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**GUIDE TO THE
ILLINOIS UNEMPLOYMENT
INSURANCE ACT****I. INTRODUCTION**

The Illinois Unemployment Insurance Act was enacted to provide partial protection to workers against the loss of wages when they are out of work due to a lack of opportunities. For this reason, contributions and payments in lieu of contributions are required from certain employers to maintain the fund used to pay benefits to the unemployed workers who meet the eligibility requirements of the law.

Unemployment benefits are not “hand-outs” or “relief” and are not available just for the asking. They are insurance, bought and paid for by their employers, and paid only to job seekers who are unemployed through no fault of their own and who are ready, willing and able to accept suitable employment.

Unemployment insurance is a joint State-Federal endeavor. The programs involving the payment of benefits, the collection of contributions and payments in lieu of contributions and employment service are the responsibility of the State. The federal government pays the cost of administration.

The overall tax liability of an employer in relation to unemployment insurance is determined by both federal and State law. An employer that is subject to one is usually subject to both. The major exceptions are certain types of nonprofit organizations, local governmental entities and the State of Illinois that are subject to only Illinois law.

Employers subject to both the Federal Unemployment Tax Act and the Illinois Unemployment Insurance Act do not have to make the full payments required by the federal Act IF they make the proper payments to the State FIRST.

This Guide has been prepared in order to inform employers of their rights and responsibilities under the Illinois Unemployment Insurance Act. It describes the conditions under which an employer is liable for the payment of contributions or for making payments in lieu of contributions, the reports that must be filed by all employers, the varying rates at which contributions are paid, the circumstances under which unemployed workers are eligible for benefits and, in general, the highlights of Illinois unemployment insurance law.

Reading the entire Guide will give an employer a broad picture of the unemployment insurance program as administered by the Department of Employment Security.

The Guide should be kept and used as a reference for the explanation of particular issues that may arise from time to time. Employers having questions not answered by this Guide should contact:

Illinois Department of Employment Security
Employer Hot Line
33 South State Street
Chicago, Illinois 60603
(800) 247-4984

*** IMPORTANT ***

THIS GUIDE DOES NOT HAVE THE EFFECT OF LAW, RULINGS OR REGULATIONS. IT IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY, AND IT IS NOT INTENDED TO PROVIDE, OFFER OR BE A SUBSTITUTE FOR COMPETENT LEGAL ADVICE.

II. EMPLOYER'S RESPONSIBILITIES TO WORKERS**A. Information Required to Be Given to Workers**

All employers subject to the Illinois Unemployment Insurance Act are required to inform workers about their rights to unemployment insurance benefits. There are two requirements.

First, the employer is required to post notices and signs sent to it for that purpose by the Department of Employment Security. By law and regulation, the employer must post these notices in conspicuous places in its establishment where they may be seen by employees. (56 Ill. Adm. Code 2760.1)

Second, when a worker quits, is discharged, or is laid off for an expected duration of seven days or more, the employer is required to give the worker a copy of "What Every Worker Should Know About Unemployment Insurance". (56 Ill. Adm. Code 2720.100) English and Spanish versions of this publication are also available on the Department's website.

This pamphlet gives the worker information about the conditions he must meet to be eligible for unemployment insurance benefits. If delivery in person is impossible or impractical, a copy should be mailed within five calendar days following the separation to the worker's last known address. (56 Ill. Adm. Code 2720.100)

The employer should enter the company's name and address in the box provided on the first page of this form.

B. Notice to Partially Unemployed Workers

A worker is "partially unemployed" if he works regularly for an employer and in a calendar week works less than full-time due to a lack of work and earns less than his weekly benefit amount. (Section 239 and 56 Ill. Adm. Code 2720.1)

If otherwise eligible for unemployment insurance benefits, this worker is entitled to benefits equal to his weekly benefit amount less that part of his wages which are in excess of 50 percent of his weekly benefit amount. (Section 402 and 56 Ill. Adm. Code 2920.15)

In order for the Department to determine the amount of unemployment insurance benefits payable to such an individual, the Department must know what his earnings were in such a week.

If requested by the worker, an employer is required to furnish any worker who is partially unemployed with what is known as "valid evidence" of such partial unemployment. This information is furnished by issuing a Low Earnings Report to an employee whenever he earns less than the maximum weekly benefit amount allowed by law in a week of less than full-time work.

If the employer has learned from any notice received from the Department what the worker's actual weekly benefit amount is, it shall issue the Low Earnings Report when the worker's earnings in a calendar week of less than full-time work are less than this actual benefit amount.

The employer may either fill out the Department form or may attach a blank copy of this form to a check stub, pay envelope or voucher containing the following information:

1. The name of the worker;
2. Social Security number of the worker;
3. Ending date of the calendar week;
4. Actual amount earned during the calendar week;

5. A statement that the earnings were for a week of less than full-time work during which the earnings were reduced due to a lack of work;
6. Name and address of the employer;
7. The date the “valid evidence” is issued to the worker; and
8. A signature (actual or facsimile) or other positive identification of the employer supplying the information (e.g., imprinting of the employer’s name and address on the stub or pay envelope).

The Low Earnings Report or its equivalent must be issued not later than the pay day for the last day of the calendar week. (56 Ill. Adm. Code 2720.107)

There are times when the Department may find it necessary to request from an employer a Low Earnings Report for a worker to determine whether he is entitled to benefits. When an employer receives such a form, it must fill in the information requested and return the form to the address given on the form within 5 business days of receiving it, or the Department will accept the worker’s statement of his earnings. (56 Ill. Adm. Code 2720.107)

If a worker’s failure to work on a holiday occurs in a week in which the worker is partially unemployed, a Low Earnings Report should NOT be given to the worker with respect to such week. If a Request For Low Earnings Report is received by the employer under such circumstances, such report should include a statement that the worker did not work on a specific date because of a holiday.

III. EMPLOYER LIABILITY UNDER THE UNEMPLOYMENT INSURANCE ACT

A. Employers of “One or More in Twenty Weeks” or with \$1,500 Quarterly Payroll

An employing unit, except certain types of nonprofit organizations or local governmental entities, that has one or more persons in employment in Illinois on any one day within each of 20 or more calendar weeks in any calendar year is required to pay contributions for that calendar year and for at least the following calendar year, even though it did not or does not have one or more employees in as many as 20 weeks in that second year. (Section 205)

An employing unit that does not meet the “one or more” test but pays or paid wages for services in employment of \$1,500 or more during any calendar quarter of a calendar year is required to pay contributions for that calendar year and for at least the following calendar year.

When any employing unit reaches the twentieth week of one or more employees, or pays wages of at least \$1,500 in any calendar quarter, it becomes liable for contributions on its taxable payroll for the entire year.

EXAMPLE: Even if the twentieth week in which one or more persons were employed falls in the last part of December, 2017 or \$1,500 in wages are paid for the first time in the fourth quarter of 2017, the employing unit is liable for contributions on its taxable payroll for the year of 2017 and also for 2018. It must file its first report in January, 2018 and pay contributions based on its taxable payroll for 2017, and it must file a report for each quarter in which it had paid employees.

It must also pay contributions quarterly thereafter. Once having had one or more persons in employment on any one day within each of 20 or more calendar weeks in any calendar year, or once having paid \$1,500 or more in wages in any calendar quarter for services in employment, an employing unit will have to pay **CONTRIBUTIONS FOR THAT YEAR AND FOR EVERY YEAR THEREAFTER** unless it has a year with less than “twenty weeks of one employee” **AND** all the quarterly taxable payrolls in that year are less than \$1,500; **AND** it asks the Director of Employment Security **IN WRITING** to be relieved from the requirement of paying contributions; **AND** such request is granted.

There is a **TIME LIMIT** for filing such a request. For the termination of coverage to be effective as of January of any calendar year, the request must be filed prior to February 1 of such year.

However, an employer that no longer has services being performed for it and ceases to pay wages for services in employment in Illinois can request termination immediately if it files an application with the Director within five days after the date that its next wage report is due.

However, if the employer again has individuals providing services to it during that calendar year or the following calendar year, the termination shall be rescinded as of the date that the termination was originally granted. Additionally, if the Director determines that the employing unit has permanently ceased to pay wages for services in employment and permanently ceased to have any individual performing services for it, he may terminate that employing unit on his own initiative. (Section 301)

For an employing unit to have in employment one or more individuals within each of 20 or more calendar weeks does not mean that an employing unit must necessarily have a staff of one or more regular, full-time workers for 20 weeks in a row, or that the same individual is employed in each such week. A part-time worker, who works for only a half hour one day a week, counts just as much in each week as one regular, full-time worker.

A rather extreme example, involving an employing unit having one part-time worker, will serve to illustrate this point. If the employing unit hired a different part-time worker each week for 20 calendar weeks, it would have to pay contributions for that year and for at least the next calendar year.

The week to be used in determining liability is a **CALENDAR WEEK**, which may not necessarily be the employer’s payroll week. An employer’s payroll week could end on any day of the week. However, a **CALENDAR WEEK** begins at 12:01 A.M. on Sunday and ends at midnight on the following Saturday. If a worker works a few hours on Saturday and a few hours on Sunday in the same weekend, he is working in two different calendar weeks.

All individuals performing services for an employing unit are counted in determining the number of workers or in determining the quarterly taxable wages EXCEPT the following:

1. Sole proprietor or partner. (Section 206) A SOLE PROPRIETOR OR PARTNER IS NOT AN EMPLOYEE AND SHOULD NOT BE REPORTED AS SUCH. An individual who operates as a sole proprietor is NOT in an employment relationship because the individual is performing services for himself, not a separate employing unit. Under the Act, an employment relationship requires that the individual and the employing unit be distinct, legal entities. This reasoning also applies to partnerships. If an individual incorporates a business and operates that business under the auspices of the corporation, including a subchapter "s" corporation, then the corporation is the employing unit with respect to services the individual performs for it, whether the individual is a sole shareholder, corporate officer or sole employee. Unless an exemption applies, the individual's services for the corporation constitute employment, and the corporation may be the individual's employer. Wages paid to a corporate officer for Act-insured employment may be used to establish monetary eligibility to receive benefits, however, just because the corporate officer is monetarily eligible to receive benefits does not necessarily mean that the individual will be otherwise eligible for benefits. An individual working for a corporation, even if earning no wages, may not be an unemployed individual under the Act's definition of an "unemployed" individual. (Section 239) That issue is determined on a case-by-case basis. When an individual provides services to a corporation, it is expected that he would be paid. If the individual receives remuneration in the form of dividends, the Department will attribute a reasonable portion of such dividends as wages subject to the payment of contributions.

EXAMPLE: Johnson is a sole proprietor, operating as Johnson's General Store. As such, he should not report his remuneration as wages subject to the payment of contributions. He later incorporates as Johnson's General Store, Inc., a subchapter "s" corporation. For federal income tax purposes, his wages are treated as if he were still a sole proprietor. However, for purposes of the Unemployment Insurance Act, he is an employee, and his wages are subject to the payment of contributions. If, instead of receiving wages for his services, Johnson is paid dividends by the corporation, a reasonable amount of such dividends will be treated as wages subject to the payment of contributions.

EXAMPLE: Jones is the sole shareholder of a corporation in the construction industry. During the winter, the company is shut down, and its employees are laid off. Jones continues to work full time seeking contracts for the corporation when it reopens in Spring. If Jones applies for unemployment insurance benefits, it will be determined that she is not actively seeking or available for work because she is seeking contracts for the corporation rather than applying for jobs. To the extent that Jones spends more than a minimal amount of time seeking contracts for the corporation, it could also be found that she is not "unemployed" since she is still providing services to the corporation, even if she is not being paid.

2. Directors of a corporation acting in the capacity of a Director or on a committee provided for by law or by the charter or the bylaws of the corporation. The services on the committee must be as a Director dealing with broad matters of policy, and not those ordinarily performed by an officer or other employee of a corporation. (Section 232) This Section does not apply to certain nonprofit organizations.
3. The owner's father, mother, spouse, and the owner's child under the age of 18. If the entity is a partnership, the father, mother, spouse or child under the age of 18 must be the father, mother, spouse or child under the age of 18 of every partner (56 Ill. Ad. Code 2732.235) A person working for a corporation is counted even though the owner of all the stock is the worker's son, daughter, spouse or parent. (Section 218)
4. Persons who do not perform any of their services in the State of Illinois. However, after 1971, if such person is not covered by any other state or Canada, his services are considered to be Illinois employment if the place from which the services are directed or controlled is in Illinois.

Also, services of a citizen of the United States performed outside the United States for an American employer are considered Illinois employment if the principal place of business of the employer is located in Illinois or, if there is no place of business in the United States, the owner or partners reside in Illinois, or the corporation is organized under the laws of Illinois if the employer is a corporation. (Sections 207, 208, 208.1 and 208.2)

5. Persons free from the employer's control and direction who are engaged in an independent trade, occupation, business or profession and who perform services that are outside the course of the employer's business or performed outside the place of business. (Section 212)

This provision is much narrower than what is commonly known as an "independent contractor". See 56 Ill. Adm. Code 2732.200 for some of the factors considered in the application of this exception.

6. Agricultural and aquacultural workers. Only certain specified types of these workers are counted in employment. The worker should be counted if the employing unit paid cash wages of \$20,000 or more in any calendar quarter either in the current or preceding year to workers employed in agricultural or aquacultural labor OR the employing unit employed 10 or more such workers in each of 20 or more weeks in either the current or preceding year. (Sections 214 and 211.4)
7. Domestic workers in private homes, local college clubs and local chapters of college fraternities or sororities unless their

employer had paid cash wages of \$1,000 or more in any calendar quarter in either the current or preceding calendar year to an individual or individuals employed in such domestic service. (Sections 215 and 211.5)

8. Officers or members of the crew of a vessel that is not an American vessel or that is directed or maintained from an operating office outside this State. This includes persons whose services are performed outside this State. This includes persons whose services are performed on or in connection with an aircraft, which is not an American aircraft, if the person is employed on or in connection with such aircraft when outside the United States. (Section 216)
9. Real estate salesmen under certain conditions. (Section 217)
10. Persons under the age of 18 who deliver newspapers or shopping news and any persons who deliver newspapers or shopping news to the ultimate consumer, if substantially all of their remuneration is on a “per piece” or output rather than an hourly basis, and they work under written contracts that indicate they are not to be treated as employees for federal tax purposes.

Freelance editorial and photographic work for newspapers is also exempt. (Section 225)
11. Insurance agents who are paid solely by commission. (Section 228)
12. Persons who perform services in another state as well as in Illinois if the Director of Employment Security has agreed to consider all of their services performed in another state. (Section 2700)
13. Certain persons performing services for nonprofit organizations. (See the section on nonprofit organizations for a complete explanation.)
14. Certain persons who perform services for governmental entities. (See the section on governmental entities for a complete explanation.)
15. Direct sellers of consumer goods outside of a retail establishment if the remuneration for such service is directly related to sales, rather than hours worked, and the services are performed pursuant to a written contract that provides that the person shall not be treated as an employee for federal tax purposes. (Section 217)
16. Owner-operators of their own trucks but only under certain specified circumstances as provided in the Act. (Section 212.1 and 56 Ill. Adm. Code 2732.205)
17. Real estate closing agents when their contract with the title insurance company specifies that they are not employees and they are paid on a per-closing basis. (Section 217.1)
18. Real estate appraisers whose written employment contract provides that they are paid on a fee-per-appraisal basis and that they are free to accept or reject appraisal requests from that entity or from other entities. (Section 217.2)
19. Golf caddies if they are full-time students under the age of 22 and are paid directly by a golf club member or by the golf club on behalf of a member. (Section 232.1)
20. Full-time students in the employ of an organized camp under certain specified conditions. (Section 232.2)
21. An election official or election worker for certain governmental entities if the remuneration received by the individual for such services in any year is less than \$1,000. (Section 220)
22. An alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act (Section 211.4)

Furthermore, any individual’s services will be considered “employment” for Illinois Unemployment Insurance purposes if such services constitute “employment” under the provisions of the Federal Unemployment Tax Act (FUTA). Such services will also be considered “employment” if FUTA deems such service to be “employment” to enable Illinois employers to receive the full FUTA tax credit for the contributions paid. (Section 245B)

In most situations, the services of actors, actresses, singers, musicians, models and other “talent” constitute employment under the Act. However, a talent or modeling agency that is licensed under the Private Employment Agency Act is not the employing unit with respect to the performance of services for which an individual has been referred by the agency. (Section 204)

Under certain conditions, an employee leasing company that contracts with a client to supply or assume responsibility for workers that perform services for the client on an on-going, rather than temporary basis, may be considered to be the employer. The

employees must be paid directly from the employee leasing company's account, the employee leasing company must retain the right to hire or terminate the worker, either exclusively or in conjunction with the client, and the client's unemployment insurance contribution rate must be equal to or lower than the new employer rate. If the client's rate is higher, the difference between the client's rate and the employee leasing company's rate must not exceed 1.5 percent. (Section 206.1) See part X, Section A, for reporting requirements.

In deciding whether wages for agricultural workers should be reported for unemployment purposes, a crew leader can be considered an employing unit. (Section 211B)

A further note on sole proprietors and corporate officers. An individual who operates as a sole proprietor is not in an employment relationship because there is no other party. The sole proprietor running the business is the same entity as the individual performing the services. Under the Act, employment requires that the individual and the employing unit be distinct entities.

Any individual who is a member of a crew furnished by a crew leader to perform agricultural services for any other employing unit shall be treated as employed by the crew leader if the leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963 or substantially all of the members of such a crew operate or maintain tractors, mechanized harvesting or crop dusting equipment or any other mechanized equipment provided by the crew leader.

Furthermore, any individual furnished by a crew leader for service in agricultural labor for an employing unit who does not fall within the employ of a crew leader will be treated as performing services in the employ of the other employing unit. Such employing unit will be treated as paying cash wages equal to the amount paid by the crew leader. (Section 211.4)

Under Section 214 of the Act, “agricultural labor” means all services performed as follows:

- a. On a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and fur-bearing animals and wildlife;
- b. In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment;
- c. In connection with the ginning of cotton, or the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;
- d. In the employ of the operator of a farm, or a group of operators of farms (or a cooperative organization of which such operators are members), in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator or operators produced more than one-half of the commodity with respect to which such service is performed.

The definition of “agricultural labor” shall not include services performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption. (Section 214)

The term “farm” as used in this Section includes stock, dairy, poultry, fruit, furbearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards. (Section 214)

The term “aquacultural labor” means all services performed in connection with the production of aquatic products as defined in the Aquacultural Development Act

If you are in doubt as to whether you are required to count an individual in a specific situation, consult your local unemployment insurance office or write to:

Department of Employment Security
Employer Hot Line
33 South State Street
Chicago, Illinois 60603

If you have a more complex legal question, such as one about “employee leasing” (additional information on this subject can be found on the IDES website), contact the Office of Legal Counsel, 9th Floor, Department of Employment Security, in Chicago.

B. Employer Liability by Succession

An entity which purchases or otherwise acquires an organization, trade or business owned or operated by another, which is at the time of the transfer required to pay contributions must, in turn, pay contributions for the remainder of the year in which the transfer takes place, and indefinitely after that, until there is a year of less than “twenty weeks of one employee” AND all the quarters’ taxable payrolls in that year are less than \$1,500; AND the entity requests in writing that its liability be ended; AND such request is granted. (Section 205C)

EXAMPLE: Kramer, a grocer, has one person working for him on one day in each of 25 weeks in 2017. He sells his store as a going business to Green on February 1, 2018. Kramer must pay contributions based on his payroll for the month of January, 2018. Green must pay contributions for the month of February and for the remainder of 2018 (and for January also, if he paid workers in January) and for each year thereafter until his liability ceases.

Any person or firm purchasing or otherwise acquiring the business or a portion of a business of another or the business assets of another should request the seller to produce a certificate from the Director of Employment Security stating that it owes no contributions, interest, or penalties; otherwise, the purchaser or transferee will become **PERSONALLY LIABLE** for the payment of contributions, interest or penalties owed by the seller, or the transferor (up to the value of the property acquired), unless it withholds enough of the purchase price to pay to the Director the amount owed by the seller. (Section 2600)

Caution: Compliance with the Illinois Bulk Sales Act is insufficient.

Similarly, an employing unit that buys the assets or a portion of the assets of another business that is outside the purchaser’s usual course of business and either assumes a substantial amount of the seller’s debts or obtains a substantial amount of its goodwill, or continues in the same business at the same place of business must pay contributions if the seller was required to do so. (Section 205)

Any employing unit that succeeds to substantially all of the assets of an organization, trade or business, or of a severable portion of those assets, is required to file a signed form UI-1 S&P “Report To Determine Succession” or a document that includes the same information. This report should be filed online using MyTax Illinois (mytax.illinois.gov) or by mail to: Central Registration Division, Illinois Department of Revenue, PO BOX 19030 MAIL CODE 3-222, Springfield, IL 62794-9030. (56 Ill. Adm. Code 2760.105)

C. Employer Liability by Tacking

Whenever one acquires the business assets or business of another during a calendar year and continues in that business, the number of weeks in which the purchaser has one or more employees during the rest of the year will be added to the number of such weeks which the seller had during the first part of the year and if the total makes 20 or more weeks, the purchaser will be required to pay contributions on its own payroll for that year and for at least the following year.

Similarly, if the acquisition occurs during a calendar quarter, the buyer’s taxable payroll for the remainder of the calendar quarter is added to the seller’s payroll for that quarter. If the total is \$1,500, or more, the buyer will be required to pay contributions on its own payroll for that year and for at least the following year.

D. Employer Liability by Election

Employing units, except State and local governmental entities, that do not have to pay contributions for any of the foregoing reasons or because the worker’s services do not constitute employment (Section 206) may desire to have its workers insured against the risk of unemployment.

They may request permission to pay contributions. If the Director approves the request, the employer must pay contributions for at least two full calendar years and comply with the requirements to which all other employers are subject. (Section 302)

E. Employer Liability Under the Federal Unemployment Tax Act

Any employing unit, except for certain types of nonprofit organizations and local governmental entities, that must pay a tax under the Federal Unemployment Tax Act because the employing unit has employed one or more persons on some day within each of 20 or more weeks in a calendar year throughout the United States (and in some instances, outside the United States), must pay contributions based on wages paid to those working for the employing unit in Illinois.

EXAMPLE: An employer having one or more persons in employment on some day within each of 20 or more calendar weeks in 2018 in the United States with two workers in Illinois for less than 20 weeks (with a quarterly payroll in Illinois of less than \$1,500) and two in Iowa for 20 weeks or more, must pay contributions to Illinois based on the wages that it pays its Illinois workers. The employer receives credit against the Federal tax for the contributions so paid.

EXAMPLE: An employer with a sales organization in the State of New York which employs 10 persons in the New York office at all times and employs a salesman in Chicago for less than 20 weeks and whose wages for a calendar quarter are less than \$1,500 must pay contributions under the Illinois Unemployment Insurance Act on the Illinois salesman's wages or commissions. The employer will receive a credit against the Federal tax for the contributions so paid.

An employer that must pay contributions to Illinois for any year, solely because of its tax liability for that year under the Federal Unemployment Tax Act, must continue to pay contributions to Illinois, based on wages it pays its Illinois workers, for each subsequent year (even though, for any such subsequent year, it does not incur any tax liability under the Federal Act), until the employer requests in writing that its State liability be ended and its request is granted.

For complete information about the Federal tax, consult the Internal Revenue Service.

F. Termination of Liability

Once an employing unit is determined liable and receives an account number, whether because of its own employment experience, by voluntary election, through succession, or because of liability under the Federal Unemployment Tax Act, it remains liable from year to year thereafter until officially terminated by the Director.

To end liability, an employing unit must file an application for termination of coverage with the Director of Employment Security. This application must be filed by January 31 of the year for which the employer seeks to terminate liability, and the employer must show that its employment experience in the preceding year was such as to make it eligible to terminate liability.

In other words, most employers must show that in the preceding calendar year they did not have one or more persons in employment within 20 or more calendar weeks, and that there was no calendar quarter in that year in which the taxable payroll equaled or exceeded \$1,500. (Section 301 and 56 Ill. Adm. Code 2760.110)

EXAMPLE: If an employer had "one employee in each of 20 weeks" in 2017 or a taxable payroll in a calendar quarter in 2017 of \$1,500 or more, but does not have such experience in 2018, it is nevertheless liable for contributions for 2018 and continues to be liable for 2019, unless it files an application for termination of coverage on or before January 31, 2019 and the application is approved by the Director. If it is so approved, the employer's liability ceases as of January 1, 2019.

An employer that no longer has services being performed for it and ceases to pay wages for services in employment in Illinois can request termination immediately if it files an application with the Director within five days of the date that wage reports are due for the quarter. Such termination would become effective as of the last day of that quarter.

However, if the employer again has individuals providing services to it during that calendar year or the following calendar year, the termination shall be rescinded as of the date that the termination was originally granted.

EXAMPLE: Ma and Pa wish to close their business and retire. As of September 15, 2017, they no longer have services being performed for their business in Illinois. Their next wage report is due October 31, 2017. If they file a notice of termination with the Director by November 5, 2017, their account will be immediately terminated, effective October 1, 2017, and it will not be necessary for them to file wage reports showing no employment for the remainder of 2017 and for all of 2018.

However, if Ma and Pa later have services performed for the business in the state during either the remainder of 2017 or during 2018, the approval of their termination will be rescinded as of the date that the termination was originally granted.

Additionally, if the Director determines that the employing unit has permanently ceased to pay wages for services in employment and permanently ceased to have any individual performing services for it, he may terminate that employing unit on his own initiative. (Section 301)

Certain nonprofit organizations subject to the Act because they have four or more workers may similarly terminate liability if the number of workers drops below four or the number of weeks in which at least four are employed drops below 20. (See the section on Non-profit Organizations)

It is again emphasized that liability extends from year to year regardless of the number of persons employed or the amount of wages paid, unless an application for termination of coverage is filed on time or unless the Director terminates on his own initiative. Liability is terminated on the basis of the information submitted, but it may be subject to an investigation at a later date.

If it is subsequently found that termination should not have been granted, the employer's account is reinstated, and it is required to file quarterly reports and to pay contributions, interest and penalties, as provided by the Act. This includes payment for those quarters in which no reports were filed and no contributions were paid.

G. Offset Credit Against the Federal Unemployment Tax

The requirement that the employer of “one or more in 20 weeks” pay contributions under the Illinois Unemployment Insurance Act coincides with the provisions of the Federal Unemployment Tax Act (See Section 3306(a)).

Under that Act, any employer of one or more persons throughout the United States on any one day within each of 20 or more calendar weeks in a calendar year must pay to the federal government a tax on its taxable payroll.

Likewise, if it pays total insured wages to persons throughout the United States (and in some instances, outside the United States), of at least \$1,500 in a calendar quarter, it is liable for federal unemployment taxes. This provision does not apply to certain types of nonprofit organizations and to local governmental entities.

Beginning July 1, 2011, the FUTA tax rate became 6.0% on the wages paid after June 30, 2011. For 2018, the FUTA tax rate is still 6.0%.

If Illinois did not have a certified unemployment insurance law, Illinois employers would be required to pay the full tax to the federal government. For the Illinois law to be certified by the U.S. Secretary of Labor, the Illinois law must meet certain federal guidelines.

Because Illinois does have a certified unemployment insurance law, employers which pay contributions on time receive an offset credit against the federal unemployment tax. An employer is also entitled to an additional credit against the federal tax equal to the difference between the amount of contributions actually paid and the amount it would have been required to pay if it did not have a reduced rate based on its experience.

The maximum credit that may be granted against the federal tax is limited to 90 percent of that tax at a “deemed” rate of 6 percent. This means that the maximum credit allowed is 5.4 percent. Further information can be found at the Internal Revenue Service website <http://www.irs.gov/uac/Form940>.

It should be noted that an employer which is delinquent in the payment of contributions to the State may be required to pay the federal tax in full in addition to contributions to the State, plus interest and penalties.

EXAMPLE: Employer Z is liable both under the Federal Unemployment Tax Act and the Illinois Unemployment Insurance Act for 2017. In 2017, it paid its workers taxable wages of \$10,000. Its tax at 6.0 percent of its payroll under the Federal Unemployment Tax Act is \$600.00. It has an Illinois rate of 5.5 percent and as a result pays \$550.00 in State contributions. If Employer Z pays contributions to Illinois in full on or before January 31, 2018, it may report its federal tax payable as follows:

1.	Taxable wages paid	\$10,000.00
2.	Federal Tax at 6.0 percent	600.00
3.	Credit for Contributions paid to Illinois (Cannot exceed the maximum credit offset, which is 5.4 percent)	-540.00
4.	Net federal Tax Due	60.00

H. Qualified Settlement Funds

Qualified Settlement Funds (QSF) cannot be employers because no services are performed for the QSF by employees involved in the settlement. Wage payments made by a QSF are the result of services that were actually or constructively performed for the employer or employers involved in the settlement. Since the employer with direction and control of the worker is the employer for purposes of the Act, wage distributions as a result of a settlement must be reported, and contributions or payments in lieu of contributions paid, by the employer or employers involved in the settlement.

IV. WAGES

This Section applies to all employers, including non-profit organizations and governmental entities that elect to reimburse benefits in lieu of paying contributions.

A. Wages Defined

In general, “wages” means every form of remuneration for personal services, including salaries, commission, bonuses and the reasonable money value of all remuneration in any medium other than cash.

The reasonable money value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the Director. Such rules shall be based on the reasonable past experience of the workers and the employing units. (Section 234)

B. Meals and Lodging as Wages

Board, lodging, meals or other payment in kind received by a worker from his employer in addition to or in lieu of (rather than a deduction from) money wages shall be considered remuneration paid by the employer.

The Director shall determine or approve the cash value of such payments. This cash value shall be used in determining the wages paid to the worker and in computing the contributions due under the Act.

Where a money value for board or lodging or both furnished a worker is agreed upon in an employment contract, the amount agreed upon shall be considered the cash value of such board and lodging. (56 Ill. Adm. Code 2730.100) However, meals given for the convenience of the employer are not remuneration for services and do not constitute wages. (56 Ill. Adm. Code 2730.100)

C. Tips as Wages

Employers that have individuals in their employ who customarily receive tips in the course of their work are required by law and regulation to post notices advising such workers of their duty to report the amount of tips they receive. (56 Ill. Adm. Code 2730.105 and Section 234)

Employers should request copies of the required posters and forms from Employer Hot Line, Department of Employment Security, 33 South State Street, Chicago, Illinois 60603, (800) 247-4984.

Detailed rules with respect to the reporting of tips as “wages” can also be obtained from the Office of Legal Counsel, 9th Floor, Department of Employment Security, in Chicago.

D. Remuneration Not Considered Wages

There are several classes of remuneration which are NOT considered “wages”, which need NOT be reported, and on which contributions are NOT required. (Section 235)

The exemptions from the definition of “wages” are also available to nonprofit organizations and local governmental entities that elect to reimburse benefits in lieu of paying contributions.

The exemptions to the definition of “wages” include:

1. Payments to a worker for actual expenses incurred for the employer in the course of his employment, for which the employee is required to submit a current and itemized account to his employer.
2. Payments made under a workers’ compensation law are excluded from the term “wages.” Premium payments made under a workers’ compensation law are also excluded.
3. Payments under a plan or into a fund (including accident insurance premiums) on behalf of workers or their dependents for medical or hospital expenses in connection with sickness or accident disability, or death;

PROVIDED that these payments are made under a plan applying generally to the employer's workers and their dependents and not to a specific individual.

The sickness or accident disability exemption is limited to those advanced premium payments made under a plan or into a fund for sickness or accident disability. Sick pay and disability payments actually made to the individual or his dependents on account of sickness or accident disability are not exempt (except for payments made under a workers' compensation law, which are exempt).

4. Payments to an employee in connection with sickness or accident disability or related medical and hospital expenses, made by the employer more than six months after the employee last performed service for the employer.
5. Payments made to, or on behalf of, an employee or his beneficiary that would be excluded from "wages" by subparagraphs (A), (B), (C), (D), (E), (F) or (G) of Section 3306(b)(5) of the Federal Internal Revenue Code of 1954, in effect on January 1, 1985.
6. Remuneration to an individual employed in agricultural labor, as defined by Section 214 of the Act, which is made in a medium other than cash.
7. Payments that are not taxable for federal income tax purposes as part of a cafeteria plan established under Section 125 of the Internal Revenue Code of 1986 are not included in "wages", to the extent that (1) the benefit chosen under the plan is specifically excluded under Section 235 of the Act and (2) under Section 245(c) of the Act, the benefit is not includable in the terms "wages" subject to the payment of taxes under FUTA. (56 Ill. Adm. Code 2730.150)

EXAMPLE: Payments made under a plan established by an employer generally for individuals in its employ to provide for the payment of medical insurance premiums, which would not be includable in gross income for federal income tax purposes under Section 125 of the Internal Revenue Code of 1986, are not includable as wages because there is a specific exclusion in the Act for payments on account of medical or hospitalization expenses in connection with sickness or accident disability and such payments are not subject to the payment of taxes under FUTA.

EXAMPLE: Payments made under a plan established by an employer generally for individuals in its employ to provide for the payment of dependent care assistance, which would not be includable in gross income for federal income tax purposes under Section 125 of the Internal Revenue Code of 1986, are includable as wages because there is no specific exclusion in the Act for payments on account of dependent care assistance even though they are not subject to the payment of taxes under FUTA.

8. Payments that are not taxable for income tax purposes under Section 401(k) of the Internal Revenue Code of 1986 are included in "wages," as defined in Section 234 of the Act. Amounts deducted from an individual's taxable income pursuant to salary reduction arrangements, as well as employer contributions, are also "wages." (56 Ill. Adm. Code 2730.155)

E. Wage Limitations

For the calendar years 2014 through 2019, only the first \$12,960 of wages paid to a worker during that calendar year are subject to the payment of contributions. (Section 235)

Total wages in excess of these amounts for all workers in the quarter must be reported, but contributions on such excess are not paid.

In general, only the wages paid by the employer itself or tips can be considered in applying the particular wage limitation. However, there are situations in which an employer may take into account wages paid by another employer.

One such situation is where both employing units are owned or controlled by the same interests. In the other instance, an employer which succeeds to the business or substantially all of the assets of another employer or distinct severable portion thereof is treated as a single unit with its predecessor for the purpose of the wage limitation in the year in which the succession occurs, provided that the predecessor was also liable for the payment of contributions. (Section 235)

EXAMPLE: On April 1, 2018, Jones buys from Brown an established drug store already liable for the payment of contributions. Brown had already paid a pharmacist wages of \$5,000 in the period January 1 through March 31 and had paid contributions on those wages. Jones hires the same pharmacist and pays him wages of \$34,500 in the period from April 1 to December 31. Jones is required to pay contributions on only \$7,960 of the \$34,500 which he paid the pharmacist.

In computing the wage limitation for any calendar year, an Illinois employer may count the wages paid by it to a worker on which it has to pay contributions to another state or states.

EXAMPLE: Taylor, a building contractor, hires a carpenter to work on a project in Wisconsin in the Spring of 2018 and pays him \$8,000 for such work. Since all the work is performed in Wisconsin, he pays contributions on the \$8,000 to the State of Wisconsin. In the Fall of 2018, Taylor hires the same carpenter to work on a project in Chicago. He pays him wages of \$8,000. Taylor is required to pay contributions to Illinois on only \$4,960 of the \$8,000 paid for work in Illinois.

V. RATE OF CONTRIBUTION

The entry level contribution rate for employers, except nonprofit organizations and governmental entities that elect to reimburse benefits in lieu of paying contributions is the GREATEST of the following four rates:

1. 2.7 percent;
2. 2.7 percent times the adjusted state experience factor;
3. The rate determined by the employer's Economic Sector in the North American Industry Classification System (NAICS), which is based on the average contribution rate for all experience rated employers in that specific Economic Sector (or a similar system sanctioned by the U.S. Secretary of Labor and established by rule); or
4. A rate determined in accordance with the experience rating provisions of Sections 1501 through 1507 of the Act, but only if the employer has had at least 13 consecutive months experience with the "risk of unemployment."

As used in Section 1500 of the Act, the "risk of unemployment" means the possibility that the wages paid by an employer could become base period wages for an individual.

EXAMPLE: A sole proprietor begins business on February 1, 2017. On April 1, 2017, the proprietor hires his first employee who begins work on that date. Assuming the proprietorship becomes liable for the payment of contributions for calendar year 2017, April, 2017 is the first month in which the proprietorship faces the risk of unemployment since it is the first month that the proprietor paid wages that could become base period wages.

The greatest of these entry level rates is applicable to those employers that have not qualified for a variable contribution rate determined on the basis of their previous experience with the risk of unemployment because they have less than three years of liability under the Act.

A. Payment of Contributions

Except for certain employers of only household workers (See 56 Ill. Adm. Code 2760.128 and Section 1400.2), contributions are payable and wage reports must be filed quarterly - on or before April 30, July 31, October 31, and January 31, respectively - for the preceding quarter, but may be accelerated by the Director. An employing unit that becomes newly liable under the law must file its first wage report and pay its first contributions on or before the end of the month following that quarter in which it became liable.

Liability is always for the ENTIRE calendar year once the employing unit becomes liable, and contributions are due on the entire taxable payroll since the preceding January 1.

The amount of wages upon which the employer is liable for payment of contributions may vary from year to year according to the different amount set by law. The principle of liability expressed in the two following examples remains valid despite statutory changes to the wage base.

EXAMPLE: An employer which has previously not been liable for the payment of contributions and has one or more workers in employment within each of five calendar weeks in the first quarter of 2018 (January, February and March), within each of five calendar weeks in the second quarter (April, May and June) and within each of ten calendar weeks in the third quarter (July, August and September) must file its first report and pay contributions by October 31, 2018.

The employer must report by quarter all wages paid by it in 2018 from January 1 to September 30, and pay contributions on all such wages up to the taxable wage limit of \$12,960 applicable to 2018 for each worker, whether part-time or full-time, steady or extra.

The employer makes its next report and payment in January 2019 covering wages paid in October, November and December 2018, but pays contributions only on wages paid to each worker not in excess of the first \$12,960 paid to such worker in 2018. If this employer had 25 or more workers in its employ in 2018, it must file monthly wage reports beginning in July, 2019.

EXAMPLE: An employer, not previously liable for the payment of contributions, which pays \$1,500 or more in wages to its worker or workers within the second quarter of 2018 (April, May and June) must file its first report and pay contributions by July 31, 2018. It must report by quarter all wages paid by it in 2018 from January 1 to June 30, and pay contributions on all such wages up to \$12,960 for each worker. The employer makes its next report and payment by October 31, 2018, covering wages paid in July, August and September 2018, but pays contributions only on wages paid to each worker not in excess of the first \$12,960 paid each worker in 2018.

The employer makes its fourth quarter report and payment by January 31, 2019, paying contributions only on wages paid to each worker not in excess of the first \$12,960 paid to such worker in 2018. If this employer had 25 or more workers in its employ in 2018, it must file monthly wage reports beginning in July, 2019.

Whether an employer had 25 or more workers in its employ is determined by counting the total number of social security numbers reported by the employer during the prior year.

The fact that the Director has not sent a newly liable employer a contribution report or notice that it is liable is NOT an excuse for late payment. **THE DUTY OF REGISTERING AND COMPLYING WITH THE LAW RESTS UPON THE EMPLOYER.**

If a newly liable employer does not have enough time to get the proper forms and still file them on time, it should compute the amount of contributions it owes the Director and mail its check or money order, with an explanatory letter and a list of its employees' names, social security numbers and the amount of wages paid to each employee during each quarter involved.

B. Penalties For Failure To File Reports

An employer that fails to file a timely quarterly wage and contribution report must pay a penalty for each month or part of a month that the report was late. **The Department accepts a post mark by the U.S. Postal Service as the date of filing a report or making a payment. If a private delivery service is used, however, the date of filing or payment is the date that the report is actually delivered to the Department unless the private delivery service is one recognized by the Internal Revenue Service pursuant to 26 USC 7502(f). The names of recognized delivery services can be found in IRS Notice 2004-83 or its later revision.** (56 Ill. Adm. Code 2725.11)

The penalty for failing to file a timely quarterly wage and contribution report or monthly wage report is \$5 for each \$10,000 or fraction thereof of the total wages for insured work paid by it during the period or \$2,500 per month, whichever is less. The maximum penalty is \$10 for each \$10,000 or fraction thereof of the total wages for insured work paid during the period or \$5,000, whichever is less.

Pursuant to rule, all employers with 25 or more employees (not necessarily all 25 at the same time) during the preceding calendar year must file their quarterly wage and contribution reports electronically. An electronic filer that files on paper is still subject to the imposition of the penalty.

While there is a phase in period, by July 1, 2014, all employers with 25 or more employees in the preceding calendar year are required to file monthly wage reports, though some waivers may be applicable.

THE PENALTY FOR LATE FILING CAN IN NO INSTANCE BE LESS THAN \$50.

The penalty for failure to timely file these forms accrues even though the contributions or payments in lieu of contributions due were paid on time. An employer that has paid wages in a calendar quarter (or month, if applicable), all of which wages are in excess of the particular taxable wage base applicable to each worker in the particular calendar year, must also file its quarterly (or monthly) report on time, even though no contributions are due. Failure to do so will also result in the imposition of a penalty. (Section 1402). An employer that has paid no wages during a calendar quarter (or month, if applicable) must file a "zero" wage report or face the imposition of a penalty.

Employers that willfully fail to pay contributions or to make payments in lieu of contributions when due, with intent to defraud, may be subject to a penalty equal to 60 percent of the amounts due. In no instance can this penalty be less than \$400. (Section 1402)

If, for any reason, an employer is not able to make a timely payment, it should complete the wage and contribution report and return it by the due date. In this way, the employer avoids having to pay a penalty. The employer must, however, pay interest on the unpaid contributions or reimbursement.

C. Waiver of Interest and Penalties

The Director of Employment Security is authorized to waive the payment of all or part of any interest and penalty upon proper application and showing of good cause. (Sections 1401 and 1402)

Good cause has been defined by Department rule to consist of any or all of the following:

1. Where the delay was caused by the death or serious illness of the employer or a member of his immediate family, or by the death, or serious illness of the person in the employer's organization responsible for the preparation and filing of the report or for making the payment.
2. Where the delay was caused by the destruction of the employer's business records by fire or other casualty without fault.
3. Where the Department, in its written communication or through a specifically identified employee in oral communication directed to a specific employer account, affirmatively misled the employer as to its duties and obligations such that the charging of interest to the employer would violate the principle of equitable estoppel.
4. For the purposes of waiver of interest only: Where the employer relied to its detriment on a certificate issued by the Director pursuant to Section 2600 of the Act and the Director agrees, at a later date, that the certificate was issued in error, such waiver shall be granted from the date the erroneous certificate was issued to a date 30 days after notice that the original certificate was in error.

Interest can also be waived according to Department rule whenever the employer can demonstrate extreme financial hardship and files with the Director a repayment agreement. However, the waiver in this instance only applies to additional interest that would have accrued during the period of the repayment agreement. (56 Ill. Adm. Code Section 2765.65)

The Director will waive interest for a nonprofit organization or for a local governmental entity, if:

- a. The organization or entity had never filed any of the reports or forms required of it under the Act; and
- b. It had not been determined to be the "chargeable employer" as result of the filing of an unemployment insurance claim; and
- c. Its chief operating officer files an affidavit with the Director in which he states that, upon learning of the organization or entity's liability under the Act, he took immediate action to bring the organization or entity into compliance. (56 Ill. Adm. Code 2765.70)

The Director can grant a waiver of interest to certain nonprofit hospitals that have sustained large operating losses and that enter into deferred payment agreements with the Director. (56 Ill. Adm. Code 2765.73)

The Director will also waive any interest accruing due to a delay that is the fault of the Department of more than 180 days in the issuance of a decision on a protested Determination and Assessment. (56 Ill. Adm. Code 2765.71)

The Director shall also waive the penalty if:

- a. The contributions due for the delinquent quarter are less than \$500, except for an employer which has elected to make payments in lieu of contributions and, therefore, pays no contributions;
- b. The employer files its request for waiver within 30 working days of the mailing of a notice that its report is delinquent; and
- c. The employer has not been delinquent in the filing of reports for the 20 prior consecutive calendar quarters or, in the case of a monthly filer, 20 prior consecutive reporting periods (months and/or quarters). (Section 1402 and 56 Ill. Adm. Code 2765.68)

In order to allow for the annual filing of wage reports and the annual payment of contributions by certain employers of only household workers (See 56 Ill. Adm. Code 2765.61 and Section 1400.2), the statute has extended the time to file such reports and pay any contributions due to April 15 of the year following the quarters for which such reports and payments would otherwise have been due.

D. Filing Reports Under Protest

If an employer disputes its liability, it should fill out the wage and contribution report marking it “under protest” and mail it to the Department pending a final decision concerning its liability.

Nevertheless, if an assessment for unpaid contributions is made, it must still file a protest to the assessment in order to get a hearing and to prevent the assessment from becoming legally final. Payment of contributions at the time the combined form is filed or the payment of a reimbursement bill when due under protest will avoid the accrual of interest if the employer is ultimately determined to be liable for the payment of such contributions or reimbursement.

E. Overpayments And Underpayments

In the event that an employer overpays the amount due in one quarter, it may obtain an adjustment of payment in some subsequent quarter if it makes proper application not later than three years after the date on which the payments were erroneously paid. (Section 2201)

For refunds of overpaid contributions, penalties or interest, interest shall be paid by the Director, if such refund is not mailed within 90 days of the date of the claim for the refund. This interest is computed at the rate of 1.5 percent per month. (Section 2201.1)

In the event of an underpayment of the amounts due, outstanding amounts should be paid as promptly as possible, inasmuch as interest accrues on all late payments and credit for FUTA purposes might also be adversely affected. (56 Ill. Adm. Code 2765.63)

The Department will send employers a statement of account. However, the employer should not wait for this statement to pay deficiencies.

In preparing the quarterly wage and contribution report, the employer should be sure that the report is completely and accurately filled out. It is of the utmost importance that the name, social security number and the full amount of wages paid to each worker during the quarter be accurately listed. This same care needs to be made by employers that are required to file monthly reports.

If the Department finds an error in a wage report, it may notify the employer to file a corrected report. If the employer fails to file a corrected and sufficient report within 30 days from the date the request for the correction was mailed to it, it must pay, in addition to interest, the penalty for each month or part of a month (BUT NOT LESS THAN \$50) on the total wages for the quarter in question. (Section 1402)

If an employer finds an error in its wage reports, it should notify the Department.

VI. EXPERIENCE RATING**A. Introduction**

“Experience rating” is designed to perform three functions:

1. Replenish the unemployment trust fund for the amount of benefits paid from it in a recent period.
2. Control the size of the unemployment trust fund to prevent it from falling to dangerously low levels or rising to unduly high levels.
3. Allocate the cost of fund replenishment among employers on the basis of their experience with unemployment.

These functions are accomplished through a variation in the contribution rate of each employer which has incurred liability for the payment of contributions at the current new employer rate for the required number of years. This contribution rate is based on the employer’s experience with the risk of unemployment.

In addition to considering the individual unemployment experience of each employer, the State also takes into consideration the unemployment experience of the entire State in setting rates under the experience rating system. The unemployment experience of the State is measured by a formula set by statute and adjusted depending on the financial condition of the State’s trust fund. This percentage is known as the adjusted state experience factor.

A “fund building” surcharge is added to each employer’s computed contribution rate. (Section 1506.3) The fund building surcharge provides for additional funds for the payment of benefits and, in times when the trust is depleted, provides a source for the repayment of loans or bonds which might be issued to replenish the depleted fund. For 2014 through 2017, the fund building surcharge was 0.55 percent. For each year after 2017, if there were no bonds outstanding as of October 31 of the immediately preceding calendar year, then the fund building surcharge will float between 0.40 percent and 0.55 percent based on the rate adjustment applicable in Section 1400.1. Under Section 1400.1, based on the prior year’s trust fund balance, the rate adjustment to the fund building surcharge could be zero, or it could increase or decrease the fund building surcharge by 0.05 percentage point or 0.025 percentage point. For 2018, the fund building surcharge is 0.525%.

The experience rating provisions of the Unemployment Insurance Act and this chapter do not apply to nonprofit organizations or local governmental entities for any period during which they have elected to reimburse benefits, in lieu of paying contributions. Such employers should refer to the chapters on nonprofit and governmental entities.

For the first three consecutive calendar years in which liability for the payment of contributions is incurred, an employer that first becomes subject to the Illinois Unemployment Insurance Act pays contributions on its taxable payroll at a rate equal to the greatest of: (Section 1500)

1. 2.7 percent;
2. 2.7 percent multiplied by the current adjusted state experience factor;
3. The rate determined by the employer’s Economic Sector in the North American Industry Classification System (NAICS), which is based on the average contribution rate for all experience rated employers in that specific Economic Sector (or a similar system sanctioned by the U.S. Secretary of Labor and established by rule) (Section 1500); or
4. A rate determined in accordance with the experience rating provisions of Sections 1501 through 1507 of the Act, but only if the employer has had at least 13 consecutive months experience with the “risk of unemployment.”

For each calendar year thereafter, so long as the employer’s liability continues, it earns a variable contribution rate. However, if in any subsequent calendar year the employer pays NO WAGES, it will lose its variable rate and will be subject to the above provisions for three additional years.

The experience rating system in Illinois has four essential features:

1. It rests on the principle that the fund from which benefits are paid to eligible claimants within a given period should be replenished in a subsequent year or years.
2. It provides that the rate of contribution for an individual employer shall be determined not only by its own experience, but also by the benefit payment experience of the entire State. Thus, favorable experience in the State will tend to lower the rates of employers generally, while unfavorable experience will tend to raise the rates for employers generally. (Sections 1504 and 1505)
3. It provides that, should the fund become too large, the state experience factor will be adjusted so as to scale contribution rates downward. On the other hand, should the fund become too small, the state experience factor will be adjusted so as to scale contribution rates upward. (Sections 1504 and 1505)
4. The amount of benefits paid to workers become the employer's benefit charges (one of the factors governing the rate of contributions for an individual employer) only when such workers or former workers have drawn benefits in any benefit year. (Sections 1502 and 1502.1)

The following discussion and illustrations show how these four factors operate in determining the contribution rate applicable to an employer.

B. Employer's Benefit Ratio

The actual amount of benefits paid to each former worker is the numerator of the fraction which is known as the employer's benefit ratio.

The numerator of this fraction consists of what are called benefit charges. A benefit charge is equal to the actual amount of benefits (including dependents' allowances) paid to the former worker. Benefit charges are assessed only to the last employer which employed the individual for at least 30 days from the beginning of his base period to the week for which a benefit charge is being made.

Because there are several exceptions to this provision, it will be necessary to examine the statute to determine whether the facts of each situation are such as to make one the chargeable employer. (Section 1502.1 and 56 Ill. Adm. Code 2765.325 *et seq.*)

Because benefits are charged to the single chargeable employer of the individual instead of to multiple base period employers, in order to minimize the effect on the state experience factor, an employer's benefit charges are multiplied by a "benefit conversion factor" to determine the numerator of its benefit ratio. (Section 1502.2)

1.	Total benefits paid to former employees for whom the employer is the chargeable employer 7/1/15 - 6/30/18	\$90,000
2.	Total wages subject to the payment of contributions 7/1/15 - 6/30/18	\$3,000,000
3.	Inserting the above amounts into the formula (for 1993 and each calendar year thereafter, the Benefit Conversion Factor is 138.4 percent) yields the following:	
<div><div><div><div><div><div></div><div><i>Total Benefit Charges</i></div></div><div><div><i>X Benefit Conversion Factor</i></div><div><div></div><div></div></div></div><div><div></div><div><i>\$124,560</i></div></div><div><div></div><div><i>\$3,000,000</i></div></div></div><div><div></div><div><i>=</i></div><div><i>4.1520 percent (Employer's Benefit Ratio)</i></div></div></div></div></div>		

C. The State Experience Factor

The second factor in establishing the contribution rate of an individual employer is the state experience factor. (Section 1504) The state experience factor is the sum of all regular benefits paid during the three-year period ending on June 30 of the year immediately preceding the year for which a contribution rate is being determined plus the applicable “benefit reserve for fund building” divided by the “net revenue” for the three-year period ending on September 30 of the year immediately preceding the year for which a contribution rate is being determined. Each of these terms is defined in the Act.

Even though the Illinois experience formula is designed to replenish the fund reserved for benefit payments, there is always a possibility that the fund might diminish to a danger point.

Similarly, it is possible that, in a period of low benefit payments in relation to contributions receipts, the fund might accumulate a greater amount of money than may be considered reasonable.

To safeguard the fund against either depletion or excessive accumulation, the Unemployment Insurance Act provides that the state experience factor be increased when the fund is dangerously low and decreased when it is excessively high. (Section 1505)

EXAMPLE:

1.	The sum of all regular benefits paid plus the applicable "benefit reserve for funding building" for the applicable 3-year period	\$3,600,000,000
2.	"Net Revenue" for the applicable 3-year period (accrued (not received) during the same 3-year period as above).	\$2,900,000,000
3.	Inserting the above amount into the formula yields the following:	
<i>Sum of all regular benefits paid plus the applicable "benefit reserve for fund building" for the applicable 3 - year period</i>		<i>\$3,600,000,000</i>
		=
<i>"Net revenue" for the applicable 3 - year period</i>		<i>\$2,900,000,000</i>
		<i>= 124 percent</i>
		<i>State Experience</i>
		<i>Factor</i>

For every \$50,000,000, or fraction thereof, by which the amount in the fund on June 30 preceding the calendar year for which contribution rates are being computed falls below the “target balance” in the fund, the state experience factor for the year for which contribution rates are being computed is to be increased by one full percentage point absolute. (Section 1505C)

On the other hand, for every \$50,000,000, or fraction thereof, by which the fund, on that June 30, exceeds the “target balance”, the state experience factor for the rate year is to be decreased by one full percentage point absolute. For 2005 and each calendar year thereafter, the “target balance” is \$1,000,000,000. (Section 1505C)

As an example, if the unadjusted state experience factor was 95 percent, and the fund on the June 30, 2002 was \$115,000,000, the state experience factor for that year would be adjusted upward to 108 percent for 2003. If the amount in the fund was \$785,000,000, the state experience factor would be adjusted downward to 94 percent for 2003.

The Department of Employment Security announces the adjusted state experience factor each year, usually in the month of October, for the following rate year. The adjusted state experience factor was 112 percent for 2016, 106 percent for 2017, and 100 percent for 2018. (Section 1505D)

D. Fund Building Rate

In order to build up adequate reserves in the trust fund, for years prior to 2004, there is added to each employer's contribution rate a fund building rate, equal to 0.4 percent. For 2004, the "fund building" rate was 0.7 percent; for 2005, it was 0.9 percent; for 2006 and 2007, 0.8 percent; for 2008, 0.6 percent; for 2009, 0.4 percent; for 2010, 0.45 percent; for 2011, 0.5 percent; and for 2012 through 2017, 0.55 percent. The fund building rate is 0.525 percent for 2018. This rate applies to all taxable employers subject to the Act. The increase in the "fund building" rate for 2004 and thereafter serves the dual purpose of providing adequate reserves in the trust fund and also provides a source for the repayment of any bonds which might be issued by the Department when the trust balance becomes so low that issuing bonds is the only alternative to borrowing the needed funds from the federal government. Bonding may be a preferred alternative to borrowing from the federal government.

However, for employers whose total wages for insured work for a quarter are less than \$50,000, that employer's contribution rate, including the fund building rate, shall not exceed 5.4 percent.

This limitation does not apply to a newly liable employer which has its contribution rate determined by the average rate of employers within its Economic Sector in the North American Industry Classification System (NAICS). (Section 1506.3)

E. Computation of the Contribution Rate

The contribution rate of an employer is the product obtained by multiplying the employer's benefit ratio for that calendar year by the adjusted state experience factor for that same year. (Section 1506.1)

The maximum contribution rate is limited to the greater of 6.4 percent or 6.4 percent multiplied by the adjusted state experience factor. In addition to the employer's regular contribution rate, there will be a permanent "fund building" rate.

Because the adjusted state experience factor is 106 percent for 2017, the maximum contribution rate for 2017 was 7.35 percent (this figure includes the 0.55 percent fund building rate). The maximum contribution rate for 2018 is 6.925 percent (this figure includes the 0.525 percent fund building rate).

Employers whose total payroll in a calendar quarter is less than \$50,000 will have a maximum rate of 5.4 percent.

For all employers that qualify for a variable rate, the minimum experience-based portion of the contribution rate is the greater of 0.2 percent or the product obtained by multiplying 0.2 percent times the adjusted state experience factor, except that, for 2012 through 2019, the experience-based portion of the contribution rate shall be 0.0 percent. (Section 1506.1) The experience-based portion of the contribution rate is added to the applicable "fund building" surcharge (see VI. EXPERIENCE RATING). For 2014 through 2017, the minimum rate was 0.55 percent, which includes the 0.55 percent fund building rate for those same years. For 2018, the minimum rate is 0.525 percent, which includes the 0.55 percent fund building rate.

An employer which has qualified for a variable contribution rate, has benefit charges but did not report wages for insured work for the applicable period, shall pay at the maximum contribution rate applicable to employers for that year, plus the fund building rate. An employer that had no benefit charges during the computation period applicable to that year, and that did not report wages for insured work for the applicable period, shall pay at the rate applied to new employers for that year, plus the applicable fund building rate. (Section 1506.1)

Variable contribution rates are assigned automatically. No application for a rate is necessary except where an employer has purchased a separate part of another's business.

When an employer sells or otherwise transfers a part of its business, there are certain conditions under which its prior experience rating record may be transferred to the purchaser.

F. Total Transfer Of Experience Rating Record

Whenever an employer transfers substantially all of its business to another, the successor is assigned the entire experience rating record of the predecessor. (Section 1507)

This record includes all years during which liability for the payment of contributions was incurred by the predecessor, all benefit charges, and all wages for insured work on which the contributions were paid by the predecessor.

If the purchasing employer previously had a contribution rate assigned to it for the calendar year in which the purchase occurs, such rate will be continued for it for the balance of the year. If no rate had previously been determined for the successor employer, the predecessor's contribution rate will be assigned to it for the calendar year in which the purchase occurs.

In subsequent years, the consolidated experience rating records of both employers will be the basis for computing the successor's contribution rate.

G. Partial Transfer of Experience Rating Record

Provision is made in the law for the partial transfer of an experience rating record under certain conditions. (Section 1507B) Such provision applies to the employer that has transferred substantially all of its business to another, but retains a distinct severable portion.

Likewise, the provision permits the purchaser of less than substantially all of another's business to acquire a portion of the predecessor's experience rating record, if the purchaser has succeeded to a distinct severable portion.

The conditions that must be met before partial transfer of an experience rating record is permitted are:

1. The portion of the business retained or transferred must be distinct and severable. Only under such conditions can the experience rating record of the portion be identified and segregated.
2. Unlike total transfers of experience rating records, partial transfers are not mandatory. Accordingly, a partial transfer cannot be put into effect unless it is preceded by a joint application for such transfer by all parties whose interest would be affected by it.
3. Since a partial transfer can possibly be used as a device to shift poor experience with unemployment risk by the reorganization of an employing unit or by splitting it into two or more employing units, the Act provides that if the parties to a reorganization are owned or controlled by the same interest, and if a partial transfer is approved, they are to be treated, while so affiliated, as a single unit for the purpose of determining their contribution rates.

The law provides time limits for the filing of an application for partial transfer.

The application must be filed prior to whichever of the following is the LATEST:

1. One year after the date of the transfer of the business;
2. The date the contribution rate determination of the applicant became final for the year following the year in which the transfer of the business occurred.

Employers that contemplate filing applications for a partial transfer of experience rating records are urged to examine carefully all implications of such action.

THE FILING OF A TIMELY APPLICATION CANNOT AFFECT ANY CONTRIBUTION RATE DETERMINATION THAT HAS BECOME FINAL.

The contribution rates of both the predecessor and the successor may be affected either favorably or unfavorably depending on the nature of the benefit experience to be transferred. Under the law, once an application for partial transfer has been approved, it becomes final as to all parties to the application.

H. Revision of the Statement of Benefit Charges

The Department of Employment Security mails to each employer liable for the payment of contributions, a quarterly Statement of Benefit Charges that have been entered on its experience rating record. An employer has 45 days from the date of mailing of the Statement of Benefit Charges within which to file an application for its revision. (Section 1508)

In the absence of such application for revision, the statement is final and conclusive.

Upon receipt of a sufficient and timely application for revision, the Director rules thereon, denying or allowing it on the merits of the allegations presented in support of revision.

If the application is denied, the Director shall issue an order to that effect, which becomes final and conclusive at the expiration of 20 days from the mailing date of the order. However, within the 20-day period, the employer may file a written protest and petition for hearing specifying its objections to the order.

Upon receipt of a sufficient petition, that is, one which states a legal or factual basis for relief, either relief will be granted or a hearing will be scheduled before a representative of the Director. This hearing is conducted in a manner similar to hearings on Assessments and Claims For Refunds.

An employer does not have the right to object to benefit charges shown on the Statement of Benefit Charges unless it can show that such benefit charges arose as a result of benefits paid to a worker in accordance with a finding, determination or a Referee's decision, to which such employer was a party entitled to notice thereof, and that it was not notified as required by the appropriate provisions of the Act.

However, in no case is an employer precluded from alleging at the hearing that the statement of benefit charges is incorrect by reason of clerical error made by the Director or any Department employees.

Benefit charges shall be canceled if the employer proves that the Department failed to give notice of any of the following:

1. A notice of claim to the last employing unit,
2. A nonmonetary determination or a Referee's remanded decision,
3. A reconsidered finding or a determination,
4. A Referee's decision allowing benefits, or,
5. A decision of the Director or the report of the Director's representative involving a labor dispute.

For a charge to be canceled, notice must not have been given within 180 days of the relevant date prescribed by the Act, and the failure to give notice must have directly resulted in the payment of benefits and hence have caused the benefit charges to accrue to the employer's experience rating record. (Section 1508.1)

I. Review of a Notice of Contribution Rate

Each employer, except nonprofit and local governmental entities that have elected to reimburse benefits in lieu of contributions, is notified each year of its contribution rate for such year. (Section 1509)

This notice is usually mailed at the end of the year prior to the one for which it applies. A contribution rate is final and conclusive upon the employer unless, within 15 days after the date of mailing of the notice of such rate, the employer files an application for its review. Such application must state the employer's reasons for its belief that the assigned contribution rate is incorrect.

Upon receipt of a sufficient application for contribution rate review (56 Ill. Adm. Code 2725.105), if the application is allowed, the contribution rate will be corrected and, if the rate changes, notice of the correction mailed to the employer.

In the event the application is denied, the Director will issue an order to that effect. Such order is final and conclusive at the expiration of 10 days from the date of mailing of such order, unless, within the 10-day period, the employer files a written protest and petition for hearing, specifying its objections to the order. These objections must state a legal and factual basis for relief.

Upon receipt of a sufficient protest and petition for hearing, either relief will be granted or a hearing will be scheduled before a representative of the Director. The hearing is conducted in a manner similar to that provided by the Act for determination and assessment hearings. At this hearing, the employer may present witnesses and exhibits to establish its contentions. (56 Ill. Adm. Code 2725.250)

Upon conclusion of the hearing, the Director's Representative submits to the Director a report and recommendation for disposition of the matter. A copy of this report is mailed to the employer.

The employer has the right to file specific objections to the representative's report within 20 days after the report's mailing date. (56 Ill. Adm. Code 2725.275)

If no objections are filed within the time allowed, the recommendation of the Director's Representative becomes the Director's Decision without further action by the Director.

Upon receipt of the objections to the report, the Director issues a decision and gives notice by mail of such decision to the employer. (56 Ill. Adm. Code 2725.280)

This decision is final and conclusive unless review is requested in the courts under the Administrative Review Act.

J. SUTA Dumping

If an individual or entity transfers all or a portion of its trade or business and there is any substantial common ownership, management or control of the transferor and transferee, the experience rating records attributable to the transferred trade or business shall be transferred to the transferee, except that, if the transferor or transferee had a contribution rate applicable to it for the calendar year in which the transfer occurred, it shall continue with that contribution rate for the remainder of the calendar year and, and if the transferee had no contribution rate applicable to it for the calendar year in which the transfer occurred, the contribution rate of the transferee shall be the same as the contribution rate of the transferor for the remainder of the calendar year. Additionally, if an individual or entity that is not an employer under the Act acquires the trade or business of any employing unit, the experience rating record of the acquired business shall not be transferred to the individual or entity if the Director finds that the individual or entity acquired the business solely or primarily to obtain a lower contribution rate. Violations of this provision carry substantial penalties. An individual or entity that knowingly advises another in a way that results in a violation of this provision can be found guilty of a Class B misdemeanor and be subject to an administrative penalty of \$10,000 per violation. (Section 1507.1).

VII. PROTESTS AND HEARINGS ON ASSESSMENTS AND REFUNDS

A. Protests

When an employer fails to pay contributions or to reimburse benefits as required by the law, the Director makes an assessment which includes the amounts due, interest, and if the employer has failed to file wage reports on time, penalties. (Section 2200)

An employer that disagrees with an assessment by the Director must file a protest and petition for hearing. This protest must be in writing, set forth the specific reasons why the employer contends that the assessment is incorrect and must include a legal and factual basis for relief. (56 Ill. Adm. Code 2725.110)

The written protest must be filed with the Department within 20 days after a notice of the assessment is mailed to the employer. This protest must be delivered in person, postmarked, or filed on MyTax Illinois within the 20-day period (see X. FORMS AND REPORTS REQUIRED). While the law does not require it, it is advisable to send such a protest by certified mail and obtain a receipt, since the employer bears the risk of nondelivery.

If a timely protest is not filed, the assessment will become final, and the employer will have lost its right to deny liability for the amounts allegedly due.

An employer that disagrees with an assessment by the Director may avoid the possible further accumulation of interest by paying the contributions or making the reimbursement due, together with the accrued interest to date, and filing a claim for refund of such payment. (Section 2201)

If the claim for a refund is denied, the employer may petition within 20 days after the notice of the denial is mailed. This will serve the same purpose as a protest to an assessment, and the payment prevents the further accumulation of interest. **However, the employer must not let the assessment become final, or it will lose its right to question its liability for the contributions assessed.**

In the event the employer does not wish to pay the contributions or the reimbursement amount and file a claim for refund, but does wish to avoid the filing of a lien against its property by the Director, it may furnish a bond supplied by an authorized bonding company in the amount of 125 percent of the sum of the contributions or the reimbursement amount, interest and penalties allegedly due. (Section 2401D)

An employer that believes it has paid contributions or amounts in reimbursement of benefits, interest or penalties in error may file with the Director a claim for adjustment or refund within three years after the date on which such payments were made, provided that the payments were not made pursuant to an assessment that became final.

Note: Whenever an employer purchases another business or the assets of another business, it should obtain a certificate from the Director that the seller does not owe contributions, penalties or interest to the Director. Without such a certificate, the purchaser may be liable for the unpaid debt. Since the Director was not a party to the purchase agreement, this is true even if the purchase agreement provides that the purchaser is not liable for the debts of the seller. (Section 2600)

The claim for adjustment or refund form can be obtained on-line or from:

Illinois Dept. of Employment Security
Employer Hot Line
33 South State Street
Chicago, Illinois 60603
(800)247-4984

After an investigation has been made, an order is entered either allowing or denying the claim in whole or in part. If the claim is denied either in whole or in part, a notice of such denial is mailed to the employer.

The denial becomes final and cannot be contested unless the employer files a written protest and petition for hearing within 20 days from the date of mailing of the notice of denial.

All or any part of any penalty or interest may be waived by the Director for good cause shown. (Sections 1401, 1402, and 56 Ill. Adm. Code Section 2765.65)

An employer has 30 days from the date that the late payment or delayed report became due or from the date of mailing of the notice that such payment or report was untimely, whichever is later, to file a sworn written application for waiver of the interest and/or penalty.

An application is not complete unless it contains the name and address of the employer, the UI account number, the period involved and the reasons for the waiver. The Director will issue an order granting or denying the waiver. An employer has 20 days from the date the order is mailed in which to file an appeal to such order.

B. Hearings

Telephone or in-person hearings on assessments or denials of a claim for refund are held by hearing officers as representatives of the Director. (56 Ill. Adm. Code 2725.220) **The General Assembly, with the approval of the Governor, has allocated one million dollars to provide free legal assistance to “small employers” (less than 20 employees during two of the four quarters preceding the request for free assistance) at Departmental hearings. To implement this provision, the Department contracted with a private law firm to provide this assistance. A contact telephone number is printed on decisions, orders, etc., the appeals of which are covered by this program.**

After hearing the evidence, the Director’s Representative files a report with the Director, summarizing the evidence and making a recommendation to the Director that the assessment be either affirmed, modified, canceled, or that the claim for refund be allowed, denied or allowed in part.

A copy of this report is sent to the employer, which may file specific objections to it within 20 days after the date of mailing of such report. A 10 day extension can be granted if requested in writing within 10 days of the date of mailing of the report and recommended decision.

If no objections are properly filed or if the Director does not modify or cancel the assessment on his own motion within the 20-day period, the recommended decision becomes the final decision of the Director.

If objections are filed, the Director will issue a decision that may either adopt the report of the Director’s Representative or modify it in accordance with the evidence and the law.

If the Director issues a decision after the hearing either affirming an assessment in whole or in part, the employer may obtain judicial review of the decision under the Administrative Review Act by filing a complaint in the Circuit Court of the County in which the hearing was held. This complaint must be filed within 35 days from the date the decision was mailed.

VIII. STATE OF ILLINOIS AND LOCAL GOVERNMENTAL ENTITIES

In 1972, the Unemployment Insurance Act was amended to extend its coverage to the State and each of its instrumentalities.

In 1978, coverage under the Illinois Unemployment Insurance system was extended to workers employed by local governmental entities. Although these entities continue to be exempt from the taxing provisions of the Federal Unemployment Tax Act, they are required to pay contributions under Illinois law. (Section 1405)

However, they may elect, instead, in lieu of paying contributions, to reimburse the State for the actual amount of any benefits paid to their former workers. (Section 1405)¹

Local governmental entities electing to reimburse benefits, like all other employers, are required to file quarterly Wage Reports listing the name and social security number of each worker and the total wages paid to each worker for employment during the calendar quarter. (Section 1400)

Consequently, employees of the State and its instrumentalities and of local governmental entities, unless their services are specifically excluded from coverage, can qualify for benefits on the basis of the wages paid them by their employers, if they meet the eligibility requirements set forth in the law. The rights and responsibilities of governmental employees with respect to unemployment benefits do not differ from those of other workers.

A. Definition of Local Government Entities

The law defines a local governmental entity as any political subdivision or municipal corporation of this State or any of its instrumentalities, or an instrumentality of more than one of the foregoing, or any instrumentality of any of the foregoing and one or more other states or political subdivisions. (Section 211.1)

Local governmental entities are “employers” subject to the Act REGARDLESS of their past or current employment experience, the number of workers providing services for them, the size of their payroll or the fact that the governmental unit is exempt from the Federal Unemployment Tax Act pursuant to Section 3306 (c)(7) of that Act.

All local governmental entities are subject to the Unemployment Insurance Act. However, the law excludes from coverage as “employment” certain services performed in the employ of such entities. No taxes are assessed and no benefits become payable with respect to the excluded services.

B. Services Excluded from Employment

Individuals who provide services for a governmental unit are in the insured employment of that employing unit regardless of whether they are full time, part time, or temporary workers, or whether they receive wages in cash or in any other form of remuneration.

However, certain services are excluded from insured employment pursuant to specific exemptions under the law. (Section 220)

When services are excluded, individuals performing such services are not considered in insured employment.

An individual’s service for a governmental entity is excluded if it falls within any of the following exceptions²:

¹Sections 205, 211.1, 220 and 1405 of the Act were amended and Section 205.1 was added by Public Act 92-0555. These changes were made to comply with the Federal Unemployment Tax Act as amended by the Consolidated Appropriations Act. These Sections were amended to consider service performed in the employ of an Indian tribe as employment. In addition, the amendment to Section 1405 allows Indian tribes to elect to make payments instead of contributions.

² Exclusions similar to 1, 2, 4, 5, 6, 7 and 8 apply to service in the employ of an Indian tribe. (Section 220)

1. As an elected official; (Section 220)
2. As a member of a legislative body, or a member of the judiciary of this State or a political subdivision or municipal corporation; (Section 220)
3. As a member of the Illinois National Guard or Air National Guard; (Section 220)
4. As a worker serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; (Section 220)
5. In a position that, under or pursuant to the laws of this State, is designated as a major nontenured policymaking or advisory position, or as a policymaking position the performance of the duties of which ordinarily does not require more than eight hours a week; (Section 220)
6. As a part of an unemployment work relief or work-training program assisted or financed in whole or in part by any federal agency or agency of this State, or a political subdivision or municipal corporation, by an individual receiving such work relief or work training; (Section 220)
7. In a facility, in a program conducted for the purpose of the rehabilitation of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or a program providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; (Section 220)
8. By an inmate of a custodial or penal institution; (Section 220)
9. In the employ of a school, college or university, by a student who is enrolled and is regularly attending classes at such school, college or university, or by the spouse of such a student, if the spouse is advised, at the time the spouse commences to perform such services, that:
 - a. the employment of the spouse to perform such services is provided under a program to provide financial assistance to the student by the school, college or university, and
 - b. such employment will not be covered by any program of unemployment insurance; (Section 224)
10. By an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that the exemption shall not apply to service performed in a program established for or on behalf of an employer or group of employers; (Section 227)
11. In the employ of a hospital, if such service is performed by a patient of the hospital; (Section 230)
12. As a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school approved pursuant to the Illinois Nursing Act; (Section 230)
13. As an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to State law. (Section 230)
14. As an election judge or election official if the individual's remuneration for such service is less than \$1,000 during the calendar year.

C. Financing Benefits Paid to State Employees

Benefits paid to State employees on the basis of wages paid to them by the State or any of its instrumentalities are financed by appropriations to the Illinois Department of Employment Security. (Section 1403)

Quarterly wage reports, listing the social security account numbers and names of State employees and the wages paid to each of them during each calendar quarter, will be filed with the Revenue Division of the Department of Employment Security by the Auditor of Public Accounts and the State universities.

Whenever an individual who has worked for the State of Illinois files a claim for benefits, notice of the filing of the claim will be mailed to the Department, institution, agency or instrumentality where he worked.

Whenever the recipient of the notice has information that may raise a question as to the individual's eligibility for benefits, it should transmit the information to the Department of Employment Security at the address and within the time limit shown on the notice.

D. Tax Rates and Experience Rating

Unless a local governmental entity elected to become a self-insurer by reimbursing the State for any benefits paid, the local governmental entity is required to pay contributions on the same basis as a non-governmental employer.

A governmental entity that has elected to be a reimbursable employer that continues to provide less than full time work to an individual who has applied for benefits due to a separation from other employment will not be subject to payments in lieu of contributions if the employer requests to have the charge removed.

This continued part time employment must continue after the end of the individual's base period and during the applicable benefit year on the same basis as prior to the individual's separation. (Sections 1405B and 1501F)

E. Benefit Reimbursement Option

Each local governmental entity has the right to elect to be reimbursable by agreeing, in lieu of paying contributions, to reimburse the State for the actual amount of regular benefits and 100 percent of the extended benefits paid to its former workers if it was both the last employer and a base period employer of a worker and to reimburse 50 percent of these amounts if the entity was the last employer but not a base period employer of a worker. (Section 1405)

If a local governmental entity elects reimbursable status, the amount that it will have to pay cannot be readily predicted because the local governmental entity must reimburse for the actual benefits paid its former workers. The amount of such reimbursement will depend upon the number of the entity's workers who become unemployed, the duration of their unemployment, the number of such workers who file claims for benefits and the amount of total benefits paid to them.

Each local governmental entity before electing to be reimbursable should examine its experience with labor turnover and the average duration of unemployment of its separated workers before they find other work.

Because the amount of benefits depends on the amount of wages the individual was paid during the individual's base period (Section 237), and upon whether or not he has certain specified dependents, it might be helpful to the entity to determine the average weekly wage and the average number of dependents of its workers.

F. Time Limits for Electing Reimbursement

A newly created governmental entity is allowed 30 days immediately following the end of the calendar quarter in which it first becomes subject to the Act to file its written election to make payments in lieu of contributions. (Section 1405B2)

Newly-created local governmental entities or entities that have previously not incurred liability for at least two calendar years may elect reimbursement for one year. All others must elect for a minimum of two years.

G. Changing From Contribution to Reimbursement

A local governmental entity that has incurred liability for the payment of contributions for at least two calendar years and is not delinquent in the payment of such contributions or in the payment of any interest or penalties that may have accrued may elect to reimburse benefits in lieu of paying contributions beginning with January 1 of any calendar year.

The written election to change to the reimbursement basis must be filed before that January 1. The new election cannot be for a period of less than two years. Such an organization remains liable for any contributions due for any calendar quarter prior to the

effective date of the election. (Section 1405B3 and 1405B4)

H. Changing from Reimbursement to Contributions

A local governmental entity that elected to reimburse benefits may terminate its election with respect to any year after the required minimum period (see “Time Limits for Electing Reimbursement” in this Section) provided it files a written notice to that effect before January 1 of the year for which it wishes to terminate its election.

A local governmental entity that changes from reimbursement to contributions will be required to pay contributions quarterly commencing with the first calendar quarter of the year for which the change is effective.

The entity will continue to be liable for reimbursement of any benefits paid to its former workers on and after the effective date of the change if the organization was the individual’s “last employer” during a benefit year beginning prior to the effective date of the change. (Sections 1405B 5 and 1404A 5)

I. Allocation of Reimbursement Costs

When an unemployed worker first files a claim for benefits, he establishes his own “benefit year.” (Section 242)

His eligibility for benefits and the amount of benefits payable to him during this one year period depends on the amount of wages for employment he was paid during his “base period” by employers subject to the law. (Section 237)

A worker’s base period consists of the first 4 of the last 5 completed calendar quarters preceding the first day of his benefit year, except, if an individual does not qualify for the maximum weekly benefit amount due to his receipt of either workers’ compensation or occupational disability payments during the base period determined above, he would be eligible to have his benefits calculated in accordance with an alternative base period. A worker’s base period can also consist of the last four completed calendar quarters preceding the first day of his benefit year if he does not qualify for benefits based on the “standard” base period above. (Section 237)

When an individual has worked during his base period for a reimbursement employer and the reimbursement employer is also the individual’s chargeable employer, the reimbursement employer will be liable for 100 percent of the cost of the benefits paid to the individual (including dependents’ allowance).

If the reimbursing employer is the chargeable employer but not a base period employer, then it will be liable for only 50% of the cost of the benefits paid to the individual (including dependents’ allowance). (Sections 1404A and 1405B)

EXAMPLE: The individual is a substitute teacher for a school district, a local governmental entity that has elected to make payments in lieu of contributions. She did not, however, work for the school district during her base period.

If she now files a claim for benefits and the school district is her chargeable employer, it will be liable for 50 percent of any payments in lieu of contributions which would result if she would be paid benefits. This is because the school district is the last employer for at least 30 days prior to the beginning of her claim. The employer is only liable for 50 percent of the amount of the benefits paid because the individual performed no services for this employer during her base period.

J. Reimbursement of Benefits Erroneously Paid

A local governmental entity that has elected to reimburse benefits is required to reimburse the State for ALL benefits paid to its former workers, **INCLUDING ANY BENEFITS ERRONEOUSLY PAID**. If the erroneous payment has been recovered by the State after the local governmental entity has made reimbursement of the amount so paid, an adjustment or refund will be made to the entity. (Section 1404B5)

K. Payment of Reimbursement

As soon as possible, following the close of each calendar quarter, a local governmental entity that has elected to reimburse benefits will receive a Statement of the amount due from it for the benefits paid to its former workers during the calendar quarter.

The Statement will contain the name of each person to whom payments have been made as well as the amount of benefits paid to him that is chargeable to the local governmental entity. (Section 1405C)

The local governmental entity has the right to apply to the Director for a revision of a Statement within 20 days. If it is not satisfied with the disposition of its request for revisions, it may petition within 20 days for a hearing before a representative of the Director. (Sections 1508, 1404B and 1405C)

The local governmental entity has 30 days from the mailing date of the Statement to pay the amount due. (Section 1508)

A failure to pay any amount due within 30 days from the date of mailing of the Statement will result in an interest charge on the sums due at the rate of 2 percent per month. (Section 1401) All remedies available to the Director for collecting contributions due to the State are available for the collection of reimbursement payments. (Sections 2206, 2206.1, 2200, 2207, 2401, 2404, 2600 and 2800)

L. Group Accounts

Two or more local governmental entities that have elected to reimburse benefits may file a joint application for the establishment of a group account effective January 1 of any calendar year, for the purpose of sharing the cost of benefits paid on the basis of the wages paid by such organizations. (Sections 1405D and 1404E)

A joint application for a group account must meet the following criteria:

1. The application must be filed prior to that January.
2. The application must designate a group representative to act as the group's agent for this purpose.
3. The group account must remain in effect for a minimum of two calendar years.
4. The group will be liable for reimbursement due from all of its members.
5. The amount due from any member of the group if a delinquency occurs with respect to any calendar quarter will be the same ratio to the total amount due as the total wages for insured work paid by the member in the same calendar quarter bears to the total wages for insured work paid in the quarter by all members of the group.

IX. NONPROFIT ORGANIZATION

Prior to 1972, nonprofit organizations established and operated exclusively for religious, charitable, scientific, literary or educational purposes were exempt from compulsory coverage under the Illinois Unemployment Insurance Act. However, these organizations could provide coverage for their employees on a voluntary basis.

The Federal Employment Security Amendments of 1970 contained a requirement that each state extend the coverage of its unemployment insurance system to these organizations. The Illinois Unemployment Insurance Act was amended accordingly, effective January 1, 1972.

Although these nonprofit organizations continue to be exempt from the taxing provisions of the Federal Unemployment Tax Act, they are required to pay contributions under the Illinois law. However, these organizations may elect, instead, to reimburse the State for the benefits paid to any of their workers.

A. Definition of Nonprofit Organization

The Unemployment Insurance Act sets forth a definition of a “nonprofit organization”. A nonprofit organization that does not meet the elements of this definition is subject to the Act as an “ordinary” employer. Others may remain exempt from its coverage. It is important that each element of the definition be carefully analyzed.

The law defines a “nonprofit organization” as a corporation, community chest, fund or foundation (Section 211.2):

1. which has or had in employment four or more workers within each of 20 or more calendar weeks within either the current or preceding calendar year; AND
2. which is defined as a “nonprofit organization” under Section 501(c)(3) of the Internal Revenue Code of 1986 as exempt from federal income tax under Section 501(a) of that Code; PROVIDED
3. that the services performed for the organization are excluded from the definition of “employment” under the provisions of Section 3306(c)(8) of the Federal Unemployment Tax Act.

Services excluded from the definition of “employment” under Section 3306(c)(8) of the Federal Unemployment Tax Act are those performed for organizations listed in Section 501(c)(3) of the Internal Revenue Code as exempt from federal income tax.

A nonprofit organization exempt from federal income tax under a paragraph of the Internal Revenue Code other than 501(c)(3) cannot meet the definition of “nonprofit organization” and is treated as an “ordinary” employer under the Illinois law.

The material that follows is directed only to those organizations that meet the conditions of paragraphs 2 and 3 above. If your organization does not meet these conditions, it is an “ordinary” employer, and not a “nonprofit organization.”

B. Employment Of “Four Or More Workers Within Twenty Weeks”

Each “nonprofit organization” that meets the conditions set forth in paragraphs 2 and 3 above, and that has had four or more workers in employment within each of 20 or more calendar weeks within either the current or preceding calendar year is subject to the law. (Section 211.2)

A nonprofit organization that is not subject to the law because it has not had in employment at least four workers in 20 weeks in a calendar year may elect coverage for a minimum of 2 calendar years.

If the election is approved by the Director, the organization is entitled to the same options available to those employers mandatorily covered by the law. (Section 302)

There are other circumstances under which an exempt organization may become subject to the law.

An organization that purchases or acquires the organization, trade or business of an employer already subject to the law becomes also subject at the time of such acquisition. (Section 205D)

Whenever a nonprofit organization acquires the assets or business establishment of another employing unit and continues its activities, the number of weeks in which the purchasing organization has had four or more workers will be added to the number of weeks in which the former organization had 4 or more workers.

If the total makes 20 or more weeks in the calendar year, the purchasing organization will be subject to the law for that year (from the date of acquisition) and for at least the following year.

C. Exclusions From Employment

To determine whether a nonprofit organization has had four or more workers in at least 20 weeks, the organization must count all fulltime, part-time and temporary workers, regardless of whether they received cash wages or other forms of remuneration. All individuals who performed services for the organization must be counted, unless such services are specifically excluded under the law.

Individuals performing the following services need not be counted to determine liability:

1. In the employ of a church or convention or association of churches, or an organization or school that is not an institution of higher education, operated primarily for religious purposes and that is operated, supervised, controlled or principally supported by a church or convention or association of churches. (Section 211.3A)
2. By a duly ordained, commissioned, or licensed minister of a church in the exercise of duties required by such order. (Section 211.3B)
3. In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency, or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work.
4. As part of an unemployment work relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a State or political subdivision or municipal corporation thereof, by an individual receiving such work relief or work-training. (Section 211.3E)
5. By an inmate of a custodial or penal institution. (Section 211.3F)
6. In the employ of a school, college or university, by a student who is enrolled and is regularly attending classes at such school, college or university or by the spouse of such a student if the spouse is advised, at the time the spouse commences to perform such service:
 - a. the employment of the spouse to perform such service is provided under a program to provide financial assistance to the student by the school, college or university, and
 - b. such employment will not be covered by any program of unemployment insurance. (Section 224)
7. In the employ of a hospital, if such services are performed by a patient of the hospital. (Section 230)
8. As a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school approved pursuant to the Illinois Nursing Act. (Section 230)
9. As an intern in the employ of a hospital by an individual who has completed a 4 year course in a medical school chartered or approved pursuant to State law. A "resident" is not an intern. (Section 230)
10. In any calendar quarter in the employ of any organization exempt from income tax under Section 501(a) of the Federal Internal Revenue Code (other than an organization described in Section 401(a) of the Internal Revenue Code), or under Section 521 of the Internal Revenue Code, if the remuneration for such service is less than \$50 for the calendar quarter. (Section 223)

D. Tax Liability

A nonprofit organization that does not elect to reimburse the State for the actual amount of benefits paid to its former workers is required to pay contributions on its taxable payroll. (Section 1404) All newly liable employers, including nonprofit organizations, are required to pay contributions at a fixed rate for the first three calendar years of coverage (see V. RATE OF CONTRIBUTION). The taxable payroll is limited to a maximum amount of wages paid to each worker by each employer in a calendar year. (Section 235)

For years prior to 1988, due to a depletion in the Illinois unemployment trust fund (which necessitated borrowing from the federal government), an emergency surcharge was enacted by the Illinois legislature. (Section 1506.2)

Though all borrowings were repaid, in order to avoid future borrowing for years after 1987, a permanent “fund building” surcharge was enacted, and the emergency surcharge was repealed. Because the trust fund was again depleted in 2003, effective with the contributions due for the fourth quarter of 2003, the “fund building” surcharge can be used to repay bonds issued by the Department to avoid the need to borrow from the federal government.

After the third calendar year of coverage, an employer pays contributions at rates determined for each year under the experience rating provisions of the Act. These provisions set forth a formula giving consideration to the employer’s experience with the risk of unemployment of his workers.

E. Benefit Reimbursement Option

Each nonprofit organization subject to the Act has the right to elect to be a reimbursable employer by agreeing, in lieu of paying contributions, to reimburse the State for the actual amount of regular benefits and one-half the amount of extended benefits paid to its former workers who meet the eligibility requirements of the law. (Section 1404A)

If a nonprofit organization elects to be a reimbursable employer, the amount that it will be required to pay to the State cannot be readily predicted.

Since the nonprofit organization would have to reimburse the State for the actual benefits paid to the organization’s former workers, the amount of such reimbursement would depend upon the number of the organization’s workers who become unemployed, the duration of their unemployment, the number of such workers who file a claim for benefits, and the amount of the weekly and total benefits paid to them.

Before electing to be a reimbursable employer, the nonprofit organization should examine its experience with labor turnover.

F. Time Limits For Electing Reimbursement

A nonprofit organization that becomes subject to the Act is allowed 30 days immediately following the end of the calendar quarter in which it first becomes subject to the Act to file its written election to make payments in lieu of contributions. (Section 1404A2)

EXAMPLE: Z private Secondary School was in existence and had at least four workers in each of 20 weeks or more in 2016 during which time the school was liable as a “regular” employer.

Effective January 1, 2017, the school receives a Section 501(c)(3) tax exemption from the Internal Revenue Service. It has until 30 days following the end of the quarter in which it becomes a nonprofit employer, as defined by the Act, to elect reimbursement, i.e. the quarter in which it first has at least four workers in each of 20 weeks for the year.

Election of reimbursement of benefits for a minimum of one calendar year is permissible only for newly created nonprofit organizations. In all other instances, an election of reimbursement of benefits must be for a minimum of two calendar years. (Section 1404A 1)

G. Filing of Quarterly Wage Reports

Nonprofit organizations electing to reimburse benefits, like other employers, are required to file quarterly and, if they had 25 or more employees during the preceding calendar year, monthly Wage Reports listing the name and social security number of each worker and the total wages paid to him for employment during the calendar month or quarter. (Section 1400) An employer who fails to file a monthly or quarterly Wage Report by the due date (the last day of the month following the calendar month or quarter) is subject to a penalty. (Section 1402)

H. Changing From Contributions To Reimbursement

A nonprofit organization that has incurred liability for the payment of contributions for at least two calendar years and is not delinquent in the payments of such contributions or in the payment of any interest or penalties which may have accrued, may elect to reimburse benefits in lieu of paying contributions beginning with January 1 of any calendar year. A nonprofit organization that has entered into a repayment agreement is DELINQUENT in the payment of contributions until the amounts due are paid in full. Such organization is not eligible to elect reimbursement.

The written election to change to the reimbursement basis must be filed before such January 1. The new election cannot be for a period of less than two years. Such an organization remains liable for any contributions due for any calendar quarter prior to the effective date of the election. (Section 1404)

A nonprofit organization that has elected to reimburse benefits and continues to provide less than full-time work to an individual who has applied for benefits due to a separation from other employment will not be subject to payments in lieu of contributions if the employer has so requested.

This continued part-time employment must continue after the end of the individual's base period and during the applicable benefit year on the same basis as prior to the individual's separation. (Section 1404B 7)

A similar provision applies to payments made with respect to benefit years beginning on or after July 1, 1989. (Section 1404B 7)

I. Changing From Reimbursement To Contributions

A nonprofit organization that elected to reimburse benefits may terminate its election with respect to any year after the expiration of the minimum period of election (See "Time Limits for Electing Reimbursement" in this Section), provided it files a written notice to that effect before January 1 of the year for which it wishes to terminate its election. (Section 1404A 5)

A nonprofit organization that changes from reimbursement to contributions will be required to pay contributions quarterly commencing with the first calendar quarter of the year for which the change is effective.

The organization will continue to be liable for reimbursement of any benefits paid to its former workers, on and after the effective date of the change if the organization was the individual's "last employer." (Section 1404C)

J. Allocation Of Reimbursement Cost

When an unemployed worker first files a claim for benefits, he establishes his own “benefit year.” (Section 242)

His eligibility for benefits and the amount of benefits payable to him during this one year period depend on the amount of wages for employment he was paid during his “base period” by employers subject to the law. (Section 237)

A worker’s base period consists of the first 4 of the last 5 completed calendar quarters preceding the first day of his benefit year (See “Allocation of Reimbursement Costs” in VIII. STATE OF ILLINOIS AND LOCAL GOVERNMENTAL ENTITIES).

Whenever a nonprofit organization on the reimbursement method is the individual’s “last employer” and it is also a base period employer, it will be liable for 100 percent of the benefits paid to the individual. If it is the “last employer” but not a base period employer, it will be liable for 50 percent of the payments paid to the individual. (Section 1404A)

In some instances, a nonprofit organization may be both a contributions employer and a reimbursement employer during a worker’s base period. This can occur when the base period covers quarters in two calendar years and the organization has elected to change its method of payment at the close of the earlier calendar year. In such case, it would be liable for either payments in lieu of contributions or benefit charges depending on its status at the time that the claim was filed.

K. Reimbursement Of Benefits Erroneously Paid

A nonprofit organization that has elected to reimburse benefits is required to reimburse the State for all benefits paid to its former workers, INCLUDING ANY BENEFITS ERRONEOUSLY PAID, unless the erroneous payment has been recovered by the State. If the erroneously paid benefits are recovered by the State after the nonprofit organization has made reimbursement of the amount so paid, an adjustment or refund will be made to the organization. (Section 1404B 5)

L. Payment Of Reimbursement Due

As soon as possible following the close of each calendar quarter, a nonprofit organization that has elected to reimburse benefits will receive a Statement of the amount due from it for the benefits paid to its former workers during the calendar quarter. The Statement will contain the name of each person to whom payments have been made, and the amount of benefits paid to him that is chargeable to the nonprofit organization. (Sections 1404 and 1508)

The nonprofit organization has the right to apply for a revision of the Statement within 20 days. If it is not satisfied with the disposition of its request for revision, it may request a hearing before a representative of the Director. (Section 1508) The nonprofit organization has 30 days from the mailing date of the Statement to pay the amount due. (Section 1508).

Although the employer may have a question concerning the Statement, it should pay the amount indicated so as not to incur interest charges and then request a refund.

A nonprofit organization that fails to pay the amount due within these 30 days will be charged interest on the sum due at the rate of 2 percent for each month, computed at the rate of 12/365 of 2 percent per day. Payments received more than 30 days after such payments became due shall be deemed to have been received on the last day of the month preceding the month in which they became due.

All remedies available to the Director for collecting contributions due to the State are available for collection of reimbursement payments. (Sections 2206 and 2207).

M. Group Accounts

Two or more nonprofit organizations that have elected to reimburse benefits may file a joint application for the establishment of a group account effective January 1 of any calendar year, for the purpose of sharing the cost of benefits paid on the basis of the wages paid by such organizations. (Section 1404E)

The joint account must meet the following criteria:

1. The application must be filed prior to that January
2. The application must designate a group representative to act as the group's agent for this purpose.
3. The group account must remain in effect for a minimum of two calendar years.
4. The group will be liable for reimbursement due from all of its members.
5. The amount due from any member of the group if a delinquency occurs with respect to any calendar quarter will be the same ratio to the total amount due as the total wages for insured work paid by the member in the same calendar quarter bears to the total wages for insured work paid in the quarter by all members of the group.

X. FORMS AND REPORTS REQUIRED

All forms received from the Department of Employment Security should be read thoroughly and the instructions followed carefully.

Some forms are sent out by the Department solely for the information of the employing unit and require no further action.

Most forms, however, require prompt action if the employing unit is not to lose rights or incur penalties. IDES forms are self explanatory or are accompanied by instructions.

If these instructions are not clear to you, contact the Employer Hot Line, (800) 247-4984, of the Department of Employment Security in Chicago.

Commonly used forms can be obtained by downloading from the Department's website at www.ides.illinois.gov.

Each report or form submitted to the Department of Employment Security must be signed and certified as to its accuracy and contain the employer's account number. The title of the individual signing the report or form must be shown on the report or form.

A. Form To Determine Liability For the Payment of Contributions

Every employing unit that has not paid contributions or has not filed a report of its employment experience must obtain Form REG-UI-1 (Report to Determine Liability Under the Unemployment Insurance Act) from the Revenue Division of the Department of Employment Security. This report must be completed and filed online using MyTax Illinois (mytax.illinois.gov) or by mail to: Central Registration Division, Illinois Department of Revenue, PO BOX 19030 MAIL CODE 3-222, Springfield, IL 62794-9030 A newly created employing unit must file this report within 30 days after it begins business. (56 Ill. Adm. Code 2760.105)

An employee leasing company which meets the requirements for reporting under its own account number the wages paid to workers performing services for its clients must report each client to the Department of Employment Security within 30 days of the effective date of the contract or by the end of the quarter in which the contract takes effect, whichever is later. If the report of the client relationship is untimely, the report will go into effect with the next quarter for which the report may be considered timely. (56 Ill. Adm. Code 2732.306).

Under Section 2600, any employing unit, including those not liable for the payment of contributions, which goes out of business, or transfers or sells substantially all of its business assets or its business, or is involved in any change must submit Form UI-50A (Notice of Change) to the Department of Employment Security within 10 days of such change. This report also must be filed if a business sells a separate part of its business or the assets of such separate part. (56 Ill. Adm. Code 2760.110)

All employers determined to be liable for the payment of contributions, including nonprofit organizations and local governmental entities that elect to reimburse benefits in lieu of paying contributions, must file Form UI-3/40 (Contribution and Wage Report) quarterly.

B. Forms For Reporting Wages And Paying Contributions

The wages of the workers for a calendar quarter are reported on Contribution and Wage Report (Form UI-3/40). Before mailing the UI-3/40 to the employer, the Department of Employment Security imprints on it the employer's name, address, account number, its employees' names and social security numbers (from the prior quarter's report) (up to twenty-five) and the rate at which contributions are to be computed. The UI-3/40 should be completed and promptly returned with a check or money order covering the contributions due.

The check should be made payable to

The Department of Employment Security

and mailed with the Report and Payment Coupon to the designated address. These forms should be mailed using the envelope provided (56 Ill. Adm. Code 2760.135). Employers may also pay by Electronic Funds Transfer via MyTax Illinois. All monthly reports **MUST** be made electronically.

As an alternative to filing its wage and contribution report on paper, employers are encouraged to use a free service known as **MyTax Illinois**. Information on this service can be found on the Department's website at www.ides.illinois.gov. This service allows an employer to reduce data entry time by automatically generating a list of employees from its previous report and merely updating this information. It also calculates taxable wages automatically and is available any time day or night. This secure and confidential service may also be used to obtain certain information about the employer's account.

The Wage and Contribution Report (UI-3/40) must be filed by the use of electronic media which has been approved by the Director if the employer reasonably expects to have 25 or more workers in its employ during that year or had 25 or more workers in its employ during the previous year. Failure to comply with this requirement will result in penalties to the employer. Waiver of this requirement is allowed only where the employer has been granted a waiver of the similar federal electronic reporting requirement. Therefore, it is of utmost importance that employers subject to this rule take immediate action to insure compliance. (56 Ill. Adm. Code 2760.140) **If an employer is required to file its monthly and quarterly wage report electronically but instead files on paper, the penalty for failing to properly file its monthly or quarterly report will still be imposed.**

An employer that maintains its payroll records on data processing equipment and that is not subject to the requirement explained in the previous paragraph, may submit its individual workers' wages on electronic media. (56 Ill. Adm. Code 2760.140) Information and detailed instructions for reporting may be obtained by writing to:

**Illinois Department of Employment Security
Revenue Division
Attn: Document Control
33 South State Street
Chicago, IL 60603**

In certain instances, employers engaged in more than one type of industry or operating in more than one geographical area within the State of Illinois are required to submit Form BLS 3020 with the quarterly Form UI-3/40. On Form BLS 3020, the amount of wages and the number of workers shown on Form BLS 3020 are broken down by type of industry or by geographical area.

An employer that continues to be liable for the payment of contributions but which has paid no wages in a calendar month or quarter because of temporary inactivity must file a monthly or quarterly report showing "no wages paid". If the employer terminates business, it should file a final report showing the wages paid in the last quarter of business and should also file a Form UI-50A (Notice of Change). (56 Ill. Adm. Code 2760.110)

C. Employer Records

All individuals or firms that employ one or more workers must maintain and preserve payroll records that show (56 Ill. Adm. Code 2760.115):

1. Each worker's name (including temporary and part-time workers).
2. Each worker's social security account number.
3. The city or county in which each worker is employed.
4. The dates upon which each worker performed services.
5. The date on which each worker was hired, the date on which each worker was laid off, discharged or quit, and the date of rehiring after temporary layoffs.
6. The monthly, weekly, daily or hourly rate of pay, or the piecework rate if the worker is paid on a piecework basis.

7. The number of hours worked by each worker paid at an hourly or piecework rate.
8. The customary or scheduled full-time hours for each worker paid on an hourly or piecework basis in the employment in which he is engaged.
9. The dates covered by the employer's pay period, the wages paid each worker for each pay period and the total wages for each pay period.

The record of wages paid must include:

1. Money wages paid, such as wages, salary and commissions.
2. Reasonable cash value of remuneration other than cash such as board, room, laundry, etc., except where a meal is provided for the benefit of the employer. (56 Ill. Adm. Code 2730.100)
3. Special payments, such as bonuses, gifts, prizes, dismissal pay, vacation pay or pay in the nature of vacation pay, wages in lieu of notice, and the period of time these special payments cover.
4. The amount of tips and gratuities, where these are customarily received by workers from persons other than the employer and are reported to the employer by the worker.

All payroll records must be kept in such a way that quarterly wages of each worker and the weeks in which the workers performed their services may be easily determined.

Payroll records are used to determine:

1. whether an employing unit is liable for the payment of contributions,
2. the total contributions an employer must pay, and
3. the benefit rights of unemployed or partially unemployed workers.

All records must be kept accurately and be up to date.

The records of employing units must be preserved for at least five years, or until a determination and assessment of contributions, interest, or penalties or an action for the collection of contributions, interest or penalties has become final or is canceled and withdrawn. (Section 1801)

Such records must be open to inspection by representatives of the Director of Employment Security at all reasonable times. Under Section 1900, these records will be held confidential.

Willful failure to furnish reports, audits or other information required for the proper administration of the Illinois Unemployment Insurance Act is punishable by fine and imprisonment. (Section 2800)

D. Notice Of Claim

As soon as possible after a claim is filed for benefits, a Notice of Claim to Last Employing Unit, or Notice of Claim to Chargeable Employer or Notice of Claim to Interested Party is sent to the claimant's most recent employing unit(s) and the Benefit chargeable employer, the employer whose experience rating will be chargeable if benefits are paid to the individual. The same notice is sent when an additional claim or a claim for Extended Benefits is first filed.

An employer that receives the above Notice and which believes that the claimant may be ineligible for benefits for any reason, must **AT THAT TIME** file a letter or a Notice of Possible Ineligibility (Form ADJ030F) (return copy) if it wishes to be a party to the claims adjudicator's determination. Unless the employer is a party to a determination, it does not have the right to appeal an adverse determination. This Notice must be mailed to the office designated on the form, and by the designated **"REPLY DUE DATE"** (within 10 days from the **NOTICE OF CLAIM**). As mentioned above, if the Notice is not sent by the employer within the time period required, the employer loses its appeal rights except with regard to the issues of availability, disqualifying income, refusal of work or "not unemployed" for subsequent weeks. (Section 702 and 56 Ill. Adm. Code 2720.130)

Pursuant to 56 Ill. Adm. Code 2720.132, if an employing unit discharges an individual for an alleged felony or theft connected with his work, the employing unit must send a notification to:

Illinois Dept. of Employment Security
Attn: Felony and Theft Unit
33 South State St. – 9th Floor
Chicago, IL 60603

The notification must be sent within 10 days of the date that the individual files his next claim for benefits. This notice must meet the sufficiency requirements of Section 602B of the Act. It is advisable that the employing unit mail this notice to the Department as soon as possible after the separation of the individual from the employing unit.

E. Notice Of Possible Ineligibility Form ADJ030F (Return copy)

A Notice of Possible Ineligibility (Form ADJ030F) or a letter containing the equivalent information should be mailed or faxed to the designated office within 10 days of the date of the notice of claim.

Failure to file a Notice within 10 days will result in a loss of party status and appeal rights. (Section 702 and 56 Ill. Adm. Code 2720.130)

Information contained on the Notice should include the names, addresses and telephone numbers of persons having personal knowledge of the facts and circumstances supporting the allegations.

The Notice must also meet the sufficiency requirements of 56 Ill. Adm. Code 2720.130(c) as follows:

1. A separate Notice must be sent for each claimant.
2. The allegations must be supported by material reasons or facts, rather than conclusions of law. (Section 702)
3. If the employer alleges that the claimant is ineligible for benefits because of vacation pay, the employer must state the amount paid and must also designate the period to which such pay is allocated. (Section 610 and 56 Ill. Adm. Code 2920.30)
4. If the employer alleges that the claimant is not eligible for benefits because of a labor dispute, the employer must provide the Department with the name and social security number of each worker involved in the dispute within five days of the start of the period of the work stoppage due to such labor dispute. (Section 604)

If the Department determines that the Notice has not met the sufficiency requirements, the Notice will be returned with a description of the needed information.

If the requested information is mailed back within 10 days of the date the Department returned the Notice to the employer, the Notice will be considered filed on the date that the Department originally received it. (56 Ill. Adm. Code 2720.130(e))

The Department will not return the Notice more than once. A determination that a Notice is insufficient may be appealed.

It is of the utmost importance that each allegation on the Notice of Possible Ineligibility be supported by as detailed a statement of the facts as possible. The claims adjudicator can make a correct determination only to the extent that the facts and circumstances relevant to the claim are known to him. A mere allegation that a worker has been discharged for misconduct connected with the work is inadequate. An allegation should be supported by a summary of the events which led to the worker's discharge. Similarly, an allegation that the worker is not available for work should be supported by a statement of the facts that led the employer to believe that the worker is unavailable.

F. Claims Adjudicator's Determination As to Eligibility

For each week for which a claim for benefits is made, a claims adjudicator makes a determination as to the claimant's eligibility. (Section 702 and 56 Ill. Adm. Code 2720.140)

An employer that has filed a sufficient Notice of Possible Ineligibility within the 10-day time limit is a party to such determination and is entitled to a notice of the determination and has the right to appeal it. **The General Assembly, with the approval of the Governor, has allocated one million dollars to provide free legal assistance to "small employers" (less than 20 employees during two of the four quarters preceding the request for free assistance) at Departmental hearings. To implement this provision, the Department contracted with a private law firm to provide this assistance. A contact telephone number is printed on determinations, decisions, etc., the appeals of which are covered by this program.**

If no Notice of Possible Ineligibility or letter has been filed within the time limit, the employing unit is not a party to the determination.

Even though an employer does not send a Notice within the proper time limit, the claims adjudicator will consider the information disclosed on the late Notice in making his/her determination or in reconsidering a determination already made. An employer should send a Notice if it believes the claimant to be ineligible, even though the 10-day period has expired. A late Notice does not make the employer a party to the determination and cannot be made the basis of an appeal except with respect to the issues of availability, disqualifying income, refusal of work or "not unemployed," for subsequent weeks. However, the non-party employer will receive a copy of the determination for its information only. (56 Ill. Adm. Code 2720.140)

An employer that has filed a sufficient and timely Notice of Possible Ineligibility alleging an issue of availability, disqualifying income, refusal of work or "not unemployed" becomes a party to any determination made with respect to the week for which the Notice is received. Such employer will have appeal rights to the determination.

Any employer that does not receive a Notice of Claim but which has knowledge of facts indicating the possible ineligibility of the claimant may mail a Notice of Possible Ineligibility or a letter containing the information to Claimant Services, Department of Employment Security or to the local office.

G. Report of Workers Affected By A Labor Dispute

An employer that wishes to contest a worker's eligibility for benefits on the grounds that his unemployment is due to a stoppage of work because of a labor dispute must mail or fax a Report of Workers Affected by Labor Dispute (Form ADJ027FE) or a letter setting forth the names and social security numbers of the workers involved and the establishment affected by the labor dispute, within five days after the worker's unemployment begins to:

**Illinois Department of Employment Security
UI Program Support
Labor Dispute & Determination Section
33 South State St.
Chicago, Illinois 60603**

The report may be faxed to 312-793-6992.

Upon receipt of the employer's list, a Labor Dispute Questionnaire (Form ADJ032FE) is sent to the employer and to either the union or to the designated representative of the employees involved in the labor dispute.

This questionnaire must be returned within 10 days or the adjudicator will issue his determination based on the information that is included in the record at that time. Form ADJ027FE pertains only to possible ineligibility resulting from a labor dispute and does not operate as a Notice of Possible Ineligibility with respect to any other issue. If any other issue exists, Form ADJ030F should be used. (Section 604 and 56 Ill. Adm. Code 2720.130(d)(3))

H. Notice of Determination

If a sufficient and timely Notice of Possible Ineligibility (Form ADJ030F) is filed by an employer, the employer will be sent a Notice of the Claims Adjudicator's Determination (Form ADJ004L).

In the case of a labor dispute, if an employer files a timely Report of Workers Affected by Labor Dispute (Form ADJ027FE), the employer will be sent a Notice of the Claims Adjudicator's Determination accompanied by Form ADJ004L.

In either case, if the employer believes that the determination is not correct, it must file its appeal with the claims adjudicator at the address provided therein within 30 days of the mailing date of the notice of the determination. If such an appeal is filed on time, a hearing will be scheduled and the parties will be notified of the time and place of such hearing. **The General Assembly, with the approval of the Governor, has allocated one million dollars to provide free legal assistance to "small employers" (less than 20 employees during two of the four quarters preceding the request for free assistance) at Departmental hearings. To implement this provision, the Department contracted with a private law firm to provide this assistance. A contact telephone number is printed on determinations, decisions, etc., the appeals of which are covered by this program.**

I. Back Pay Awards

The statute requires that, whenever an individual has received "wages" in the form of a back pay award, any unemployment insurance benefits paid during the period covered by the back pay award must be repaid to the Department. To implement this requirement, the employer **MUST** make the check for the ENTIRE back pay award payable jointly to the Director and the individual. The employer should provide a copy of the settlement or back pay agreement. The Director will then deduct the amount of unemployment insurance benefits previously paid and return the difference to the individual. There is no legal authority for the employer to merely offset any unemployment insurance benefits from the back pay award. (Section 900D) However, the federal court has held that the provision for withholding does not apply to awards made by the National Labor Relations Board. Nonetheless such awards still constitute wages which still require the repayment by the claimant of any unemployment insurance benefits paid during the period of the back pay award.

For revenue purposes, the employer must report the back pay award, and pay contributions or payments in lieu of contributions, during the month or quarter in which the back pay award was paid to the employee.

For benefit purposes, a back pay award is allocated to the period covered by the back pay award. (56 Ill. Adm Code 2920.50)

XI. CLAIMANT BENEFITS

The unemployment insurance program is an insurance system designed to protect workers against the risk of involuntary unemployment. (Section 100) The benefits that a worker receives from the system partially replace the wages lost by him when he experiences such unemployment. To receive these benefits, a worker must meet non monetary, as well as monetary, eligibility requirements set forth in the Illinois Unemployment Insurance Act.

A claimant who has worked in Illinois but lives outside Illinois may apply for benefits under the Illinois Unemployment Insurance Act by filing a claim in the state or territory in which he resides. He also has the option of filing his claim on line directly with Illinois. (56 Ill. Adm. Code 2720.155)

A. Base Period Wages and Benefit Year

To be monetarily eligible for any benefits, a worker must have been paid wages of \$1,600 or more in his base period by employers subject to the UI Act. At least \$440 of these wages must have been paid to him outside the calendar quarter in which he was paid the highest amount of wages. (Section 500E)

In addition, to qualify for extended benefits an individual's total base period earnings must be at least 1.5 times his high quarter wages. (Section 409B)

A worker's base period consists of the first four of the last five completed calendar quarters immediately preceding the month in which the benefit year begins.

An alternative base period is available to workers who do not qualify for the maximum benefit amount because they were receiving either workers' compensation or occupational disability during the above base period.

Another alternative base period consisting of the last four completed calendar quarters immediately preceding the month in which the benefit year begins is available where the worker is completely ineligible using the "standard" base period. (Section 237)

The benefit year is the one-year period beginning with the Sunday of the week in which the worker first files a valid claim for benefits. (Section 242)

An individual who was paid benefits in his first benefit year is ineligible for benefits for any week in a second benefit year even if he has sufficient base period wages unless, subsequent to the beginning of the immediately preceding benefit year, he performed bona fide work and earned remuneration for such work equal to at least 3 times his current weekly benefit amount. (Section 607B)

B. Weekly Benefit Amount

The claimant's weekly benefit amount depends on the amount of wages he was paid during the two highest quarters of his base period by employers subject to the Act. (Section 401)

The total wages paid to an individual in the two highest quarters of his base period shall be divided by 26 to determine the Prior Average Weekly Wage for the claimant. With respect to benefit years beginning on or after January 6, 2008, 47 percent of the claimant's Prior Average Weekly Wage equals his weekly benefit amount.

However, in no case can this amount be more than 47 percent of the Statewide Average Weekly Wage nor less than \$51.

The Statewide Average Weekly Wage is computed twice per year for use in determining benefits under the Workers' Compensation Act.

However, a separate formula for unemployment insurance purposes was added to the statute in 1990. Using this formula, the Statewide Average Weekly Wage for use in 2018 is \$972.73. (Section 401B)

A claimant is given an additional benefit allowance for dependents. For a non-working spouse, an additional amount, determined by statute, is added to the weekly benefit amount, not to exceed a maximum of the Statewide Average Weekly Wage set by statute.

For a dependent child or children, an additional amount set by statute is added to the weekly benefit amount, not to exceed a maximum of the Statewide Average Weekly Wage also set by statute.

Except for benefit years beginning in 2012, most claimants are eligible to receive 26 times their weekly benefit amount during their benefit year. Any dependents' allowance payable to a claimant is in addition to the weekly benefit amount.

The total amount of benefits and dependents' allowance payable to an eligible claimant cannot exceed the total amount of wages for insured work paid to the claimant during his base period. (Section 403)

When a claims adjudicator makes a finding, determination, or a reconsideration of a finding or a determination that the claimant is eligible for benefits, benefits are promptly paid on the basis of such determination, without regard to any appeal. Such payments continue unless and until an appellate body decides that the claimant is ineligible for benefits. (Sections 703 and 706)

C. Disqualifying Income

An individual is ineligible for benefits for any week for which he receives disqualifying income in an amount equal to or greater than his weekly benefit amount. If such disqualifying income is less than the claimant's weekly benefit amount, he is entitled to partial benefits if he is "unemployed" during that week. (Sections 239 and 402)

The following are examples of disqualifying income:

1. Wages from part time employment that are less than the claimant's weekly benefit amount. With respect to any such week, the claimant shall receive an amount equal to his weekly benefit amount, (plus dependents' allowance) less that part of such wages in excess of 50 percent of his weekly benefit amount. (Sections 239 and 402 and 56 Ill. Adm. Code 2920.15)
2. The entire amount of retirement pay from a former employer who has paid all of the cost of such retirement pay and 50 percent of the retirement pay from a former employer who has paid some but not all of the cost of such retirement pay.

Social security benefits no longer constitute disqualifying income.

To be disqualifying income, the retirement pay must be paid by an individual or organization for which the individual provided services in his base period or for an employer which is chargeable under Section 1502.1 for any benefits paid to the individual. (Section 611)

3. Vacation pay, vacation pay allowance, or standby pay that an employer pays, becomes obligated or holds itself ready to pay during an announced period of shutdown for inventory or vacation is wages for the portion of the shutdown period covered by the payment. (56 Ill. Adm. Code 2920.25)

However, if the vacation pay is connected with a separation, the employer MUST file a Notice of Possible Ineligibility with the Department within 10 days after the employer has been notified that the claimant has filed a claim, designate the period for which the payment has been made and indicate the amount of vacation pay to be allocated. (Section 610 and 56 Ill. Adm. Code 2920.30)

4. Workers' Compensation paid for temporary disability arising out of or in connection with the claimant's employment under the laws of Illinois, another state or of the United States. (Section 606)
5. Wages in lieu of notice are considered disqualifying income while severance pay is not. This distinction must be decided on an individual, case-by-case, basis. (56 Ill. Adm. Code 2920.40)

Employers with questions concerning these payments should contact the Claimant Assistance Hotline or:

Illinois Department of Employment Security
Office of Legal Counsel
33 South State Street
Chicago, Illinois 60603

D. Extended Benefits

During periods of abnormally high unemployment, extended benefits are payable to claimants who have exhausted the total amount of regular benefits available to them and who meet the specific eligibility requirements pertaining to the extended benefit program. If a claimant fails to accept or apply for suitable work or fails to engage in a systematic and sustained search for work, the claimant will not be eligible for extended benefits unless he has been subsequently employed for four weeks and earned 4 times his weekly benefit amount. (Section 409)

The weekly benefit amount for extended benefits is the same as the claimant's weekly benefit amount established for his latest regular benefit year. The total amount of extended benefits available to a claimant cannot exceed the lesser of 50 percent of the total amount of his regular benefits or 13 times his weekly benefit amount.

However, an individual eligible for benefits in Illinois, but who is absent from this State and filing his claim from another state, shall be eligible for a maximum of only two weeks of extended benefits unless an extended benefit period also exists in the other state in which he files his claim.

The payment of extended benefits, which are financed on a 50/50 basis by the State's employers and the federal government, is triggered on in Illinois if the State insured unemployment rate (the ratio which the number of persons who claim regular benefits in Illinois bears to all workers covered by the Illinois law) reaches a specified statutory figure.

The Director of Employment Security publicly announces the beginning and ending dates of any period during which extended benefits are payable.

E. Claimant Non-Monetary Eligibility

When an unemployed worker files a claim for benefits, a claims adjudicator issues a Finding, which is a statement of the amount of wages for insured work paid to the claimant during each quarter of his base period. This wage information usually is derived from the employer's quarterly report of wages (UI-40).

The claimant's weekly benefit amount, the maximum amount of regular benefits payable to him for his benefit year and the dependents' allowance are computed. The claimant is notified of these amounts. (Section 701) Benefits are payable for CALENDAR weeks (Sunday through Saturday). To be eligible for benefits for a week, the claimant must have been unemployed in that week.

A claimant is unemployed in any week in which he is paid no wages and performs no services, or in any week of less than full time work for which the wages payable to him are less than his weekly benefit amount.

An unemployed individual is eligible for benefits for a week only if:

1. He has registered for work and reports at regular intervals by mail or by telephone at an Illinois Department of Employment Security office as required by the Director. (Section 500A and 56 Ill. Adm. Code 2865.125(a)(1))

2. He has made a claim for benefits either on line or by phone. (Section 500B and 56 Ill. Adm. Code 2720.100)
3. During the week, he is able to work, available for work and actively seeking work. (Section 500C and 56 Ill. Adm. Code 2865.125)

An individual is presumed to be unavailable for work if:

- a. After his separation from his most recent work, he has moved to and remains in a locality where job opportunities for him are substantially less favorable than those in the locality he has left. (Section 500C3)
- b. His principal occupation is that of a student in attendance at, or on vacation from, a public or private school.

However, an individual enrolled in and attending a Department approved training course may, under specified conditions, be considered available for work. Such an individual will not be required to seek work and will not be disqualified under Section 603 for work refusal. (Sections 500C4 and 5)

4. During the week, he has participated in reemployment services to which he has been referred, including but not limited to job search assistance services.
5. He has served a non-compensable waiting period of one week in which he has met all the eligibility requirements. (Section 500D)
6. He is not disqualified under any of the disqualifying provisions of the Act.

A claimant may claim that he is exempt from registering with the employment service office for one of the following reasons (56 Ill. Adm. Code 2865.100):

1. The claimant's unemployment is due to a labor dispute even if the claimant is not involved in the dispute.
2. The claimant's unemployment is due to a temporary layoff that does not exceed 10 weeks in duration.
3. The claimant is a member of a labor union whose hiring hall provides substantially all of the job placements. The hiring hall must be certified by the Department. The procedures for union certification are found at 56 Ill. Adm. Code 2865.60.
4. The claimant is still attached to a regular job but he is only partially employed due to a temporary reduction in his hours.
5. The Department determines that, based on local labor market information, registration with the Illinois Employment Service would not increase the likelihood of the claimant's return to work.

A claimant is required, when requested, to keep and to provide the Department with records to indicate that he is conducting a thorough, active and reasonable search for work. He should keep records of the names and addresses of employers contacted, the dates and method of contact, the result of such contact, the type of work he has been seeking, and other relevant information concerning the work search. (56 Ill. Adm. Code 2865.125)

The Department shall consider the following in evaluating the adequacy of an individual's work search (56 Ill. Adm. Code 2865.125):

1. The individual's physical and mental abilities.
2. The individual's training and experience.
3. The employment opportunities in the area.

4. The length of the claimant's unemployment.
5. The nature and number of the claimant's work search efforts.
6. The customary means of seeking employment in the occupation(s) in which the claimant seeks employment.
7. Any other information that would affect the claimant's work search.

F. Voluntary Leaving Disqualification

An individual will be ineligible to receive benefits if he has left work voluntarily without good cause attributable to his employer.

The disqualification continues until the individual has become reemployed and has had earnings equal to or in excess of his current weekly benefit amount in each of four calendar weeks which are either for services in employment, or have been or will be reported pursuant to the provisions of FICA. (Section 601)

There are seven exceptions that exempt the worker from disqualification even though he has left work voluntarily without good cause attributable to the employer:

1. When the worker is deemed physically unable to perform his work by a licensed and practicing physician, or where the worker leaves work upon the advice of a licensed and practicing physician that assistance is necessary for the purpose of caring for his spouse, child, or parent who is in poor physical health, and such assistance will not allow him to perform the usual and customary duties of his employment.

In either instance, the worker must notify his employer of the reason for leaving before the exception will apply. (Section 601B1)

2. Where the worker has left work with one employer in order to accept bona fide work with another employer, and after such acceptance, works for at least two weeks for the new employer, or earns wages equal to at least two times his current weekly benefit amount. (Section 601B2)
3. Where a worker refuses to accept a transfer to other work offered by his employer under the terms of a collective bargaining agreement, or established employer plan, when such transfer would result in the separation of another worker currently performing this work. (Section 601B3)
4. Where the sole reason for leaving work was the sexual harassment of the worker, and the employer knew or should have known of the harassment prior to the leaving and failed to take timely and appropriate action. (Section 601B4)

The Act defines sexual harassment as follows:

- a. Unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other conduct or communication that is made a term or condition of the employment; or
 - b. The employee's submission to or rejection of such conduct or communication that is the basis for decisions affecting employment; and
 - c. When such conduct or communication has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment and the employer knows or should know of the existence of the harassment and fails to take timely and appropriate actions to correct the problem.
5. Where the work accepted after the worker's separation would be deemed unsuitable for him under the provisions of Section 603 of the Act. (Section 601B5) For further information concerning this exception see the discussion of Refusal of Work Disqualifications.

6. Where the worker leaves because he/she is a victim of domestic violence, has made a reasonable effort to preserve the employment relationship and has provided the employing unit with written notice of this fact and has provided the Department with certain documentation specified in the Act.
7. Where the worker leaves to accompany his/her spouse on a military reassignment or where the worker leaves to accompany his or her spouse who has relocated because of a change in employment to a place where it is impractical to commute.

G. Misconduct Disqualification

An individual who is discharged for misconduct connected with his work is ineligible for benefits for the week in which he was discharged for misconduct and thereafter until he has become re-employed and has had earnings equal to or in excess of his weekly benefit amount in each of four calendar weeks.

These earnings must be for services in "employment" as defined in the Act, or must be for services in which the earnings have been or will be reported under the Federal Insurance Contributions Act by the employing unit.

The Act defines "misconduct" as the "deliberate and willful violation of a reasonable rule or policy of the employing unit, governing the individual's behavior in performance of his work, provided such violation has harmed the employing unit or other employees or has been repeated by the individual despite a warning or other explicit instruction from the employing unit."

In addition, the following was added to 602A of the Act effective in 2016:

The previous definition notwithstanding, "misconduct" shall include any of the following work-related circumstances:

1. Falsification of an employment application, or any other documentation provided to the employer, to obtain employment through subterfuge.
2. Failure to maintain licenses, registrations, and certifications reasonably required by the employer, or those that the individual is required to possess by law, to perform his or her regular job duties, unless the failure is not within the control of the individual.
3. Knowing, repeated violation of the policies of the employer that are in compliance with State and federal law following a written warning for an attendance violation, unless the individual can demonstrate that he or she has made a reasonable effort to remedy the reason or reasons for the violations or that the reason or reasons for the violations were out of the individual's control. Attendance policies of the employer shall be reasonable and provided to the individual in writing, electronically, or via posting in the workplace.
4. Damaging the employer's property through conduct that is grossly negligent.
5. Refusal to obey an employer's reasonable and lawful instruction, unless the refusal is due to the lack of ability, skills, or training for the individual required to obey the instruction or the instruction would result in an unsafe act.
6. Consuming alcohol or illegal or non-prescribed prescription drugs, or using an impairing substance in an off-label manner, on the employer's premises during working hours in violation of the employer's policies.
7. Reporting to work under the influence of alcohol, illegal or non-prescribed prescription drugs, or an impairing substance used in an off-label manner in violation of the employer's policies, unless the individual is compelled to report to work by the employer outside of scheduled and on-call working hours and informs the employer that he or she is under the influence of alcohol, illegal or non-prescribed prescription drugs, or an impairing substance used in an off-label manner in violation of the employer's policies.
8. Grossly negligent conduct endangering the safety of the individual or co-workers.

For purposes of paragraphs 4 and 8, conduct is "grossly negligent" when the individual is, or reasonably should be, aware of a substantial risk that the conduct will result in the harm sought to be prevented and the conduct constitutes a substantial deviation from the standard of care a reasonable person would exercise in the situation.

Nothing in paragraph 6 or 7 prohibits the lawful use of over-the-counter drug products as defined in Section 206 of the Illinois Controlled Substances Act, provided that the medication does not affect the safe performance of the employee's work duties.

Additionally, the requalification requirements of this subsection will be deemed to have been served if, subsequent to a discharge for misconduct connected with his work, the worker is reinstated by the employer. (Section 602A)

H. Felony and Theft Disqualification

No benefit rights shall accrue to an individual based upon wages from any employer for services performed prior to the day upon which the individual was discharged due to the commission of a felony or theft committed in connection with his work.

For this disqualification to apply, the employer must in no way be responsible for the felony and must have notified the Director of such possible ineligibility within 10 days of the date of the individual's next claim for benefits.

Furthermore, the individual must also have admitted his commission of the felony or theft to a representative of the Director or he must have signed a written admission of such act and such written admission has been presented to the representative of the Director, or such act has resulted in a conviction, or order of supervision by a court. (Section 602B)

I. Refusal of Work Disqualification

An individual will be ineligible for benefits if he has failed, without good cause, to do any of the following (Section 603):

1. To apply for available, suitable work when so directed by the Department of Employment Security office or the Director.
2. To accept suitable work when offered him by the Department of Employment Security office or an employing unit.
3. To return to his customary self employment (if any) when so directed by the Department of Employment Security office or the Director.

This ineligibility shall commence in the week in which such failure occurred and, thereafter, until he has become reemployed and has had earnings equal to or in excess of his current weekly benefit amount in each of four calendar weeks that are either for services in employment or have been or will be reported for FICA purposes by each employing unit.

In determining whether or not any work is suitable for an individual, consideration shall be given to the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

No work shall be deemed suitable and benefits shall not be denied to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. If the position offered is vacant due directly to a strike, lockout or other labor dispute;
2. If the wages, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
3. If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;
4. If the position offered is a transfer to other work offered to the individual by the employing unit under the terms of a collective bargaining agreement or pursuant to an established employer plan, program or policy, when the acceptance of such other work by the individual would require the separation from that work of another individual currently performing it.

J. Labor Dispute Disqualification

An individual is ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work that exists because of a labor dispute at the factory, establishment or other premises at which he is or was last employed.

The term "labor dispute" does not include an individual's refusal to work because of his employer's failure to pay accrued earned wages within 10 days from the date due. (Section 604)

Even though the individual's unemployment is due to a stoppage of work, the individual may be eligible for benefits if he can show that he is not directly interested in, nor participating in, nor helping to finance the labor dispute and does not belong to a grade or class of workers so involved in the dispute.

A lockout by the employer is not, in itself, considered to be participation in the dispute by the worker and a worker's failure to cross a picket line shall not, in itself, be considered to be participation.

The term "labor dispute" does not include a lockout by an employer unless:

1. the workers' representative refuses to meet with the employer under reasonable conditions to discuss the issues giving rise to the lockout, or
2. there is a final adjudication by the National Labor Relations Board that the workers' representative has failed to bargain in good faith with the employer over the issues that gave rise to the lockout, or
3. the lockout is the direct consequence of the violation of the terms of an existing collective bargaining agreement by the workers' representative.

A worker who was laid off in anticipation of a labor dispute will not be ineligible for benefits until the date of the actual stoppage of work. (Section 604)

K. School Personnel Disqualification

An individual is ineligible for benefits on the basis of wages for services in employment in any capacity performed for a nonprofit or public educational institution, including an institution of higher learning or educational service agency, for any week during a holiday or vacation period.

Educational personnel are also ineligible during a period between two successive academic years, or during a period between two regular terms whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract where the individual performed service in the first of such academic years (or terms), and there is a contract or reasonable assurance that the individual will perform service in any capacity for the same type of educational institution or educational service agency in the second of such academic years (or terms). (Section 612 and 56 Ill. Adm. Code 2915.5 through 2915.35)

The term "educational service agency" means a governmental agency or governmental entity established and operated exclusively for the purpose of providing such services to one or more educational institutions. (Section 612)

However, if an individual employed in a capacity other than instructional, research, or principal administrative by either an educational institution or by an educational service agency in an educational institution is denied benefits and is not offered a bona fide opportunity to provide service for the second year or term, he shall be entitled to a retroactive payment of benefits if he is otherwise eligible. (Section 612)

Where an individual performs services in the employ of an educational institution or an educational service agency in one capacity during an academic year or term, and there is a reasonable assurance that the individual will cross over to perform services in a different capacity in the employ of any educational institution or any educational service agency for a subsequent academic year or term, the individual is not ineligible for benefits during the period between the two academic years or terms.

L. Athlete Disqualification

If 90 percent of an individual's total wages is for employment as a participant in sports or athletic events or training or preparing to participate or as an ancillary participant, he will be ineligible for benefits for any week during the period between two successive sport seasons (or similar periods).

However, the individual must have performed such services in the first of such seasons (or similar periods) and have a reasonable assurance that he will perform such services in the subsequent season (or similar period). (Section 613 and 56 Ill. Adm. Code 2910.1)

For the purpose of this section, the following terms shall be defined as (56 Ill. Adm. Code 2910.5):

1. "Sport" or "athletics" is an activity involving an individual or group of individuals who participate in any competitive play, game or contest that requires either physical or mental ability or both.
2. "Participate" shall mean taking part in sports or athletic events as an individual competitor or as a member of a team, or as a participant in the training or preparing to so participate.
3. "Sports season" is that part of the calendar year when, according to the established practice or tradition of a particular sport or game, the team players or individual competitors are actively involved in participating in sports or athletic events or in training or preparing to so participate.
4. "Professional athlete" is a claimant whose occupation is participating in athletic or sporting events as:
 - a. A regular player or team member; or
 - b. An alternate player or team member; or
 - c. An individual in training to become a regular player or team member; or
 - d. An individual who, although performing no active services, is retained as a player or team member while recuperating from illness or injury.

5. A semi-professional athlete is within the scope of the term “professional athlete” if he is paid for participating in sports or athletic events.
6. “Ancillary personnel” is a claimant who, without being a professional athlete, participates, or trains or prepares to so participate in sporting or athletic events. It includes coaches, trainers and referees.

A reasonable assurance that the claimant will perform services in sports or athletic events in a subsequent season is presumed to exist if (56 Ill. Adm. Code 2910.10):

1. He has an expressed or implied multi-year contract that extends into the subsequent sport season; or
2. He is free to negotiate with other teams or employers for employment as a participant in the subsequent sport season, and
 - a. There is a reason to believe that one or more employers of participants in athletic events are considering or would be desirous of employing the claimant in an athletic capacity in the subsequent sport season, and
 - b. He is not clearly and affirmatively withdrawn from participating in remunerative and competitive sports and athletic events.

When the “reasonable assurance” fails to materialize, the denial of benefits to the professional athlete or ancillary personnel is still effective until the date when it is established that the assurance no longer exists. Following this date, benefits will be paid if the individual is otherwise eligible. (56 Ill. Adm. Code 2910.15)

The beginning and ending dates of any sports season and the beginning and ending dates of the intervening time period between two successive sports seasons shall be determined by the Director after taking into consideration factors of custom and practice within a particular sport, published dates for beginning and ending a season and any other information bearing upon such determination. (56 Ill. Adm. Code 2905.15)

M. Alien Disqualification

An alien is ineligible for benefits for any week on the basis of services performed, unless at the time such services were performed, the alien was:

1. lawfully admitted for permanent residence, or
2. otherwise permanently residing in the United States under color of law. (Section 614 and 56 Ill. Adm. Code 2905.1)

An alien is considered lawfully admitted for permanent residence in the United States if he is given the status of an immigrant.

However, Canadians and Mexicans who are allowed to enter the United States for daily or seasonal work shall likewise be considered as lawfully admitted for permanent residence. (56 Ill. Adm. Code 2905.10)

An immigrant is an alien who has been accorded by the United States the privilege of entering the country for permanent residence and of becoming a citizen of the United States under the conditions provided in the Immigration and Nationality Act. (56 Ill. Adm. Code 2905.5)

An alien is defined as any person not a citizen or national of the United States as provided in Section 101 of the Immigration and Nationality Act (8 U.S.C. 1101). (56 Ill. Adm. Code 2905.5)

An alien is considered permanently residing in the United States under color of law if his presence in this country is presumptively legal because:

1. He has entered the United States prior to June 30, 1906; or
2. He has been admitted under an erroneous name or due to other error; or
3. He has been given “conditional entry” status by the United States Attorney General; or
4. He has been given parole into the United States by the United States Attorney General. (56 Illinois Administrative Code 2905.15)

A claimant who indicates in his claim for benefits that he is an alien must produce evidence that he is not ineligible for such benefits. The presentation of a valid U.S. INS Form I 151, commonly known as the “green card,” or other similar documents issued by the Immigration and Naturalization Service, will be sufficient for a finding that the alien is eligible under Section 614 of the Act. (56 Ill. Adm. Code 2905.20)

N. Appeals And Hearings On Claimant Eligibility For Benefits

An employer or claimant who files a timely appeal from a finding or determination is entitled to and will receive a hearing. An appeal to a finding or a determination is timely if it is filed within 30 days after the delivery or mailing of the finding or determination. (Section 800). **The General Assembly, with the approval of the Governor, has allocated one million dollars to provide free legal assistance to “small employers” (less than 20 employees during two of the four quarters preceding the request for free assistance) at Departmental hearings. To implement this provision, the Department contracted with a private law firm to provide this assistance. A contact telephone number is printed on determinations, decisions, etc., the appeals of which are covered by this program.**

Such hearing, other than those involving labor dispute issues, is held by a Referee, also known as an Administrative Law Judge, who is a civil service employee. Hearings arising from determinations involving labor dispute issues are heard by representatives designated by the Director. (Sections 604 and 800)

At any hearing, the record of the claimant’s registration for work, or the claimant’s certification that he was able, available and actively seeking work, or any documents submitted by the parties to the Department, shall be a part of the record, and shall be competent evidence. (56 Ill. Adm. Code 2865.125, 2720.250 and 2720.265)

The failure of the claimant or other party to appear at a hearing, unless he is the appellant, shall not preclude a decision in his favor if he is entitled to such decision on the basis of all the information in the record. (56 Ill. Adm. Code 2720.255(b))

A party may appeal an adverse Referee’s decision to the Board of Review. This appeal must be filed within 30 days from the date the Referee’s decision is mailed. (Section 801 and 56 Ill. Adm. Code 2720.300) For more information on the appeal hearing process, see the IDES pamphlet called “Preparing For Your Appeal Hearing” available at www.ides.illinois.gov.

A party may appeal a Board of Review decision or a decision of the Director made as the result of a hearing involving a labor dispute to a court. Such appeals are heard by the Circuit Court serving the county in which the appellant resides or in which his principal place of business is located.

The appellant must file the necessary legal documents with the Clerk of the Court within 35 days from the date of the decision of the Board of Review or the Director is mailed. (Sections 801, 803 and 804)

XII. POLICING THE UNEMPLOYMENT INSURANCE PROGRAM**A. Benefit Payment Control**

As a necessary adjunct to both collecting taxes and paying benefits, the Benefit Payment Control Division of the Department of Employment Security monitors the unemployment insurance system to insure integrity and honesty by both employers and claimants.

It accomplishes this goal by investigating liable employers to insure that no fictitious entities are being established; it verifies changes of address by claimants; it audits requests for dependency allowances, reported return to work dates and work search contacts; and, most importantly, it runs a quarterly crossmatch program.

This program is an audit device that matches the employer's quarterly wage report against the Department's claimant benefit payment records for the same quarter. This crossmatch produces a listing of cases that may indicate possible fraud for follow up.

The Department then sends a Form SI 5 to the employers of the selected workers in order to obtain a breakdown of the workers' wages on a weekly basis. This information is necessary because unemployment insurance benefit payments are made on a calendar week (Sunday to Saturday) basis.

When an overpayment is determined, if fraudulent, the worker is subject to administrative penalties, in addition to being required to repay the benefits received. Also, in many cases, the Office of the Attorney General seeks criminal sanctions, which might include imprisonment.

B. Random Audit

Random Audit is another system designed to identify the types and cause of improper payment of unemployment insurance benefits. This information is used by State and Federal program managers to modify payment procedures in order to better detect, eliminate and prevent improper payments of unemployment insurance benefits.

Each week a sample of claims made by claimants receiving unemployment insurance payments is randomly selected for audit. Each claimant whose claim has been selected is interviewed. His availability and search for work are checked and his employer's wage records are verified.

Based on the information obtained during this audit, the amount of benefits paid to the claimant is determined to be either proper or improper. If paid improperly, the auditor will determine whether the claimant, the Department, or the employer caused the payment to be improper. The reason for such improper payment will be documented. This information will be used to form a statistical analysis and to compile management information on the types and causes of improper unemployment insurance benefit payments.

A Quality Control Team from the Department of Employment Security may visit employers to obtain information for this audit. These Team members will present identification. Cooperation from employers can enhance the success of the Quality Control program.

The purpose of the Quality Control Team visit is to verify the wage record of the claimant selected for audit, to verify that the claimant made a reasonable effort to find work, and to verify the reason for the claimant's separation or reduction in hours.

This information is needed because the right to collect benefits and the amount and duration of those benefits is based on previous and, if any, current wages. Work search contacts with employers are verified because the claimant must be seeking work in order to qualify for benefits.

The cause of separation or reduction in work hours may be needed to verify that the claimant became unemployed or was working reduced hours through no fault of his own, which is a requirement for the receipt of benefits.

C. Field Audits

The Department of Employment Security maintains a field audit program to monitor the accuracy of the employer's wage reports and assist in the collection of employer contributions. An audit may result in the collection of additional contributions or, in some cases, may result in a refund to the employer if it has overpaid its contributions.

During a field audit, a Department representative will visit the employer and examine the payroll records to verify the accuracy of the wage reports filed with the Department or the accuracy of claimant information pertaining to the alleged receipt of wages.

By statute, the employer is required to maintain wage records for five years or until a determination and assessment of contributions, interest, penalties or an action for the collection of contributions, interest or penalties has become final or is canceled and withdrawn, and to allow a representative of the Director to examine these records.

An employer that has failed to report or pay contributions will be subject to the payment of interest and penalties for such non-payment or non-reporting. (Sections 1401 and 1402)

In addition, the Attorney General may take court action to enforce a lien on the employer's assets to collect the unpaid amounts. (Section 2400)

Better detection and prevention of improper payment of benefits and non-payment of contributions will result in decreased payments and increased contributions. Generally, this will directly decrease employer unemployment insurance contributions required.

If you become aware of a suspected case of fraud, either by a claimant or employer, contact the Benefit Payment Control Division of the Department at (312) 793-3200. The information you supply will be kept in confidence, but you must identify yourself.

D. Personal Liability of Officers or Employees

Any officer or employee of an employer who has the control, supervision, or responsibility of filing wage or contribution reports and making payment of contributions or payments in lieu of contributions who willfully attempts to evade or defeat liability, shall be personally liable for a penalty equal to the total amount due. The same process available to the Department of Revenue pursuant to Section 3-7 of the Uniform Penalty and Interest Act shall be available to the Director and Department of Employment Security. (Section 2405)

XIII. THE DIRECTORY OF NEW HIRES**A. Who is Affected?**

All Illinois employers, including private firms, labor unions, nonprofit and religious organizations, and governmental entities are required to comply with the requirements for the Directory of New Hires. (Section 1801.1)

B. What is this Program?

The Directory of New Hires law requires employers (subject to withholding for federal income tax purposes) to report all new employees within 20 calendar days of their start date, including full-time, part-time, temporary and recalled (persons who had been off the payroll for 180 or more days) workers.

Employers must report the worker's name, address and social security number along with the employer's name, address and federal employer identification number (FEIN). Employers are also required to report the worker's starting date of employment. An employer may also provide an address where income withholding orders for child support should be sent, if different from the address already provided.

C. Why was it Enacted?

This program is part of the federal welfare reform legislation and is intended to assist child support officials to track down absentee parents in order to collect child support payments. The information will also be used to reduce fraud and abuse of unemployment insurance, food stamps, temporary welfare assistance and Medicaid.

D. How does it Operate?

Employers have the option of submitting information via (a) the New Hires Reporting form provided by the Department of Employment security; (b) copies of the employee's W-4 form, with all information completed legibly, including the employer information; (c) a separate listing of new employees, with required data; or (d) electronic or magnetic submission of data, reported twice monthly. Reports may be sent via first class mail or facsimile transmission to the Department of Employment Security. Mail data via first class:

Illinois New Hire Directory
P.O. Box 19473
Springfield, IL 62794-9473

Fax data to:

1-217-557-1947
(24-hour, never-busy fax line)

E. Where do I go for Information?

For information on the file format for reporting via magnetic tape, cartridge or diskette, call
(312) 793-1137

For other questions, call
1-800-327-HIRE (4473)

or visit the IDES website at:

<http://www.ides.illinois.gov>