

## Amendments to State Unemployment Insurance Laws

U.S. DEPARTMENT OF LABOR  
Employment and Training Administration  
Washington, D.C. 20210

### REPORT ON STATE LEGISLATION

REPORT NO. 2  
August 2005

**ARIZONA**            SB 1472            ENACTED and EFFECTIVE April 25, 2005  
                                  (CH 212)

#### Coverage

Establishes provisions relating to professional employer organizations (PEOs), which among other things, require that beginning March 1, 2006, every PEO in Arizona must file an initial registration with the Secretary of State, pay a registration fee, and either maintain a net worth of \$100,000 or obtain a bond or securities worth \$100,000.

Defines "professional employer services" to mean the service of entering into a co-employment relationship in which all or a majority of the employees who provide services to a client or to a division or work unit of the client are covered employees.

Requires a client to be solely responsible for directing, supervising, training and controlling the work of covered employees with respect to the business activities of the client.

Provides that unless otherwise expressly agreed to by a client in a professional employment agreement, a client shall maintain the right to direct and control the professional or licensed activities of the covered employees and the client's business.

Provides that a covered employee who is required to be licensed, registered or certified under the laws of Arizona will be deemed an employee of the client for purposes of the license, registration or certification requirement.

#### Financing

Requires the PEO to pay the wages of covered employees, to withhold, collect, report and remit payroll-related and unemployment taxes and to make payment for employee benefits for covered employees.

Requires a PEO to report and pay all required contributions to the unemployment compensation fund using the state employer account number and the contribution rate of the PEO.

Provides that for the purposes of tax credits and any other economic incentives provided by Arizona that are based on employment, covered employees will be deemed employees of either the client or the PEO; either the client or the PEO, but not both, will be entitled to the benefit of any tax credit, economic incentive or any other benefit resulting from the employment of covered employees of the client; if the amount of any credit or incentive is based on the number of employees, only the covered employees who actually work for the

client will be considered employed, and the covered employees who work for other clients of the PEO will not be considered.

Provides for civil penalties when a person knowingly provides false or fraudulent information, collects certain payments and fails to remit the funds, fraudulently or falsely procures or attempts to procure services or benefits from a registered PEO without having adequate monies to compensate the PEO, wilfully fails to comply with any requirement, and knowingly makes a material misrepresentation.

Provides that on termination of a contract between a PEO and a client or the failure by a PEO to submit reports or make tax payments as required, the client will be treated as a new employer without a previous experience record if the client has been subject to a professional employer agreement for at least 2 years or if the client is not otherwise eligible for an experience rating.

## **ARKANSAS**

SB 512

ENACTED and EFFECTIVE March 17, 2005

(Act No. 902)

### Appeals

Increases from 20 to 30 calendar days after mailing or delivery of the notice an employing unit has to appeal the director's administrative determination of coverage.

### Financing

Modifies the provision concerning experience rates by providing that any employer having no covered employment for any calendar year will have a rate equal to his or her most recently-determined contribution rate until, immediately preceding the computation date, the employer has 1 full year of benefit risk experience.

Modifies the provision concerning the computation of experience rates by prohibiting employers from making a voluntary payment to the Unemployment Compensation Fund, if their contribution rate increases because of knowingly violating or attempting to violate state law regarding transfers of experience and assignment rates.

Changes from using the 2-digit standard industrial classification code to using the 3-digit North American Industry Classification code with respect to the transfer of experience.

Requires the interest and penalty payments with respect to transfers of experience and assignments rates be credited to the Employment Security Special Fund.

Provides that civil actions brought with respect to transfers of experience and assignment rates to collect contributions or interest will be heard by the court at the earliest possible date and will be entitled to preference on the court calendar over all civil actions except petitions for judicial review and cases arising under the Workers' Compensation Law.

Requires through June 30, 2005, that a bonded-lessor employing unit report all clients' wages on the lessor employing unit's quarterly contribution and wage report using its contribution rate, account number, and federal identification number; requires that quarterly contribution and wage reports for all clients obtained by bonded-lessor employing units on or after July 1, 2005, must be reported separately for each of its clients using the clients' account number and unemployment contribution rate for 3 consecutive years; after reporting client's wages for 3 consecutive years, a bonded-lessor employing unit must report client wages on the lessor employing unit's quarterly contribution and wage report

using the lessor employing unit's contribution rate, account number, and federal identification number.

Amends state law to include SUTA dumping prevention provisions which:

mandate transfer of experience from one employer to another when there is substantially common ownership, management, or control; apply to both total and partial transfers;  
prohibit transfer of experience if a person becomes an employer by acquiring an existing business and if the purpose of the acquisition is to obtain a lower contribution rate; apply to persons, who prior to the acquisition of the business, (a) had no employees and (b) had some employees but not enough to be an employer for state law purposes;  
provide meaningful civil and criminal penalties for knowingly violating or attempting to violate the law's requirements, and for knowingly advising to violate the law; and establish procedures to identify the transfer or acquisition of a business for purposes of the law.

#### Nonmonetary Eligibility

Disqualifies an individual for benefits for voluntarily leaving work without good cause connected with the work for leaving last work to comply with the order of a correctional institution or to satisfy the terms of parole or probation.

Modifies the provision concerning disqualification for refusal to report after a layoff by providing that the time frame of a layoff is 10 weeks or less.

#### Overpayments

Amends the provision concerning recovery of overpayment to provide that when an overpayment becomes final the director must present a certificate of overpayment describing the amount owed by the claimant to the circuit clerk of the county where the claimant is domiciled; requires the circuit clerk to enter the certificate of overpayment in the docket of the circuit court for judgments and decrees and note the time of the filing of the certificate; provides that after the entry, the certificate of overpayment will have the force and effect of a judgment of the circuit court and will bear interest at the rate of 10 percent annually.

### **INDIANA**

SB 612  
(P.L. 98)

ENACTED and EFFECTIVE April 26, 2005

#### Coverage

Excludes from the definition of employment an owner-operator that provides a motor vehicle and the services of a driver to a motor carrier under a written contract.

#### Financing

Amends state law to include SUTA dumping prevention provisions which:

mandate transfer of experience from one employer to another when there is substantially common ownership, management, or control; apply to both total and partial transfers;  
prohibit transfer of experience if a person becomes an employer by acquiring an

existing business and if the purpose of the acquisition is to obtain a lower contribution rate; apply to persons, who prior to the acquisition of the business, (a) had no employees and (b) had some employees but not enough to be an employer for state law purposes; provide meaningful civil and criminal penalties for knowingly violating or attempting to violate the law's requirements, and for knowingly advising to violate the law; and establish procedures to identify the transfer or acquisition of a business for purposes of the law.

**INDIANA**                      SB 536                      ENACTED and EFFECTIVE May 11, 2005  
(CH 27)

Financing

Transfers administration of the Skills 2016 Training Program, the Skills 2016 Training Fund (Fund), and all Fund money from the Department of Workforce Development (Department) to the Indiana Economic Development Corporation (Corporation); requires the Corporation to enter into agreements with the Department for the Department to administer the fund and to administer the fund using money appropriated from the fund.

Removes the requirements that 50 percent of money in the Fund be allocated to the state educational institution and that certain amounts of such money be allocated and used for specific purposes; establishes how the money in the Fund will be allocated and requires that special consideration be given to the state educational institution to be the provider of the training funded whenever the institution meets certain criteria.

Removes the requirements that the first \$450,000 of the Fund assessment be deposited in and paid into the Special Employment and Training Services Fund for training and counseling assistance; requires the Fund assessment to be deposited in the Fund; requires the Fund assessment be used for worker training grants.

Removes the provisions relating to an incumbent worker council and the incumbent worker training board.

Expires December 31, 2008.

**INDIANA**                      HB 1453                      ENACTED May 13, 2005  
Effective July 1, 2005

Coverage

Provides provisions concerning Professional Employer Organizations (PEO); provides that a covered employee of a PEO is an employee of the PEO.

Financing

Provides that a PEO is responsible for the payment of contributions, penalties, and interest on wages paid by the PEO to the PEO's covered employees during the term of the PE agreement; requires the PEO to report and pay all required contributions to the unemployment compensation fund using the state employer account number and the contribution rate of the PEO; requires, upon the termination of a PE agreement or failure by a PEO to submit reports or make tax payments as required, the client to be treated as a new employer without a previous experience record unless the client is otherwise eligible





management, or control, the Commission may combine their merit rating accounts, including their actual contribution and benefit experience, annual payrolls, and contribution rates into one account.

### Financing

Amends state law to include SUTA dumping prevention provisions which:

mandate transfer of experience from one employer to another when there is substantially common ownership, management, or control; apply to both total and partial transfers;

prohibit transfer of experience if a person becomes an employer by acquiring an existing business and if the purpose of the acquisition is to obtain a lower contribution rate; apply to persons, who prior to the acquisition of the business, (a) had no employees and (b) had some employees but not enough to be an employer for state law purposes;

provide meaningful civil and criminal penalties for knowingly violating or attempting to violate the law's requirements, and for knowingly advising to violate the law; and establish procedures to identify the transfer or acquisition of a business for purposes of the law.

Increases the cap on the petty cash fund from \$250 to \$600.

Appropriates \$9,269,043 Reed Act money for the purpose of paying administrative expenses for Employment Service programs, the Unemployment Insurance program., and One-Stop Center expenses (attributable to employment service and unemployment insurance.

Modifies the language for noncharging to require the employer to prove to the Commission's satisfaction that the benefit wage charge includes wages paid by the employer to employees or former employees who are unemployed for certain specific reasons in order for the employer to be relieved of a benefit wage charge.

Deletes the provision establishing a \$700 petty cash fund for providing meal allowances to Job Corps students.

### Monetary Entitlement

Expands the types of qualified retirement plan payments that are excluded from the definition of wages.

### Nonmonetary Eligibility

Provides that good cause for quitting due to domestic violence or abuse is no longer conditioned on the filing of a protection order effective at the time of termination.

### Overpayments

Modifies the benefit overpayment provisions relating to fraud overpayment and claimant error overpayment to require the Commission to deduct the principal sum of benefits from any future benefits payable to the individual.

**OREGON**

HB 3305

ENACTED and EFFECTIVE April 21, 2005

### Extensions and Special Programs

Changes the emergency benefit period to begin May 1, 2005, and end August 13, 2005; requires individuals to have exhausted regular benefits with payment for the week ending December 4, 2004, or later; entitles an individual to receive 25 percent of most recent regular Oregon claim; emergency benefits applicable for weeks beginning May 1, 2005, and ending August 13, 2005.

**RHODE ISLAND**

2307Rule 28

ENACTED January 3, 2005

EFFECTIVE January 19, 2005

Nonmonetary Eligibility

Considers holiday pay as wages which will be used in the base period when computing a claim; deducts holiday pay from the gross earnings during the week in which the holiday occurs and prior to computing a weekly benefit amount or recording a waiting period; considers holiday pay for a holiday under the state unemployment insurance law if the holiday is a declared holiday.

**SOUTH CAROLINA**

HB 3682

ENACTED and EFFECTIVE May 3, 2005

Financing

Amends state law to include SUTA dumping prevention provisions which:

provides meaningful civil and criminal penalties for knowingly attempting to violate the law's requirements, and for knowingly advising to violate the law; and establish procedures to identify the transfer or acquisition of a business for purposes of the law.

Noncharges a contributing employer's account for benefits paid for voluntary quitting or a discharge due to domestic violence.

Nonmonetary Eligibility

Provides that an individual is eligible for waiting week credit and unemployment compensation for voluntary leaving or discharged because of circumstances directly resulting from domestic abuse and certain other conditions are met.

Provides that an individual is considered to have been discharged for cause connected with the work and is ineligible for benefits if the insured worker fails or refuses to take a drug test or submits to a drug test which tests positive for illegal drugs or legal drugs used unlawfully and other conditions are met.

**SOUTH DAKOTA**

HB 1228  
(CH 280)

ENACTED and EFFECTIVE March 2, 2005

Financing

Increases employers' contribution rates quarterly (instead of annually) if on the last day of any calendar quarter (instead of on the computation date), the amount in the unemployment compensation fund reduced; the increased contribution rates apply to taxable wages paid on and after the first day of the immediately following calendar quarter; rates remain in effect until the balance in the unemployment fund on the last day of any quarter is equal to or greater than 150 percent of the highest balance in the fund.

Provides that beginning calendar year 2006 and thereafter, 100 percent (formerly 50 percent) of noncharges for the preceding calendar year is to be divided by the total taxable payroll for the preceding calendar year to compute the benefits prorated among all employer experience-rating accounts when benefits paid are not charged to the experience-rating account of any employer.

Repeals the provision establishing September 30 as the annual computation date and requiring on such computation day each year for interest credited to the state's account in the unemployment trust fund be credited to the employers' experience-rating account having an excess of contributions over total charges of benefits.

**UTAH**            HB 10            ENACTED and EFFECTIVE March 1, 2005  
                          (CH 12)

#### Financing

Amends state law to include SUTA dumping prevention provisions which:

mandate transfer of experience from one employer to another when there is substantially common ownership, management, or control; apply to both total and partial transfers;  
prohibit transfer of experience if a person becomes an employer by acquiring an existing business and if the purpose of the acquisition is to obtain a lower contribution rate; apply to persons, who prior to the acquisition of the business, (a) had no employees and (b) had some employees but not enough to be an employer for state law purposes;  
provide meaningful civil and criminal penalties for knowingly violating or attempting to violate the law's requirements, and for knowingly advising to violate the law; and establish procedures to identify the transfer or acquisition of a business for purposes of the law.

Defines taxable wages as all remuneration paid by an employer to employees for insured work that is subject to unemployment insurance contributions.

Defines unemployment experience as all factors, including benefit costs and taxable wages, which bear a direct relation to an employer's unemployment risk.

Provides that the employer's overall contribution rate does not include the addition of any penalty applicable to an employer assessed a penalty rate for knowingly violating or attempting to violate and for knowingly advising to violate the law regarding transfers of unemployment experience.

Provides for recalculation and assignment of employer contribution rates upon the transfer or acquisition of a trade or business.

**VIRGINIA**            HB 2371            ENACTED and EFFECTIVE March 21, 2005  
                          (CH 464)

#### Nonmonetary Eligibility

Disqualifies an individual for misconduct connected with his work due to chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than

one unapproved absence; provides that the Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

**VIRGINIA** SB 128 ENACTED January 27, 2005  
(CH 01) EFFECTIVE as indicated

#### Nonmonetary Eligibility

Provides that the weekly benefit amount (WBA) will be reduced by 50 percent of Federal social security pensions only if the fund balance factor is below 50 percent, effective the first Sunday in January following such determination; the WBA will not be reduced by Federal social security pensions if the fund balance factor meets or exceeds 50 percent.

**VIRGINIA** SB 1047 ENACTED and EFFECTIVE March 28, 2005  
(CH 892)

#### Coverage

Changes from using the ABC test to using the Internal Revenue Service 20-factor test in determining whether an individual is an employee or independent contractor.

**VIRGINIA** HB 2840 ENACTED and EFFECTIVE January 20, 2005  
(CH 125)

#### Monetary Entitlement

Increases the weekly earnings disregarded from \$25 to \$50.

**WASHINGTON** HB 2255 ENACTED and EFFECTIVE April 22, 2005  
(CH 133)

#### Financing

Provides that the difference in benefits by calculating the weekly benefit amount as an amount equal to 3.85 percent of the average 2 highest quarters of the base period, effective on or after April 24, 2005, and before July 1, 2007, instead of calculating the weekly benefit amount as 1 percent of total base period wages will not be charged to the experience rating account of any contribution paying employer.

Provides for the calculation of a different flat social cost factor for year 2007 to be used to determine the graduated social cost factor rate.

Changes from using the standard industrial classification to using the North American industry classification system (NAICS).

Provides that for contributions assessed beginning July 1, 2005, through June 30, 2007, for employers with certain NAICS codes, the graduated social cost factor rate is 0.0.

Provides for a new definition of "social cost" for rate year 2007.

Requires that moneys for the payment of regular benefits must be withdrawn during fiscal years 2006 and 2007 in the following order:

first, from 2002 Reed Act moneys credited to the state's Unemployment Trust Fund



Provides that the Department may disclose information to the Social Security Administration utilizing the UI interstate inquiry system pursuant to contract on a nonreimbursable basis.

Provides that the Department may require any recipient of information disclosed to comply with any safeguards necessary as specified in federal regulation to ensure the information will be used only for purposes authorized.

Provides that the Department may and subject to commission regulations disclose necessary information obtained from any employing unit, individual, and any determination of benefit rights to any state or federal agency administering UI laws or federal tax laws and to the office of the U.S. bankruptcy trustee, except when information and determinations are confidential.

Repeals the provision providing that the Department may furnish information obtained under certain offices and services to any person or agency operating a public employment service.

#### Financing

Provides that a temporary service contractor is the employing unit of the temporary worker provided to an employer and is liable for unemployment contributions.

Amends state law to include SUTA dumping prevention provisions which:

- mandate transfer of experience from one employer to another when there is substantially common ownership, management, or control; apply to both total and partial transfers;
- prohibit transfer of experience if a person becomes an employer by acquiring an existing business and if the purpose of the acquisition is to obtain a lower contribution rate; apply to persons, who prior to the acquisition of the business, (a) had no employees and (b) had some employees but not enough to be an employer for state law purposes;
- provide meaningful civil and criminal penalties for knowingly violating or attempting to violate the law's requirements, and for knowingly advising to violate the law; and
- establish procedures to identify the transfer or acquisition of a business for purposes of the law.

#### Monetary Entitlement

Clarifies that the Department may make a monetary redetermination at any time prior to the end of the benefit year (instead of within 1 year after the date of an original determination) whether or not a party has filed a timely appeal.

#### Nonmonetary Eligibility

Repeals the provisions requiring the withholding of the amount of child support specified by the individual from benefits and any amount otherwise required to be withheld from benefits due to legal process.

Eliminates the 1-week waiting period, effective July 1, 2005.

