revenue Code and consistent with this
7 chapter;

8 (7) Whenever there is an amendment to this chapter which,
9 if immediately effective, would change an employer's
10 rate of contributions, the rate of the employer shall
11 be changed in accordance with the amendment and the
12 new rate shall apply for the remainder of the calendar
13 year beginning with the calendar quarter immediately
14 following the effective date of the amendment
15 providing for the change, unless otherwise provided by
16 the amendment;

17 (8) For the purposes of this section "contribution rate"
18 shall mean the basic contribution rate as defined in
19 section 383-68 when applied to calendar year 1978 or
20 any calendar year thereafter; and

21 (9) For the purposes of this section, the terms "employing
22 unit", "employer", "predecessor", and "successor"



1 shall include both the singular and the plural of each
2 term. Nothing in this section shall prevent two or
3 more successor employing units, which each succeed to
4 or acquire a clearly identifiable and segregable
5 portion of a predecessor employing unit, from gaining
6 the benefit of the clearly identifiable and segregable
7 portion of the predecessor's experience record;
8 provided that the terms of this section are complied with,
9 nothing herein shall bar a predecessor employer from waiving the
10 rights to all or the clearly identifiable and segregable portion
11 of the predecessor's prior experience record in favor of a
12 successor employer where the successor acquired a clearly
13 identifiable and segregable portion of the predecessor's
14 organization, trade, or business after December 31, 1988 and
15 prior to December 31, 1992.

16 (b) Notwithstanding any other provision of this chapter,
17 the following shall apply regarding assignment of rates and
18 transfers of experience:

19 (1) If an employing unit transfers its organization,
20 trade, or business, or a portion thereof, to another
21 employing unit and, at the time of the transfer, there
22 is substantially common ownership, management, or

1 control of the two employing units, both employing
2 units shall file a notification of the transfer with
3 the department on a form approved by the department
4 within thirty days after the date of the transfer.

5 The department shall transfer the experience records
6 attributable to the transferred organization, trade,
7 or business to the employing unit to whom the
8 organization, trade, or business is transferred. The
9 rates of both employing units shall be recalculated
10 and made effective beginning with the calendar quarter
11 immediately following the date of the transfer of the
12 organization, trade, or business;

- 13 (2) If a person is not an employing unit as defined in
14 section 383-1 at the time it acquires the
15 organization, trade, or business of another employing
16 unit, both the person and the employing unit shall
17 file a notification of the acquisition with the
18 department on a form approved by the department within
19 thirty days after the date of the acquisition. If the
20 department determines at the time of the acquisition
21 or thereafter, based on objective factors that may
22 include:



- 1 (A) The cost of acquiring the organization, trade, or
2 business;
- 3 (B) Whether the person continued the activity of the
4 acquired organization, trade, or business;
- 5 (C) How long the organization, trade, or business was
6 continued; or
- 7 (D) Whether a substantial number of new employees were
8 hired for performance of duties unrelated to the
9 organization, trade, or business activity
10 conducted prior to the acquisition, that the
11 acquisition was solely or primarily for the
12 purpose of obtaining a lower rate of
13 contribution, the person shall not be assigned
14 the lower rate and shall be assigned the
15 contribution rate for a new or newly covered
16 employer pursuant to subsection (a)(2) instead;
- 17 (3) An employing unit or person who is not an employing
18 unit shall be subject to penalties under paragraph (4)
19 or (5) if the employing unit or person who is not an
20 employing unit:
- 21 (A) Knowingly violates or attempts to violate this
22 subsection or any other provision of this chapter



1 related to determining the assignment of a
2 contribution rate;

3 (B) Makes any false statement or representation or
4 fails to disclose a material fact to the
5 department in connection with the transfer or
6 acquisition of an organization, trade, or
7 business; or

8 (C) Knowingly advises another employing unit or person
9 in a way that results in a violation or attempted
10 violation of this subsection;

11 (4) If the person is an employing unit:

12 (A) The employing unit shall be subject to the highest
13 rate assignable under this chapter for the
14 calendar year during which the violation or
15 attempted violation occurred and for the
16 consecutive three calendar years immediately
17 following; or

18 (B) If the employing unit is already at the highest
19 rate or if the amount of increase in the
20 employing unit's rate would be less than two per
21 cent for the calendar year during which the
22 violation or attempted violation occurred, a



1 penalty equal to contributions of two per cent of
2 taxable wages shall be imposed for the calendar
3 year during which the violation or attempted
4 violation occurred and the consecutive three
5 calendar years immediately following. Any
6 penalty amount collected in excess of the maximum
7 contributions payable at the highest rate shall
8 be deposited in the special unemployment
9 insurance administration fund in accordance with
10 section 383-127;

11 (5) If the person is not an employing unit, the person
12 shall be subject to a penalty of not more than
13 \$5,000. The penalty shall be deposited in the special
14 unemployment insurance administration fund in
15 accordance with section 383-127;

16 (6) For purposes of this subsection, the following
17 definitions shall apply:

18 (A) "Knowingly" means having actual knowledge of or
19 acting with deliberate ignorance or reckless
20 disregard for the requirements or prohibition
21 involved;



1 (B) "Violates or attempts to violate" includes, but is
2 not limited to, intent to evade,
3 misrepresentation, or wilful nondisclosure;

4 (C) "Person" shall have the same meaning as defined in
5 section 6601(a)(1) of the Internal Revenue Code
6 of 1986, as amended; and

7 (D) "Organization, trade, or business" shall include
8 the employer's workforce;

9 (7) In addition to the civil penalties imposed by
10 paragraphs (4) and (5), any violation of this section
11 may be prosecuted under sections 383-142 and 383-143.
12 No existing civil or criminal remedy for any wrongful
13 action that is a violation of any statute or any rule
14 of the department or the ordinance of any county shall
15 be excluded or impaired by this section;

16 (8) The department shall establish procedures to identify
17 the transfer or acquisition of an employing unit for
18 the purposes of this section; and

19 (9) This section shall be interpreted and applied in a
20 manner to meet the minimum requirements contained in
21 any guidance or regulations issued by the United
22 States Department of Labor.



1 (c) The contribution rate of each employer as it existed
2 on June 30, 2007 shall be reduced as follows:

3 (1) To sixty-five per cent of that amount from July 1,
4 2007, to June 30, 2008;

5 (2) To seventy-five per cent of that amount from July 1,
6 2008, and thereafter;

7 provided further that the department shall adopt through rules
8 under chapter 91 a contribution rate schedule in accordance with
9 this subsection."

10 SECTION 9. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 10. This Act shall take effect upon its approval.

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Report Title:

Employment Security; Unemployment Insurance

Description:

Provides temporary tax relief to employers by lowering the maximum taxable wage base for calendar years 2008 and 2009. Increases unemployment benefits for eligible individuals. Excludes the payment of benefits to individuals terminated from employment for wilful or wanton misconduct.

