

Alaska Unemployment Insurance **Tax Handbook**



**ALASKA DEPARTMENT OF LABOR
& WORKFORCE DEVELOPMENT**
Employment Security Division

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Bill Walker, Governor

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Unemployment Insurance Tax and Unemployment Insurance

How did Employment Security get its start?

In October 1929, a plummeting stock market plunged America into a financial disaster that has been remembered ever since as The Great Depression. Left in its wake was an economic wasteland that offered no market for goods and no buying power. Industry closed its doors, businesses went broke, and hundreds of thousands of people were out of work, with little or no prospect for employment or income.

In response to the crisis, the U.S. government crafted a pair of laws to provide remedial and preventative action. The Wagner-Peyser Act signed into law in 1933, established employment offices throughout the country. The Alaska Employment Security Division is one of these offices. The Social Security Act, passed in 1935, established the laws that created Unemployment Insurance. This insurance is an efficient way to maintain economic stability, especially in areas where workers are laid off and employment is scarce. The Unemployment Insurance provisions of the Social Security Act were later replaced in 1939 by the Federal Unemployment Tax Act (FUTA), which incorporated the Social Security Act provisions into the Internal Revenue Code.

Unemployment Insurance Tax

The Unemployment Insurance (UI) Tax Section of the Alaska Employment Security Division (ESD) is located in the Alaska Department of Labor and Workforce Development (AKDOL). It is primarily responsible for providing assistance and information to employers concerning the UI Tax program and for the collection of UI taxes. The basic activities of the UI Tax Section are to:

- Identify employers subject to UI laws, including:
 - ✓ nonprofit organizations
 - ✓ political subdivisions
 - ✓ successor employers
- Assist and inform employers on how to:
 - ✓ establish an account
 - ✓ properly report wages
 - ✓ determine when wages are excluded
 - ✓ compute taxable wages

- ✓ calculate contributions
- Educate employers about:
 - ✓ multi-state employment
 - ✓ fishing and maritime employment
 - ✓ employer/employee relationships
 - ✓ contract labor issues
- Determine the tax rate for each contributory employer under the experience rating system, based on the quarterly payroll decline formula, and inform all employers of their tax rate.
- Assist nonprofit employers, federally recognized tribes and political subdivisions in choosing between the contributory and reimbursable payment methods.
- Assist employers in lowering their quarterly decline by processing *employer option forms* for:
 - ✓ lump-sum payments
 - ✓ bonuses
 - ✓ seventh bi-weekly payment of wages
 - ✓ accounting anomalies
- Review all contribution reports, wage schedules and related documents submitted to identify potential problems and complete any necessary corrections.
- Complete field audits of employer records as required by federal guidelines. The audit also provides an opportunity for tax staff to meet and form working relationships with employers.
- Apply penalties and statutory tax collection remedies in order to enforce compliance with the law.
- Refund excess employer and employee contributions paid to UI Tax. As required by law, UI Tax maintains a list of employee refunds and unclaimed employer refunds.

Office Locations

Field Tax Offices are located in Anchorage, Fairbanks, Juneau, Kenai, and Wasilla. Each Field Tax Office is staffed with Field Auditors and support staff available to answer questions concerning UI Tax filing requirements.

FIELD TAX OFFICES

Anchorage

Unemployment Insurance Tax
3301 Eagle St., Room 106
P.O. Box 241767
Anchorage, AK 99524-1767
(907) 269-4850
(907) 269-4845 (Fax)

Juneau

Unemployment Insurance Tax
1111 W. 8th St., Room 201
P.O. Box 115509
Juneau, AK 99811-5509
(907) 465-2787
(907) 465-2374 (Fax)

Wasilla

Unemployment Insurance Tax
877 Commercial Drive
Wasilla, AK 99654-6937
(907) 352-2535
(907) 352-2581 (Fax)

Fairbanks

Unemployment Insurance Tax
675 7th Avenue, Station L
Fairbanks, AK 99701-4513
(907) 451-2876
(907) 451-2883 (Fax)

Kenai

Unemployment Insurance Tax
145 Main Street Loop, Suite 143
Kenai, AK 99611
(907) 283-0350
(907) 283-5152 (Fax)

To connect to a Field Tax office from outside the above areas, please use
(888) 448-2937.

Relay Alaska toll-free services: (800) 770-8973

Correspondence

The Central Office of UI Tax is located in Juneau, Alaska. All correspondence should include the employer account number. Questions, requests for forms or any other correspondence, including adjustment requests, can be emailed to:

esd.tax@alaska.gov or mailed to:

Alaska Department of Labor and Workforce Development
Unemployment Insurance Tax
P.O. Box 115509
Juneau, AK 99811-5509

Or faxed to: Fax: (907) 465-2374

You may also view your account balance and payment history from our web site.

UI Tax employer information and online services are available on the internet at www.labor.alaska.gov/estax/. This information is updated periodically, and most UI Tax forms are available online at:

www.labor.alaska.gov/estax/forms/toc_forms.htm

Who is an Employer?

For UI Tax purposes, any person, firm, corporation, Limited Liability Company, or other type of organization that hires one or more individuals to perform services for its direct benefit during any portion of the day is an employer. In addition, an organization (or person) is an employer if it has employees and does any of the following:

- Acquires a business, or substantially all the operating assets of a business was an employer at the time of purchase.
- Forms a business by merging or affiliating two or more employers.
- Forms a joint venture between two existing employers.
- Is a nonprofit organization exempt from income tax under IRC 501(a) or 501(c)(3) and:
 - ✓ pays \$250 or more in a calendar quarter; or
 - ✓ has four or more employees, at the same or different times, for some portion of a day in each of 20 not necessarily consecutive weeks in the current or preceding calendar year.
- Is a political subdivision such as the State of Alaska (including its agencies, boards, departments, hospitals, and institutions of higher education), boroughs, municipalities, and their agencies.
- Voluntarily elects coverage under the UI program even though not required by law to participate. Such elections, when approved, are effective for a minimum of two calendar years. Alaska statutes do not provide for UI coverage for self-employed individuals.

Out-of-state and multi-state employers

Out-of-state and multi-state employers must set up accounts for workers who are hired in Alaska and perform work in Alaska. Employers may also be required to report to Alaska the workers who are hired out-of-state and brought to work in Alaska.

The Alaska Department of Labor and Workforce Development (AKDOL) and the Washington Department of Employment Security have entered into a formal agreement addressing requirements for wages to be reported to each state. The U.S. Department of Labor has localization guidelines for reporting multi-state employment situations. The agreement and the guidelines are available from any AKDOL office. For addresses and telephone numbers see *Office Locations* at the beginning of this handbook.

Fishing and maritime employers

Fishing operations are excluded under Alaska law when there are less than 10 crew members, and the crew is paid on a share basis. Tender operations and fish processing wages, however, **are** reportable. Special regulations govern operating crews on American vessels. Some of the factors considered in these situations include the employer's place of business and whether the operation is inside or outside the three-mile limit for Alaska waters. Questions regarding these or other fishing and maritime issues should be referred to the nearest Field Tax Office. For addresses and telephone numbers see *Office Locations* at the beginning of this handbook.

General Information

Establishing a tax account

Employers are required to:

- ✓ Register with UI Tax
- ✓ Post a "Notice to Employees"
- ✓ Maintain accurate payroll records
- ✓ File quarterly reports
- ✓ Pay UI taxes
- ✓ Report changes in ownership, management, control or closure of the business
- ✓ Report changes in corporate executive officers
- ✓ Report changes in managers and members of a Limited Liability Company.

An Alaska employer can register a new business over the internet at www.labor.alaska.gov/estax, by mail or in person at one of the Field Tax Office locations listed at the beginning of this handbook. Tax online services also provide Alaska employers with the ability to update or close their UI tax account. Contribution rates are assigned based on information employers provide concerning their business. If this information is not provided, the employer will be given the maximum rate allowed by law for the calendar year.

Once an employer is assigned an account number, a rate notice (*see the section in this handbook entitled Contribution Rates*), letter of coverage determination, and a blue placard *Notice to Employees* will be mailed out. The *Notice to Employees* informs employees that they are covered under provisions of the Alaska Employment Security Act; its posting in a conspicuous place is required.

Employers who are purchasing or acquiring a business should refer to the section in this handbook entitled *Successors in Business* for important information.

Out-of-state employers should refer to the previous section regarding *out-of-state and multi-state employers*.

Contribution Report, Form TQ01

Contribution reports are mailed quarterly to all active employers by March 31, June 30, September 30, and December 31. These reports have been pre-printed with the employer and employee rate, the quarter ending date, employer account number, federal identification number, and the employer's name and address.

Even if employers do not receive the pre-printed form, they still must file timely reports. Contributions by employers and employees become due as tax liabilities are accrued. The report and wage schedule must be received by the last day of the month following the end of the calendar quarter. If an employer ceases business, the report and wage schedule must be filed within 10 days after the date the employer ceases business.

<u>For the Quarter Ending:</u>	<u>Report and Payment are Due:</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

Online filing of contribution reports and payments

Quarterly contribution reports must be filed over the Internet if

- ✓ a wage schedule lists 50 or more employees in a quarter; or
- ✓ a payroll agent reports on behalf of an employer;

UI Tax encourages all employers and their agents to file reports, submit payments, view account balances and payment history over the Internet at

www.labor.alaska.gov/estax.

If you have questions regarding this requirement or any of our online services, contact one of the Field Tax Offices listed at the beginning of this handbook.

Mailing address for quarterly contribution reports and payments

If you are sending your quarterly contribution reports and payments through the mail, send them to:

Alaska Department of Labor and Workforce Development
Unemployment Insurance Tax
P.O. Box 115506
Juneau, AK 99811-5506

Mailing address for correspondence, adjustments to accounts, forms, etc.

Questions, requests for forms or any other correspondence, including adjustment requests, can be mailed to:

Alaska Department of Labor and Workforce Development
Unemployment Insurance Tax
P.O. Box 115509
Juneau, AK 99811-5509

Taxable wage base

The taxable wage base, which is recalculated each year, is 75% of the average annual wage in Alaska.

UI contributions are due for each employee up to the amount of the taxable wage base. Wages paid to an employee in excess of the taxable wage base are still reported and listed on the Wage Schedule, but are not taxed.

If an employee is transferred to Alaska with the same company, the employer can receive credit for the amount paid to another state's taxable wages against Alaska's taxable wage base in the same calendar year.

In a successorship, if an entire organization, trade, or business, or a distinct portion is acquired, the wages paid to an employee by the predecessor can be combined with wages paid to the employee by the successor for the calendar year of the acquisition to determine the taxable wage base limitation.

Employee's contribution

Employees working for taxable employers or for nonprofit organizations that pay contributions are required to pay the employee share of contributions on the wages they earn to help finance the UI program. The employer is responsible for deducting the employee's share of the tax from wages earned. This tax is reported and submitted with the employer's quarterly contribution report.

No wages to report for a quarter

Quarterly reports are due for each quarter as long as the account is open, even if no wages were paid during the quarter. The employer should enter zeros in the lines for reportable and taxable wages and amount remitted, certify and date the report and submit it on time. There is a minimum \$10 penalty for late filing of a contribution report even if no money is due.

If an account has zero reports for eight or more consecutive quarters, it will be administratively closed. An employer who is anticipating paying wages in the near future, and whose account was administratively closed, should call or write the UI Tax office to have the account reopened.

Mid-quarter change

Contribution reports for both the original employer and the successor employer are required when an ownership or entity change occurs in the middle of a calendar quarter. The original owner, using his or her own account number, must report the wages and pay the taxes up to the date of the change. The successor, using their own account number, is required to report the wages and pay the taxes for their portion of the quarter.

Estimated reports

If employers fail to file a contribution report, the Alaska Department of Labor and Workforce Development will file an estimated report on their behalf. The contributions due on the Notice of Assessment for the estimated report are legally collectible. The employer must respond within 30 days of receipt of the notice. An estimated report does not take the place of the employer's factual report for rating purposes. An employer will receive a penalty rate as long as an estimated report remains on their account or their predecessor's account.

Records required

Each employer must set up, maintain, and preserve accounting and payroll records for not less than five years. Payroll records for each employee must show:

1. beginning and ending dates for each period worked
2. total wages paid in each period
3. name and social security number
4. wage rate, method of wage computation, hours of work, and wages paid in each period, showing separately:
 - ✓ money wages
 - ✓ cash value of remuneration in a medium other than cash
 - ✓ special payments of any kind, including bonuses, gifts and prizes
 - ✓ dates of hire and return to work after layoff
 - ✓ date and cause of each termination and suspense of work

An employer must furnish each employee a statement showing employee contributions withheld for each calendar year. The form generally used is a W-2 form. Employers are not required to file a copy of these statements with the UI Tax office.

An employer's records may be copied as often as necessary, and are open to inspection, such as for an audit, by the department at any reasonable time. The department may also require an employer to give statements or reports, such as a separation statement, with respect to their employees. (AS 23.20.105)

Federal Unemployment Tax Act (FUTA)

In most instances, an employer who is covered under FUTA is also defined as an employer under Alaska law. An employer who files and pays timely contributions to Alaska will receive a credit on a portion of the amount of state UI paid against the FUTA tax. The credit cannot be claimed unless payment has been made to the state. The amount of Federal Unemployment Tax and FUTA maximum taxable wage base are set by federal law. Information and tax forms are available from the Internal Revenue Service. Their toll-free telephone number is:

1-800-829-3676

Excluded Employment

Following are some common types of employment which are excluded from coverage for UI:

- Service performed for a corporation by an **executive officer of the corporation** if:
 - ✓ the corporation is incorporated under AS 10.06 (business corporation) or AS 10.45 (professional corporation)
 - ✓ the corporation is not a government entity or a non-profit corporation
 - ✓ executive corporate officers are those prescribed by the corporation's by-laws and appointed or elected according to the procedures described in the by-laws.

Note: If UI coverage is elected for corporate executive officers, all officers must be covered as a group. Refer to the section on *Election of Coverage* in this handbook.

- Service performed by an individual in the exercise of duties as an **officer of a federally recognized tribe** .
- Service performed by an **individual in the employ of the individual's**:
 - ✓ son, daughter, or spouse
 - ✓ parent or legal guardian if the individual was under the age of 21 years and a full-time student during eight of the last 12 months and intends to resume full-time student status within the next four months
 - ✓ mother or father if the service is performed by a child under the age of 18.

Special Note: *Husbands, wives and minor children of Limited Liability Company (LLC) members, who are not themselves members, but who perform services for the business whether or not the LLC files as a sole proprietor or partnership for federal income tax purposes are reportable for UI Tax purposes.*

*Also, service performed for a partnership by a parent or child (under 18 or a student as listed above), **are reportable** even if the parent or child relationship exists between the employee and all partners, such as with a husband/wife partnership or a son/daughter partnership*

- **Domestic/child care service in a private home**, except when the service is provided for an employer who paid wages of \$1,000 or more for those services in any calendar quarter in the current or preceding calendar year
- Service performed by an **individual on a boat engaged in catching** fish or other forms of aquatic animal life under an arrangement with the owner or operator of the boat; and if the individual does not receive any cash remuneration except as provided below:
 - ✓ the individual receives a share of the catch of fish or other aquatic animal life or a share of the proceeds from the sale of that catch; and
 - ✓ the operating crew of the boat (or each boat from which the individual received a share in the case of fishing operations involving more than one boat) is normally made up of fewer than 10 individuals.
- **Newsboys'** services in selling or distributing newspapers on the street or from house to house
- Service performed by a **minister** of a religion or a member of a religious order in the exercise of related duties
- Service performed for a **church** or association of churches
- Service performed for an organization which operates primarily for **religious purposes** and which is operated, supervised, controlled, or principally supported by a church or a convention or association of churches
- Service performed by **elected and appointed public officials** and municipal (city) officers as provided under AS 23.20.526(d)(8)(A)
 - ✓ **Municipal officers** include the borough or city mayor, borough assemblyman or councilman, school board member, elected utility board member, city or borough manager, members of planning or zoning commissions
 - ✓ **Public official** is defined as a judicial officer, the fiscal analyst of the Legislative Finance Division, the Legislative Auditor of the Legislative Audit Division, the Executive Director of the Legislative Affairs Agency and the directors of the divisions within the Legislative Affairs Agency, the Governor, the Lieutenant Governor, a person hired or appointed as the head or deputy head of a department, or director of a division within a department in the executive branch, an assistant to the Governor, chairman or member of a state commission or board, state investment officers and the State Comptroller in the Department of Revenue.

- Service performed by an **insurance agent, insurance solicitor, a real estate broker, real estate salesperson, or securities salesperson** when he or she receives a commission, unless the service is required to be covered under the Federal Unemployment Tax Act
- Service performed by an individual in **agricultural labor**; except:
 - ✓ when that service is performed for a person who, during any calendar quarter in either the current or the preceding calendar year, paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor; or
 - ✓ when that service is performed for a person who employed 10 or more individuals in agricultural labor for some portion of the day in each of at least 20 different weeks.
- Service performed by a **full-time student** under the age of 22 in a work study program taken for credit at a public or nonprofit institution which has certified that the service is an integral part of the program
- Service performed in the employ of a school, college, or university by an **enrolled student** who is regularly attending classes at the facility
- Service performed for a nonprofit or governmental agency or federally recognized tribe as part of an **unemployment work-relief or work training** program assisted or financed in whole or in part by any federal agency or any agency (department) of the state or political subdivision (city, borough, municipality, etc.) of the state
- Service as a member of the **Alaska Army National Guard or Alaska Air National Guard, or Alaska Naval Militia**
- Service in the employ of the state or a political subdivision of the state as an employee serving on only a temporary basis in case of **fire, storm, snow, earthquake, flood, or similar emergency**
- **Contractor/contract labor services** performed by an individual where, according to Alaska Statute 23.20.525(a)(8)(ABC) as quoted below, it has been shown to the satisfaction of the Alaska Department of Labor and Workforce Development that all three of the following criteria have been met:
 - ✓ *the individual has been and will continue to be free from control and direction in connection with the performance of the service, both under the individual's contract for the performance of service and in fact;*
 - ✓ *the service is performed either outside the usual course of the business for which the service is performed, or is performed outside of all the places of business for which the service is performed; and*

- ✓ *the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the services performed.*

For more information see the section on *Contract and Casual Labor*.

- Service performed by an individual in a calendar quarter for an **organization exempt from income tax under 26 U.S.C. 501(a)**, if remuneration for service is less than \$250.

Election of coverage for excluded employment

Employers may voluntarily elect to have their excluded employment covered for UI purposes. By doing so, employees who would otherwise be excluded may be eligible for UI benefits should they become unemployed. To elect to participate in UI coverage, an employer should submit a *Voluntary Election of Coverage for Excluded Employment* form.

When electing coverage, employers should indicate the date they would like coverage to begin. Once approved by UI Tax, an Election of Coverage agreement is binding for a minimum of two full calendar years from the effective date of the coverage. Coverage continues in effect on a yearly basis until either the employer or UI Tax terminates the coverage in writing. This must be done no later than March 15th of the year for which termination is requested.

Important Points to Remember:

- All corporate executive officers must be covered as a group.
- Self-employment is not covered, nor can coverage be elected. Sole proprietors, partners and managing members of a Limited Liability Company are considered self-employed.
- Wages paid to individuals who are specifically excluded from coverage should not be listed on the wage schedule or included in the total reportable wages unless the employer has on file an Election of Coverage for Excluded Employment that has been approved by the Department.

Wages and Excluded Payments

The wages that are reportable for UI tax purposes are the total wages paid to an employee before any deductions, such as taxes, are made. Alaska Statute 23.20.530 define wages as “all remuneration for services.” The most common types of remuneration are:

- hourly pay
- salaries
- back pay and overtime paid in settlement of employee claims

- bonuses and lump sum payments
- cash paid instead of fringe benefits
- cash value of all pay in any medium other than cash
- commissions
- fringe benefits such as adoption assistance, day care, legal services plan, etc., and those not listed under Excluded Employment
- sick leave pay (unless sick leave is paid out of a separate third-party fund which is for that purpose only)
- tips (when employees report them to the employer)
- vacation pay

However, there are payments that are **exceptions to the definition of wages** and these should not be reported. The most common exceptions are:

- dismissal payments (severance pay) which the employer is not legally required to pay
- payments by an employer and/or on behalf of an employee into a fund for:
 - A. retirement
 - B. sickness or accident disability
 - C. medical or hospitalization expenses in connection with sickness or accident disability
 - D. death benefits

(See Retirement Plans and Section 125 Cafeteria Plans)

- reimbursement to employee for moving expenses
- employment agency fees
- room and board when required for employer's convenience
- royalty payments to employees
- subsistence or per diem payments made to an employee while employed away from home *(see explanation below)*.

Reimbursement for expenses incurred by an employee in the performance of duties is not wages. To be considered a reimbursement of expense, the employer must maintain, and have available for review, evidence that the reimbursement reflects the actual employee business expenses. A payment, commonly called an allowance that is not accounted for, is considered wages. Some of the more commonly used allowances are:

- equipment or tool allowance
- car allowance
- mileage allowance
- uniform allowance

Back pay awards through a contract grievance procedure, arbitration, or court decision are considered wages under Alaska Statute 23.20.530(a). The gross amount of the payment is reportable by the employer on the Alaska Quarterly Contribution Report in the quarter in which the payment is issued.

Back payments and back pay awards must also be reported by the employee as deductible income for any week in which they are filing for UI benefits. When a claim for UI benefits is established, back pay awards and back pay for work already done are credited to the period in which the work was actually done or would have been done. If the claimant received benefits for any week within that period, an UI benefit overpayment will be established. To avoid the improper payment of UI benefits, an employer that is involved in an award or settlement agreement should contact Benefit Payment Control at 1-888-810-6789 or 907-465-2863 before making the settlement payment. With knowledge of the amount of the settlement and the time period covered by the settlement, Benefit Payment Control can determine if an UI overpayment will exist and how much should be deducted from the payment. Deductions from settlement payments for repaying overpaid UI benefits should be mailed to:

**Benefit Payment Control
Audit and Recovery
P. O. Box 115505
Juneau, AK 99811-5505.**

Contract and Casual Labor

Contract labor defined

Contract labor is a term commonly used by employers to describe a worker who is “independent,” i.e., not an employee. Alaska Statutes require scrutiny of the relationship between the employer and the contract laborer to determine for UI tax purposes whether the worker is an employee. Alaska Statutes give three conditions, discussed below, that must be met for a worker to be excluded from coverage. It is in the employer’s best interest to understand these provisions of the law. Failure to report a contract laborer who does not meet all the conditions may result in additional taxes, interest, and penalties to the employer.

Agreements and contracts are not sufficient to alter the real status or relationship between the employer and the worker. According to Alaska Statute 23.20.395, coverage under the Alaska Employment Security Act cannot be waived. In other words, an employer and/or employee cannot decide that the worker is an independent contractor, responsible for his/her own taxes, unless the legal conditions are met.

These conditions have been interpreted in a number of appeals and court decisions, the outcomes of which may be helpful in determining if “contract labor” is actually “employment” and, therefore, should be reported. The following synopsis is not all inclusive, but should be of some assistance:

To qualify as an independent contractor, a contract laborer **must meet all three** of the following conditions:

- 1) be free from direction and control
- 2) not be in the employer’s usual course or place of business
- 3) be customarily working in an independent trade or business of the same nature.

Free from direction and control

Control is exercised when workers are totally dependent upon the employer economically. The employer may exercise the necessary control over the employee through monetary means. For example, a worker who performs services primarily for one company would be economically dependent upon that company.

The nature and degree of control exercised will vary with circumstances. An experienced worker, for example, requires less direction and control than a novice. The type of work may be another factor in the degree of direction and control required. The test of control is whether the employer has the right to exercise the kind and degree of control necessary within the circumstances.

The fact that a worker may choose his/her own hours of work or days of work may not be sufficient to show a non-employee relationship. Independent contractors, for example, have freedom of action other than choosing hours/days of work. They can work with materials of their own choosing, select their own customers, hire their own assistants, and set their own fees for the services performed.

In contract labor, the company that contracted to have the work done is concerned only with the finished product. In an employer/employee relationship, concern is with the way the work is performed. A test of control is the employer’s right to fire a worker, which is distinct from breach of contract or cancellation of a contract. An employer also has the right to reject a sale or other type of contract proposed by a worker.

Service not in the employer’s usual course or place of business

The **usual course of business** is defined as the usual or ordinary functions and services a business provides. This can change as functions or services are added or deleted from a business' activities. Duties performed by a worker to achieve the goals of the business are considered employment. These services may be direct, such as sales, or indirect, such as bookkeeping, but the work performed is part of the employer's usual course of business.

The employer's **place of business** is the location where the work is performed. For example, a construction job site is the usual place of business for a contractor. The point of sale is the usual place of business for an organization involved in selling.

Customarily working in an independent trade or business of the same nature

A sign of an independent business is not the possession of a business license, but clear indication that the business of the worker could exist independent of the particular employer.

Some of the factors used to determine an independent contractor status include the following:

- ✓ customarily performing work for other clients
- ✓ advertising
- ✓ providing own tools equipment and supplies
- ✓ submitting bids on projects or proposals with the contractor setting their own fees
- ✓ being liable for the performance of the work

What about casual labor?

Alaska does not have a law that specifically addresses *casual labor*. If a worker performs service that is **part of an employer's business**, the wages are reportable regardless of how short the time worked or how little wages were paid. Workers substituting for regular staff or working part-time are to be reported for UI tax purposes.

Alaska does have a law that covers conditions under which a worker who performs service **outside the employer's trade or business** must be covered for UI purposes. The wages must be reported if:

- ✓ remuneration paid is \$50 or more in a calendar quarter, and
- ✓ the service performed is done by a worker who is regularly employed to do this work.

Individuals are considered to be regularly employed if they perform service for some portion of the day on each of at least 24 days in a calendar quarter or during the preceding calendar quarter.

Adjustments and Reporting Errors

Adjustments for errors may be submitted by letter or on a *Correction of Wage Item(s)* form, available from any UI Tax office or from the UI Tax web site at www.labor.alaska.gov/estax/forms. Information required includes:

- ✓ the employer's name and account number
- ✓ the year and quarter being corrected
- ✓ the employee's name and social security number
- ✓ the amount of reportable and taxable wages as originally reported, and
- ✓ the corrected reportable and taxable wages.

If an adjustment to an account would result in a credit balance that adjustment can be made within two years after the contributions or interest are erroneously paid. For example, an employer over reported taxable wages for the quarter ending December 31, 2010, which would result in an overpayment for the quarter. The payment applied to that quarter was received on January 30, 2011. The employer will have two years, or until January 30, 2013 to correct the taxable wages reported for that quarter.

Credit notices are normally mailed out once a month. If the credit amount appears to be in error or an employer is unsure of the correct credit balance, a call for clarification should be made before deducting the credit from the contributions due for the next quarter.

Common reporting problems and their solutions

■ ***Listing excluded (non-reportable) wages on the wage schedule***

Some examples of individuals whose wages are excluded by statute include executive officers of a corporation, self-employed individuals, or children under 18 employed by a parent. For a partial list of exclusions, see "*Excluded Employment*" in this handbook. Excluded wages are frequently listed incorrectly on the wage schedule, included in reportable wages, and removed as nontaxable wages.

Solution: Excluded wage payments should NOT be entered on the wage schedule or in reportable wages.

■ **Listing minus or negative amounts on wage schedules to adjust previous quarter reporting errors**

The UI Tax computer system cannot recognize a negative amount. Negative wages will go to a suspense file to be manually processed by UI Tax staff.

Solution: Only wages paid during the quarter should be reported. Corrections to wages reported for a prior quarter must be submitted separately. A *Correction of Wage Item(s)* form may be requested from any UI Tax office, or can be obtained from UI Tax's web site at

www.labor.alaska.gov/estax/forms/toc_forms.htm

Adjustment information may also be submitted in letter form. The letter should include:

- the year and quarter in which the reporting error was made
- each employee's social security number and name
- wages originally reported
- the correct amount of reportable wages for the quarter
- employer name and account number.

To expedite corrections to their accounts, employers should submit those corrections separately from their quarterly reports.

■ ***Listing wages in wrong quarters***

Some employers have pay periods that extend beyond the end of a quarter. When they try to prorate wages to fit into quarters, they are creating unnecessary work, and they are not complying with the law.

Solution: Wages must be reported in the quarter they are paid, not earned.

■ ***Not taking credit for the taxable wages paid by a predecessor***

An employer who acquires a business and is a successor may be able to save money by considering the wages paid by the seller when computing taxable wages for the remainder of the year in which they acquired the business.

Solution: When an employer acquires a business, he or she should be sure to receive a record of the individual employee wages paid by the seller for the year of their acquisition.

Retirement Plans, Section 125 Cafeteria Plans, and other Fringe Benefits

The following sections address retirement plans, Section 125 Cafeteria Plans, and other fringe benefits and whether or not these items are reportable for UI taxes.

- If a benefit is **reportable** it is also potentially taxable, and the amount of the benefit must be included in wages reported for UI taxes.
- If a benefit is **not reportable**, the amount of the benefit should not be included in wages reported for each employee, or in the summary of reportable or taxable wage amounts on the Quarterly Contribution Reports.

Reportable and not-reportable should not be confused with taxable and non-taxable wages. Reportable wages are taxed up to the annual taxable wage base. Also, always list the total reportable wages for each employee on the wage schedule or wage listing. The only place on the Alaska Quarterly Contribution Report where taxable wages are listed is as a total in Box 4 for calculation of taxes due.

Retirement Plans

It is important for an employer to know the type of retirement plan that they have for their employees. Deductions from an employee's wages on account of retirement are not reportable and should not be included in the total reportable or taxable wages reflected on the Quarterly Contribution Report. Likewise, amounts paid by the employer are not reportable or considered wages.

Pensions and Retirement Plans

A pension or retirement plan is a written plan that establishes benefits for employees and their beneficiaries.

Examples of retirement plans include, but are not limited to:

- 401(k) – a cash or deferred arrangement including a stock option plan or a profit-sharing plan that permits employees to also contribute toward their retirement
- PERS (Public Employees Retirement System)
- TRS (Teachers Retirement System)
- 403(b) – a tax sheltered annuity or TSA for employees of religious, charitable, educational, scientific, and literary organizations described in IRC Sec 501(c)(3) and public school systems
- SEP (Simplified Employee Pension)
- SIMPLE (Savings Incentive Match Plan for Employees) – a plan can be set up using IRAs or as part of a 401(k)
- SBS (Supplemental Benefits System) – the annuity portion only
- 457(b) – Deferred Compensation Plan

Section 125 Cafeteria Plans

A Cafeteria Plan allows a participant to choose from a menu of two or more options which may include cash and the following benefits, which the IRS allows to be excluded from wages:

- Group-term life insurance
- Accident or health insurance
- Participation in a 401(k) retirement plan
- Dependent care assistance program
- Group legal services plan
- Flexible Spending Arrangement (FSA)
- Health Savings Account (HSA)

Alaska law allows only the following Cafeteria Plan options to be excluded from the definition of wages for UI tax purposes. Payments for these benefits made by either the employer or employee are excluded from the definition of wages, and they are not reportable for UI tax purposes.

- X Group-term life insurance
- X Accident or health insurance
- X Participation in a 401(k) retirement plan
- X Flexible Spending Arrangement (FSA)
- X Health Savings Account (HSA)

The following options in a Cafeteria Plan are considered wages, and **are reportable** for UI tax purposes. Reportable wages cannot be reduced by the amount of these Cafeteria Plan options.

- ✓ Cash
- ✓ Dependent care assistance plan
- ✓ Group legal services plan

Fringe Benefits

With the advent of so-called “cafeteria plans,” employers are asking more questions concerning fringe benefits and how to report or not report these various benefits. The two sections above on Retirement and Section 125 Cafeteria Plans go over fringe

benefits in these particular situations. However, some employers have other fringe benefits for their employees and/or different methods of handling fringe benefits. It is important that an employer know what the Alaska Statute says about “fringe benefits.” The law is under AS 23.20.530(b)(1) and basically states that...

“wages does not include the amount of any payment paid by an employer for insurance or annuities or into a fund to provide for the payment to or on behalf of an individual or the individual’s dependents under a plan or system established by the employer...on account of:

(A) retirement

(B) sickness or accident disability

(C) medical or hospitalization expenses in connection with sickness or accident disability, or

(D) death”

There is no difference in the treatment of any of these benefits whether they are part of a formal cafeteria plan or not. As an example, let us examine an employer that does not provide a “Cafeteria Plan” for his employees, but does pay the premium for a medical insurance plan for the employees. The employer does not pay for any dependent coverage, and if an employee wishes this coverage, the employee has the dependent coverage premium deducted from their wages. AS 23.20.530(b) excludes the amount of **any payment...to or on behalf of** an employee or the employee’s dependents. These deductions were authorized by the employee and are made on behalf of the employee’s dependents, are paid by the employer on behalf of the dependents, and are therefore, not covered for UI.

The employer’s **plan or system** to handle medical insurance and expenses can vary. While one employer has a formal group insurance plan, Health or Medical Savings Account (HSA or MSA) or Health Reimbursement Arrangement (HRA), with payroll deductions as necessary, another employer may have a system of reimbursing their employees for medical expenses during a calendar year, or reimbursing the employee for premium payments the employee makes for their own personal medical insurance policy. Payments made to or on behalf of an employee for medical expenses are excluded by AS 23.20.530(b)(1).

Reimbursement to an employee for actual medical expenses or insurance premiums requires appropriate backup to clearly indicate that the employer is truly making a reimbursement as opposed to paying additional reportable wages. The employer must have adequate receipts and accounting for any payments made.

The same explanation and accounting would also apply to payments and accounting for life insurance, regardless of the amount of life insurance coverage the employee has, and to disability insurance. These are also excluded under AS 23.20.530(b)(1).

Employer and Contractor Responsibilities

Employers must be aware that they could be held liable for unpaid UI taxes and interest owed by their contractors and subcontractors. An employer's potential liability includes those taxes that are incurred by the contractor's or subcontractor's employees working on the project during the contract period. To avoid problems, employers and contractors need to know their obligations and responsibilities.

Employers and contractors can avoid liability

To avoid a possible liability, an employer should not make payments to contractors or subcontractors without first receiving a Tax Clearance indicating that the contractor or subcontractor has paid their UI taxes. If an employer pays a contractor or subcontractor without having received a Tax Clearance, the employer may become liable for the taxes and interest owed.

Employers have three ways of protecting themselves from the possibility of having to pay the taxes of their contractor or subcontractor:

1. Require that all contractors or subcontractors provide a Tax Clearance before the employer pays them
2. Request a Tax Clearance from UI Tax for all contractors or subcontractors performing services for their employer, or
3. Require that the employer's contractors or subcontractors post a bond with UI Tax sufficient to cover any UI taxes that may be due during the duration of the contract.

Contractors and subcontractors can avoid a delay in payment from the employer by using one of the following methods:

1. Request a Tax Clearance from an UI Tax field office and present this to the employer as proof that their UI taxes are paid.
2. Post a bond with UI Tax sufficient to pay any UI taxes that may become due during the duration of the contract.

Tax clearances

To obtain a tax clearance, an employer, contractor, or subcontractor may call, fax, write, or visit an UI Tax field office. UI Tax staff are available to verify that all required reports have been filed and taxes have been paid.

A request for a tax clearance should include:

- name, address, and telephone number of the employer requesting the tax clearance

- name, address, and telephone number of each contractor, including all names under which the contractor does business
- contractor's federal identification or state UI tax number, if available
- period for which clearance is requested.

Reports are filed with UI Tax on a quarterly basis. Therefore, clearance will generally be granted through the last filed and paid calendar quarter. If, however, an employer has a timely reporting and payment history, a Tax Clearance can be granted through the end of the current quarter.

To grant a mid-quarter tax clearance for employers without a timely reporting and payment history, UI Tax will require a partial report and prepayment of contributions. The UI Tax office can then issue a tax clearance through the weeks included on the partial report. At the end of the quarter, the contractor must file a report that includes **all** wages paid for the entire quarter and include payment for any contributions still owing.

A Tax Clearance is not required for contractors and subcontractors who have no employees. If an employer is insisting that a contractor provide clearance, the contractor should contact UI Tax and request a letter stating that a tax clearance is not required, since no employees are involved.

Contribution Rates

All states have some system of experience rating for calculation of individual employer contribution rates. Alaska's rating system is based on an employer's experience with quarterly wage declines. *See the definition of "Quarterly Declines" noted below.* A rate notice is mailed to each new employer when their account is set up. A rate notice is also mailed to all employers prior to January 1, listing the new rate and the new taxable wage base for the coming calendar year.

The three types of employer rates --- experience, industry, and standard --- are listed below:

"E" Rate – Experience rate

The "E" rate is the rate assigned to an employer who has been subject to the Alaska Employment Security Act for four or more quarters ending with the June 30 computation date and has filed all their reports and paid all contributions, interest, and penalty required by the Act. An "E" rate is based on quarterly declines in reportable wages (not taxable wages) reported each quarter. *See below for "Quarterly Declines."*

"I" Rate – Industry rate

The "I" rate is the rate assigned to a new employer. It is the rate for employers who have less than four consecutive quarters ending with the June 30 computation date. An employer who has been named as successor will generally not be "I" rated. For rating purposes, a successor employer will usually have four

or more quarters ending with the June 30 computation date when considering the predecessor's payroll history. Employers who are "I" rated will receive an industry average rate that is equal to the average rate of eligible employers in the same industry. Employers who do not list their major business activity on the *Employer Registration Form* will be assigned the highest industry rate.

"P" Rate – Standard or penalty rate

The "P" rate is the standard rate and is the highest rate class in the current rate schedule and is assigned to employers who are ineligible for an "E" rate. This standard rate is assigned to employers who have not filed reports, and/or not paid all contributions, interest, and penalties required by the Alaska Employment Security Act.

If an employer failed to file a contribution report and UI Tax filed an **estimated report** for a delinquent quarter, the **estimated report** does not take the place of the employer's factual report for rating purposes. An employer will receive an annual penalty rate if any **estimated report** remains on their account or their predecessor's account. An employer's rate, once assigned, is effective for the entire calendar year.

The quarterly payrolls of predecessor accounts are used in the determination of contribution rates. A predecessor's failure to file all the required reports and/or pay all contributions may also affect the successor's rate.

Quarterly decline

If an employer has a decline or decrease in reportable wages from one quarter to the next, this decline in wages is known as a *quarterly decline*. For rate purposes, a *quarterly decline quotient* is calculated, which is the percentage decrease in wages from one quarter to the next. All the *quarterly decline quotients* for an employer's qualifying quarters are added together, and this total is then averaged. An "E" rate is assigned based on this average of all the quarterly decline quotients.

Adjustments for artificially created quarterly declines

Several factors may create artificial quarterly declines. If an employer pays bonuses or lump-sum payments, or pays bi-weekly, the UI Tax office may be able to lower the employer's contribution rate by removing the effects of artificial declines created by these situations.

Employer Option Forms are used to even out quarterly declines in the above situations. An employer can choose to either delete or apportion the wage payments in order to obtain a more favorable rate.

Careful consideration should be given to the choice of options, as once an option method is chosen, it is effective for future years and may not be changed without approval. Employers are required to file an option form for every quarter in which their artificial decline situation arises.

Options can be made for payroll declines due to issuing bonuses, 7th bi-weekly payroll, labor disputes or for declines caused by a change in accounting methods; for example, paychecks being issued late.

Options may be used to change a rate retroactively. Through June 30, options can be used to correct the rate for the preceding calendar year as well as the current year. From July 1, only the current year's rate can be changed, but the lower rate would be retroactive to January 1 of the current year.

Questions and requests for Options should be directed to an Employer Account Specialist located in the Juneau Central Office or Option forms can be obtained from the UI Tax web site at:

www.labor.alaska.gov/estax/forms/toc_forms.htm

Successor in business

When an employer purchases or otherwise acquires substantially all of the operating assets of a business, the payroll records of the seller/predecessor will transfer to the buyer/successor for purposes of rate determination. The buyer becomes the successor to the seller (or predecessor). There are two types of successor employers:

Employer at the time of acquisition

If the buyer was an employer before buying the business, the buyer's contribution rate for the remainder of the calendar year is the current rate. Because the rate is based on a three year average, the rates for the following years may be calculated using the total of the buyer's payroll combined with the payroll of the seller's business.

Not an employer at the time of acquisition

If the buyer was not an employer before the purchase, the buyer acquires the rate that was assigned to the seller provided there was only one seller or multiple sellers with identical rates. If the sellers' rates were not identical, the buyer's rate will be set at the highest of the sellers' rates.

Responsibilities of successors

1. The successor (buyer) must register the business.
2. The successor (buyer) should withhold enough purchase money to cover the amount of taxes due and unpaid until the seller produces a receipt from UI Tax showing the taxes are paid in full. If the buyer fails to withhold purchase money as required, and the taxes are not paid within 10 days, the buyer is liable for the payment of the seller's unpaid taxes.

3. The successor (buyer) should consider the wages paid by the predecessor (seller) when computing taxable wages for the remainder of the calendar year in which the business was acquired.
4. As with all employers, successors will receive a penalty rate if prior to the UI tax annual rating process one of the following two conditions exists:
 - Either the predecessor's account or the current successor's account has a balance due, and/or
 - The quarterly report(s) have not been filed for all quarters on either the predecessor's account or current successor's account. An estimated report does not take the place of a factual report.

Nonprofit Organizations, Political Subdivisions and Federally Recognized Tribes

Nonprofit organizations, political subdivisions and federally recognized tribes may choose to be a contributory employer and pay contributions based on their quarterly wages, or elect to be a reimbursable employer and reimburse the state for the benefits paid out to their former employees. This important decision can save or cost a business money. The definitions of nonprofit organizations, political subdivisions and federally recognized tribes and an explanation of the two payment options follow.

What is a Nonprofit Organization?

Nonprofit organizations are those organizations that are exempt from federal income tax under 26 U.S.C.501 (a). Nonprofit organizations also include those organizations described in 26 U.S.C.501(c) (3), which are also exempt from income tax under 26 U.S.C.501 (a).

When does a Nonprofit become an employer?

A nonprofit organization must participate in the Alaska UI program if:

- ✓ It is exempt under IRC 501(a) and pays any individual \$250 or more in wages in a calendar quarter.
- ✓ It is exempt under IRC 501(c) (3) and has four or more employees, at the same or different times, for some portion of a day in each of 20 weeks in the current or preceding calendar year. The weeks need not be consecutive.

- ✓ It is exempt under IRC 501(c) (3) and does not have four or more employees in each of 20 weeks, but does have individuals to whom it pays \$250 or more in wages in a calendar quarter.

What is a Political Subdivision?

Political subdivisions are defined as the state and its agencies, boroughs, cities, and municipalities and their agencies, such as hospitals or schools.

What is a Federally Recognized Tribe?

Federally recognized tribes include tribes recognized by the United States Secretary of Interior as being eligible for special programs and services offered by the United States to Indians because of their status as Indians. This includes any subdivisions, subsidiary or business enterprise wholly owned by a federally recognized tribe.

Reimbursable Payment Method

Nonprofit organizations, political subdivisions and federally recognized tribe that elect the reimbursable payment method need to be aware of the risks and responsibilities. The following chart gives a comparison of different employment situations and what effect they may have on both the taxable method and the reimbursable method for payment of UI taxes.

IF AN EMPLOYER HAS:	WITH TAXABLE:	WITH REIMBURSABLE:
Few layoffs and low turnover	May pay more than benefits paid out	Lower costs
Temporary help	Fixed costs regardless of number of layoffs	Higher risks after layoff
Stable or improving economy	May pay more than benefits paid out	Lower costs

Many layoffs and high turnover	Fixed costs regardless of turnover	Higher risks. For the amount of an employer's liability, see <i>The risks</i> , below.
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The risks

Employers who choose the reimbursable payment method must be aware of the risks associated with this payment method. Employers assume liability for their former employees when those workers draw benefits on wages paid while working for them. Reimbursable employers will pay dollar for dollar on that portion of their former employees' benefits attributable to those wages.

As of January 1, 2009, the potential liability for regular benefits paid to a single employee receiving the maximum weekly amount for the maximum number of weeks is \$9,620. The employer may also be liable for extended benefits that are triggered when the unemployment rate for the entire state reaches a certain level and duration.

Regular benefits as of January 1, 2014

Minimum weekly benefit amount:	\$ 56
Maximum weekly benefit amount:	\$370
Minimum number of benefit weeks:	16
Maximum number of benefit weeks:	26

Dependents allowance: \$24 per child up to 3 children

Extended benefits as of January 1, 2013

The number of weeks of extended benefits (EB) provided is based off 50% of the parent claim. During periods of high EB the duration is extended by a maximum of 7 additional weeks.

Depending on the claim:

Minimum number of payable benefit weeks:	8
Maximum number of payable benefit weeks:	13

An employer electing to use the reimbursable method will have to continue reimbursement payments based on wages paid while the employer was on the reimbursable method. Liability for this obligation is binding for the remainder of the calendar year in which the reimbursable status ended and two additional years. The two most common situations involving this type of liability are:

- ✓ if an employer ceases business, and employees are still drawing UI benefits
- ✓ if a reimbursable employer chooses to become a contributory payer, that employer will continue to be liable for any remaining reimbursable

payments based on the period during which the reimbursable method was used.

Electing the reimbursable method

Election of the reimbursable payment method requires approval from the Alaska Department of Labor and Workforce Development (AKDOL). These items must be submitted before approval can be granted:

- ✓ a completed Alaska Employer Registration Form
- ✓ a written notice of the employer's election
- ✓ a copy of the IRS 501(c)(3) exemption letter (non-profits)
- ✓ proof of tribal status (federally recognized tribes)
- ✓ a security deposit

Bonding and security requirements

An election of the reimbursable payment method is not effective until a nonprofit organization, political subdivision or federally recognized tribe files a surety bond with the Alaska Department of Labor and Workforce Development or deposits money or securities with the Department. The amount of the bond or deposit is the larger of \$32,000 or 3.2 percent of the reportable wages paid in the four calendar quarters immediately preceding the effective date of the election.

If wages were not paid in the four quarters before the effective date of the reimbursable account status, the payroll will be estimated using the most recent and applicable information available.

A bond is required to be in effect for three years after the business ceases operations or its reimbursable status is terminated. A cash deposit will not be refunded until all liability for benefits ends, which is also for a three-year period.

Political subdivisions that elect the reimbursable payment method may request in writing a waiver of the bond or deposit requirement. A waiver can only be granted if the political subdivision is not delinquent in its payments, and payments do not appear to be in jeopardy.

Terminating the reimbursable payment method

When the reimbursable payment method is selected, it remains in effect for the remainder of the year elected and the two full calendar years following.

Termination by the employer

An employer who has been reimbursing the fund for benefit payments to former employees may terminate this election and begin to pay regular contributions. Written notice must be filed by March 1 of the year that the termination will be in effect.

In addition to becoming a contributory employer, an employer who was once reimbursable will continue to be responsible for reimbursing the fund for benefits based on wages paid to former employees during the time the employer was using the reimbursable payment method.

Termination by UI Tax staff

- An employer's election to reimburse the fund can be terminated by UI Tax staff for failure to make timely payments. The termination continues until the reporting and payment requirements have been met and for the remainder of the current and following taxable year.
- Election to reimburse the fund also may be terminated by the UI Tax staff if an employer fails to meet the bonding or security requirements. At least 30 days' written notice of intention to terminate the reimbursable payment method must be given by UI Tax. Termination under these conditions will also be in effect for the remainder of the current and following taxable year.

Employees' contributions

Employees of nonprofit organizations, political subdivisions or federally recognized tribes who have chosen the reimbursable payment method are not required to contribute to the UI program. Unlike regular contributory employers, reimbursable employers will not make deductions from their employees' pay to reimburse the Trust Fund.

For information about appeal rights or penalty and interest charges for reimbursable employers, see other sections of this handbook.

Audits

A staff of field auditors in UI Tax monitors and reviews employer accounts to verify compliance with Alaska Statutes and provides instructions on proper reporting procedures. Federal guidelines require that at least two percent of all employers be audited. Information received is confidential and is not published or open to public inspection.

Questions Concerning audits

Q. How does the audit program benefit employers?

A. UI Tax auditors will provide education on:

- ✓ reporting and payment requirements
- ✓ coverage provisions of the law
- ✓ contract/casual labor questions

- ✓ employers' liabilities
- ✓ tax rates

In some instances, the auditors may be able to point out ways to save the employer money.

Q. What will the auditor look for?

A. An auditor verifies that all wages have been reported and taxes computed correctly. The most common errors involve:

- ✓ casual and contract labor
- ✓ excluded employment
- ✓ wages being reported in the wrong quarter

Q. How far back will the audit cover?

A. Audits normally cover one year. However, if errors are discovered, it may be necessary to correct wages for additional years.

Q. What records will be needed?

A. Records reviewed include all accounting, cash, payroll, and tax records of the employer, as well as income tax records of officers, partners, managing members of a Limited Liability Company (LLC) and sole proprietors.

Q. Where will the audit take place?

A. Usually the audit will take place wherever the records are located. Often this is the employer's place of business or accountant's office. However, arrangements can be made to have the audit take place at the UI Tax office.

Q. Who should be present at the audit?

A. Anyone the employer wishes may be present at the audit.

Q. What if an employer doesn't have any employees?

A. UI Tax may want to review the employer's records to confirm this.

Q. What happens if an employer has paid a person for services mistakenly classified as casual or contract labor?

A. The employer will need to pay the amount of any additional tax due plus interest and/or penalty.

Q. When can an employer expect to hear the results of the audit?

A. At the conclusion of the audit, the auditor will advise the employer of the preliminary findings. A letter with the complete audit findings will be sent to the employer at a later date.

Q. What if the audit results in a balance due, but the employer can't pay?

A. An auditor from UI Tax will work with the employer to arrange for a payment contract.

Q. Will the audit findings affect an employer's federal tax reports?

A. If the audit results in a change in the wages the employer originally reported to UI Tax, the employer should contact IRS to see if amended reports are necessary.

Q. What if an employer disagrees with some or all of the audit findings?

A. The employer will be issued a coverage determination letter or a Notice of Assessment. Both of these have a 30-day appeal period, and both require that the appeal request be in writing stating the reasons why the employer believes the notice is unjust or incorrect. The hearing request does not stop collection actions. Refer to the section, "*Unemployment Insurance Tax Appeals*".

Q. Does an employer's appeal request stop interest from accruing?

A. No. Interest will only stop by paying the disputed amount. If the decision is in the employer's favor, the money will be refunded.

Interest and Penalties

Employers are subject to interest and penalties if they do not file a report and submit payment of contributions in a timely manner. The interest and penalties are computed differently for a **contributory employer** and for a **reimbursable employer**. The differing interest charges and penalties are explained below:

Regular contributory employer

■ **Penalty for failure to file a report**

A contributing employer who fails to file a contribution **report when it is due** will be charged a penalty of 5% of the contributions due for each 30-day period or fraction of a 30-day period that the report is late. The maximum penalty is 25% of the contributions due. The minimum penalty is \$10. If an employer is unable to pay the contributions timely, the contribution report should be filed on time to avoid being charged a late filing penalty.

Penalties may be waived if the employer can show, to the satisfaction of UI Tax, that the report was not filed for a reasonable cause. Reasonable cause may include:

- ✓ mail delay
- ✓ erroneous information given by the department
- ✓ death or serious illness of the employer or immediate family
- ✓ destruction by fire or other calamity
- ✓ delay caused by UI Tax
- ✓ ignorance of reporting requirements with no intent to violate the law.

■ **Penalty for nonpayment of contributions**

A penalty of \$10 or 10% of contributions due, whichever is greater may be charged for failure to pay contributions by the date due.

■ ***Penalty for misappropriation of employee contribution***

A penalty equal to five times the employees' share due, but not less than \$25, may be charged to employers who convert to their own use, or otherwise misappropriate, contributions withheld from the employees.

■ ***Interest on past due contributions***

If contributions are not paid on the date they are due, the amount remaining unpaid accrues interest at 12% per year. Interest continues to accrue until payment is received for the full amount due.

Reimbursable employers

■ ***Penalty for failure to file a report***

The late filing penalty is 0.1% of the total reportable wages in the quarter for each 30-day period or fraction of a 30-day period for which the report is late. The penalty may not exceed 0.5% of total reportable wages paid for the quarter, and may not be less than \$10 for each delinquent report.

■ ***Interest on past due contributions***

Interest accrues at 12% per year on all unpaid balances beginning 30 days after the quarterly billing is mailed.

Collections

As a taxing agency, UI Tax has the responsibility to collect all outstanding amounts for contributions, interest, and penalty. To help employers learn their rights and responsibilities, a brief explanation of each collection action follows:

Application of payments on delinquent balances

When a quarterly contribution report is paid after the due date, the payment will be prorated for contributions, interest, and penalties due. Any additional interest and penalty will be added based on the unpaid contribution balance.

Compromise of contributions

UI Tax may compromise a claim for contributions, interest, or penalty if collection of the full amount would result in the insolvency of the employer or individual from whom the balance is due.

Contractor liability

Employers who contract with, or have under them a contractor or subcontractor, who is an employer, can be held liable for unpaid contributions and interest of their contractors or subcontractors. For more information, see the section entitled *Employer and Contractor Responsibilities*.

Executive officers, partners, members, and managers

For purposes of collecting UI contributions, an employer also includes those officers and employees of a corporation, or members, managers or employees of a Limited Liability Company or employees of a partnership, including a limited partnership or limited liability partnership who have a duty to pay the contributions.

Court action

If an employer defaults in the payment of contributions or interest, the amount due may be collected by civil action. The fees or costs charged for the collection of the delinquent amount will be included by UI Tax in the amount due. An employer who is liable will pay the cost of the collection, including all collection fees charged, as well as the costs of the legal action. Liens filed by UI Tax may be foreclosed by decree of the court.

Deferred payment contract

For employers who experience temporary difficulty in making full payment, UI Tax may offer a Deferred Payment Contract. These contracts can allow up to one year to pay off an indebtedness. There are two conditions of these contracts: an employer must continue to timely file reports and pay contributions while the indebtedness is being paid off, and, in addition, a tax lien will be filed. Contact a field representative for more information on a deferred payment contract.

Distraint warrant

By seizing the property of the delinquent employer and selling it at public auction, UI Tax may collect the amount stated in the Notice of Assessment.

Employer's security for delinquent contributions

If UI Tax determines that an employer has been delinquent in paying contributions for two or more quarters, it may require an employer to deposit and keep on deposit a sum equal to the contributions payable for the four completed calendar quarters immediately preceding the delinquency. The deposit, bond, or other security accepted by UI Tax does not relieve the employer from paying delinquent contributions, interest, and penalty. See next section, *Injunctive relief*.

Injunctive relief

If an employer does not deposit and keep on deposit the security required as described under *Employer's Security for Delinquent Contributions*, UI Tax may bring action in Superior Court to enjoin the employer from operating any business as an employer within the state until:

- ✓ the employer is current on all final assessments, including interest and penalty
- ✓ the employer deposits and keeps the required security on deposit to protect against future failure, if requested, and
- ✓ the employer files and pays future quarterly reports on time.

Jeopardy Assessment

If UI Tax believes that an employer is insolvent or if the collection of contributions due will be jeopardized by delaying collection, a Jeopardy Assessment may be issued and collection action may begin immediately.

Lien

A lien is a claim for contributions, interest, and penalty filed against the real and personal property of the employer. Liens may be filed at any time there is a delinquency on the employer's account.

A lien is public information and is notice to possible purchasers and creditors of the state's claim against the property. Once a lien has been filed, it may remain on credit records for seven years.

Lien release

A notice of lien may be released by UI Tax by having a Certificate of Release recorded in the manner prescribed by the Recorder's Office. A lien may not be released by UI Tax until the contributions, interest, penalty, and costs are paid or until UI Tax receives adequate assurance of payment.

Notice and Order to Withhold and Deliver

A Notice and Order to Withhold and Deliver (referred to as a levy) will be issued by UI Tax to any entity who may have in its possession money or property which is owed to, or owned by, the delinquent employer. The entity served with the levy must respond to the order within 10 days or may be served with a court judgment to pay the full amount of the levy.

Notice of Assessment

When contributions, interest, and penalties are delinquent, UI Tax will send by certified mail, a Notice of Assessment to the employer stating the delinquent amount. An employer has 30 days from receipt of the notice to respond.

Before proceeding to collect, as provided by Alaska Statutes, UI Tax need only show that an effort has been made to deliver a Notice of Assessment. Refusal by an employer or the employer's agent to claim the certified mail does not stop the collection activities that UI Tax may pursue.

Employer's response to a Notice of Assessment

If an employer acknowledges that the amount shown as the balance due is correct, it must be paid within the 30 days to stop further collection action. An employer who is unable to pay the full amount within the 30-day period should contact an UI Tax field office to discuss a payment plan.

If the Notice of Assessment indicates that the balance due is based upon an estimated report, filing the factual contribution report and paying the contributions, interest, and penalties due will stop further collection action. If an employer's records show that the report was filed and contributions were paid when due, the employer should contact an UI Tax office.

If an employer disagrees with the Notice of Assessment, he or she has the right to appeal. Appeal rights and procedures are explained on the reverse side of the Notice of Assessment. A written request for a hearing must be made no later than 30 days from the date of the notice. Refer to *"Unemployment Insurance Tax Appeals"*

Property disposal

If UI Tax seizes real or personal property from an employer, it must make an inventory of the seized property. A copy of the inventory must be given to the owner of the property, and must state when and where the property is to be sold.

Notices specifying the property to be sold and the time and place of sale must be posted in at least two public places. The time of sale may not be less than 20, or more than 30 days from the date the notice was posted.

The property may be sold by parcel or lot at a public auction. A minimum price may be set by UI Tax to include the expenses of making the levy and advertising the sale. If the amount bid for the property is not at least equal to the minimum price fixed by UI Tax, the tax office or its representative may declare the property purchased by UI Tax for the minimum price.

Upon sale of the property, UI Tax will issue a bill of sale or a deed to the purchaser. The bill of sale or deed transfers from the delinquent employer to the purchaser all right, title, and interest in the property.

The proceeds of the sale will be applied by UI Tax first toward reimbursement of the costs of distraint, seizure, and sale, and the balance toward satisfaction of the delinquent account. Any excess will be refunded by UI Tax to the employer.

Remedies are cumulative

Remedies given to the State of Alaska for the collection of contributions and interest are cumulative. An action taken by the Alaska Department of Labor and Workforce Development may not be construed to be an election on the part of the state to pursue one remedy to the exclusion of another.

Seizure of property

The amount stated in the Notice of Assessment may be collected by UI Tax by seizing the property of the delinquent employer and selling it at a public auction.

Statute of limitations

By issuance of a Notice of Assessment or suit within five years after a contribution report is filed, the Alaska Department of Labor and Workforce Development starts action for the collection of contributions, interest, and penalties. A proceeding for the collection of these amounts may not begin after the expiration of this period.

In case of a false or fraudulent contribution report with intent to evade contributions, or in the event of a failure to file a contribution report, the contributions may be assessed, or a proceeding initiated in court for the collection of contributions, at any time.

Successor liability

A buyer of a business must withhold enough purchase money to cover the amount of contributions due and unpaid until the seller presents a receipt or tax clearance from UI Tax showing the contributions are paid in full.

If the buyer fails to withhold purchase money as required, and the contributions are not paid within 10 days, the buyer will be liable for the payment of the contributions accrued and unpaid by the seller. (See *Successor in Business*.)

Unemployment Insurance Tax Appeals

This section provides information and requirements for an employer filing an UI Tax appeal. Understanding appeal rights and the appeals process can help an employer obtain a fair and timely decision. Employers are encouraged to contact the UI Tax staff at the Alaska Department of Labor and Workforce Development at any time to review an UI tax adjustment, issue, or rate. Issues can usually be resolved by working together to ensure UI Tax has all the necessary information so that an employer's appeal is fairly and efficiently processed.

The appeals process

There are three levels of appeals. Two are within the Alaska Department of Labor and Workforce Development, at the Tribunal and the Commissioner levels. The third is outside the Alaska Department of Labor and Workforce Development with the Alaska Superior Court. The entry level of an appeal is defined by statute and by the issue(s) being appealed.

- ***Tribunal Level.*** The Tribunal level is a lower level appeal. The tribunal operates as a separate and independent unit of the Alaska Department of Labor and Workforce Development, staffed with hearing officers who hear and decide appeals. If disagreement occurs at this level, an employer may appeal to the Commissioner level.
- ***Commissioner Level.*** The Commissioner level is an upper level appeal. The decision is made by the Commissioner of Labor and Workforce Development. If an employer disagrees with the Commissioner's decision, further appeal must be made to Superior Court.

Filing an appeal

All appeals on UI Tax issues **MUST BE IN WRITING**. An appeal can be filed with an auditor, with other UI representatives, or at any Appeal Tribunal office. The address, telephone number, and fax number of the Appeal Tribunal are listed at the end of this section.

Time Limit

After a notice is issued, the time limit for filing an appeal on that notice is 30 days.

Late appeals

If an appeal is filed after 30 days, reasons for the delay must be stated. In some cases, late appeals may be accepted if delayed for reasons beyond the employer's control.

Bond or security requirements

A bond or other security is required for an appeal of a Notice of Assessment. The requirements are listed under “*Types of Tax Appeals.*”

Acknowledgment of an appeal request

An employer will be mailed a letter acknowledging receipt of a hearing request. Copies of the documents that UI Tax will be presenting in the hearing will be enclosed with the acknowledgment letter. Additional documents may be presented to the Hearing Officer for introduction into the appeal process at later dates. This additional documentation should be received by all parties at least 15 days prior to the hearing date.

Withdrawing an appeal

The employer, who filed the appeal, or the employer’s representative, may request in writing that the appeal be withdrawn. The request should be accompanied by an explanation of why the appeal is being withdrawn. The withdrawal request should be addressed to the Hearing Officer.

Types of tax appeals

There are four kinds of tax appeals. The specific requirements for each appeal are listed below along with their statutory references:

1. Notice of Assessment appeal

When an employer owes delinquent taxes, interest, and/or penalties, a Notice of Assessment is sent by certified mail to the employer. A Notice of Assessment may also be issued to an officer or employee of a corporation; a member or employee of a partnership; or an individual who is determined to be a responsible party under a duty to pay the contributions. (AS 23.20.220, AS 23.20.240, AS 23.20.242)

- **Appeal Level.** A Notice of Assessment appeal is heard at the Commissioner level.
- **Employer’s Notice of Appeal to the Department.** The employer has 30 days from the receipt of the Notice of Assessment to file a petition for a hearing. The hearing request must be in writing, must set out the reasons for objection to the assessment, and must list the amount of contributions that the employer admits is due.
- **Bond or Security Requirements.** The employer’s hearing request must be accompanied by a bond or deposit of other security in the amount of the assessment to ensure future collection if necessary. The security requirement may be waived if the employer submits proof of solvency or reasonable assurance that contributions, interest, and penalties due are not in jeopardy. If the employer fails to provide the required security, collection will proceed. The filing of an appeal does not affect the right of UI Tax to file/perfect a tax lien for the amount owed.

2. Coverage determination appeal

Coverage determination issues involve the question of whether the employing unit is an employer and/or whether service performed for the employer constitutes employment. A coverage determination issue also applies to a nonprofit organization or political subdivision and the effective date of the types of payment option it elects to make or terminate. (AS 23.20.315, AS 23.20.276 and AS 23.20.277)

UI Tax will mail a coverage determination notice or letter to the last address of record of the employer. The notice will include a statement of the supporting facts. If the employer disagrees, an informal reconsideration review or appeal can be filed.

- ***Reconsideration Review.*** Within 30 days, the employer may ask for a reconsideration of the UI Tax determination in light of additional facts or evidence. This initial examination is not an appeal, but an opportunity for the employer to present facts and information to UI Tax staff that may have been missed initially. Staff will review the information provided, make a redetermination, and mail the employer a second notice of determination, including a statement of the supporting facts. If the employer disagrees with this second determination notice, the employer may file an appeal.
- ***Appeal Level.*** A coverage determination issue, either after the reconsideration review mentioned above, or instead of the reconsideration review, is heard at the Appeal Tribunal level.
- ***Employer's Notice of Appeal.*** The employer has 30 days from receipt of the notice of coverage determination letter to file a petition for a hearing. The petition must be in writing.

3. Employer's tax rate appeal

Each Alaska employer is assigned a rate and mailed a **Contribution Rate Notice**. The rate determination becomes conclusive for an employer unless the employer files an application for review and redetermination. (AS 23.20.305)

- ***Appeal Level.*** A rate appeal is heard at the Commissioner level.
- ***Employer's Notice of Appeal.*** The employer has 30 days after the rate notice is mailed to the employer's last address of record to file a written petition for a hearing. Reasons for the appeal must be provided in the written application for review and redetermination.

4. Adjustment or refund appeal

If contributions or interest have been erroneously paid by an employer, a written petition for an adjustment or refund may be filed within two years after payment. An adjustment of the payment can be used to offset future contribution payments. If UI Tax determines that an adjustment or refund should not be allowed, the application will be denied and the employer will be notified in writing. (AS 23.20.225)

- **Appeal Level.** An adjustment or refund appeal is heard at the Commissioner level.
- **Employer's Notice of Appeal.** The employer has 30 days after notification of an adjustment or refund denial to file a written petition for a hearing. The petition should give the reasons for requesting the hearing and the amount to be adjusted or refunded.

Audits

After a business has been audited by a UI Tax Field Auditor and the audit resulted in an appealable determination the auditor will mail a letter of determination, and refer the employer to the Coverage Determination appeal information. Employers are encouraged to discuss any differences with their auditor to try to resolve the issue(s).

Hearing and pre-hearing conference notices

After receiving an employer's request for a hearing, the Appeal Tribunal will schedule a *pre-hearing conference* with the employer and the UI Tax representative and mail a notice to all parties. After the pre-hearing conference, the Appeal Tribunal will schedule the hearing and mail a notice to all parties. Both notices for the pre-hearing or hearing will contain the following information:

- ✓ the date, time, and place of the pre-hearing/hearing
 - ✓ whether the pre-hearing/hearing will be conducted in person or by telephone
 - ✓ the issue or issues that will be addressed at the pre-hearing/hearing
 - ✓ instructions for participating in the pre-hearing/hearing.
- **Read the notice carefully.** The person who filed the appeal should check to make sure all issues are listed and make note whether the pre-hearing/hearing will be conducted by telephone or in person. All instructions on the pre-hearing/hearing notice should be followed.
 - **The employer should call the Appeal Tribunal if:**
 - ✓ the notice does not list the issues the employer expected to be covered at the pre-hearing/hearing
 - ✓ the employer has a problem with the date, time, or place of the pre-hearing/hearing
 - **Telephone Pre-hearing/Hearing.** If the pre-hearing/hearing is conducted by telephone, the employer must call the **Appeal Tribunal at 1-800-232-4762** when the notice is received, to give the telephone number(s) where the employer and employer's witnesses can be reached at the time of the pre-hearing/hearing. If the employer does not call and provide their telephone number(s), the Hearing

Officer cannot make contact for the pre-hearing/ hearing, and the person who filed the appeal will likely receive an unfavorable decision.

The pre-hearing conference

The pre-hearing conference is scheduled to allow for both sides to meet and agree on the issue(s) under appeal, to exchange any documentation or other proposed exhibits not previously exchanged, to set a date and time for the hearing, and to go over the hearing procedures. Evidence is not presented at the pre-hearing conference. The pre-hearing conference may be recorded.

Preparing for the hearing

■ ***Gathering the evidence***

The employer should begin to gather the evidence necessary to present the case as soon as the appeal is filed. Usually there will not be another chance to present evidence after the hearing. The employer may want to make notes to help remember important facts.

■ ***The first place to start***

A copy of the appeal file that contains the documents in the case, including the written evidence used by UI Tax in making its determination, is mailed to the employer along with the letter of acknowledgment of receipt of the hearing request. After reading this material, the person who filed the appeal should have an idea of which facts to challenge or to support. If the employer cannot understand the UI Tax determination, the case should be discussed with an UI Tax representative. The Hearing Officer is not allowed to discuss the issues of the case with any of the parties before the hearing.

■ ***Interpreters***

If the employer needs an interpreter and cannot provide one, the Appeal Tribunal office should be contacted.

■ ***Witnesses***

The employer has the right to present witnesses for testimony. The Hearing Officer, however, will not allow repetitive evidence or evidence that is not relevant to the case. There is no need to bring several witnesses to testify to the same occurrence or facts. One credible witness may be enough; however, more than one witness may be needed to cover different occurrences or facts.

Employers must notify witnesses of the hearing and provide telephone numbers if the hearing is to be conducted by telephone. If the witness(es) will not agree to testify, the Hearing Officer should be contacted immediately. If the witness(es) are necessary to the case, the Hearing Officer may, upon request, issue a

subpoena that will compel the witness(es) to testify. The name(s) and current address(es) of the witness(es) must be provided.

■ **Written evidence**

An employer may submit and the Hearing Officer will only accept those records, letters, and other documents for the hearing that are relevant and necessary to decide the case. Written documentation should be sent to the Appeal Tribunal as requested, and should be received by both the Hearing Officer and UI Tax at least 15 days prior to the hearing date. Copies should be brought to the hearing, or should be immediately on hand if the hearing is conducted by telephone.

■ **Researching the law**

The Hearing Officer is knowledgeable about UI tax law and will summarize the law at the hearing. An employer may want to review the Alaska Employment Security Act (AS 23.20) and the regulations governing the UI program (8 AAC 85), in order to become familiar with the law before the hearing.

An employer may also want to review past court decisions to determine how similar cases have been decided.

The law and precedent decisions are available at the following locations:

- ✓ Online at: <http://labor.alaska.gov/appeals/adecis.htm>
- ✓ Appeal Tribunal Offices
- ✓ Law Libraries

The Alaska Statutes and Regulations that apply to UI may also be accessed on the Internet at:

www.labor.alaska.gov/estax/laws.htm

The hearing

■ **Be Prompt**

Be sure you understand when and where the hearing is to be held. If the hearing is to be conducted by telephone, the person appealing must be at the contact telephone number for the call.

■ **Tardiness**

If the person who filed the appeal fails to attend the hearing or to take the call, the Hearing Officer will allow the other parties and witnesses to leave and the appeal will be dismissed.

■ ***If the employer does not attend***

If the employer does not participate in the hearing, the Hearing Officer may dismiss the appeal or uphold UI Tax's decision.

■ ***Representation***

Parties may appear with or without an attorney or other representative. The Hearing Officer will explain the hearing procedures and safeguard the rights of all parties during the hearing. Participants may be represented, however, at their own expense by an attorney or any other representative of their choice. The name and telephone number of the representative must be provided to the Appeal Tribunal.

UI Tax is generally represented by a staff member. UI Tax has the right to legal representation, and would, if necessary, be represented by the Attorney General's Office.

■ ***Postponement***

If it is impossible for an employer to participate in the hearing, the Hearing Officer must be called immediately at (800) 232-4762 to request a postponement. Hearings will be postponed only for good cause.

■ ***Confidentiality***

Unemployment tax records are confidential and may be released only for the specific purposes spelled out in AS 23.20.110.

■ ***Hearing Procedure***

At the time of the hearing, all the interested parties will be together, either by telephone or in person. The Hearing Officer will explain the hearing procedures and issues to be decided. Each person who gives testimony will be under an oath, and all the testimony will be recorded. The person filing the appeal will have the opportunity to testify, and to ask questions of witnesses who testify.

The Hearing Officer will introduce documents or other material evidence in addition to the testimony. An employer may offer additional documents for the record at any time in the hearing. It is important to remember, however, that the Hearing Officer must exclude evidence that is repetitious or not relevant. At the end of the hearing, the Hearing Officer will allow the appealing party to make a closing statement summarizing their position.

■ ***Assistance at the hearing***

The Hearing Officer has a duty to provide a full, fair, and courteous hearing for all parties. The Hearing Officer will control the hearing to prevent intimidation or discourtesy, and will assist the employer, when necessary, in presenting their case. If the appealing party is taken by surprise or confused about what to do next, the Hearing Officer may be asked for help.

A party who disagrees with a ruling by the Hearing Officer should make a brief statement informing the Hearing Officer of the reason for disagreement. Even if the Hearing Officer does not change the ruling at the hearing, the objection or request is on the record. The Hearing Officer's ruling may be reversed on appeal.

The decision

After the hearing, a written decision stating the facts, law, and reasons for the decision will be mailed to the interested parties. The decision will explain the parties' right to further appeal.

Further appeal

■ ***From Appeal Tribunal decisions to the Commissioner level***

An employer who disagrees with the Hearing Officer's decision at the Tribunal level can file an appeal to the Commissioner of Labor. The facts surrounding the case before the Commissioner of Labor will be limited to the facts presented before the Appeal Tribunal. No additional evidence may be presented during the hearing held before the commissioner.

■ ***From Commissioner level to Superior Court***

A decision of the Commissioner will include information on the employer's right to further appeal in Superior Court. The facts surrounding the case before the Superior Court will be limited to the facts presented before the commissioner. No additional evidence may be presented during the hearing held before the Superior Court.

Appeal Tribunal Office Addresses:

Appeal Tribunal
3301 Eagle St., Room 206
Anchorage, AK 99503

Phone: (907) 269-4890
Toll-Free: (800) 232-4762
Fax: (907) 269-4840

Appeal Tribunal
P.O. Box 115509
Juneau, AK 99811-5509

Phone: (907) 465-2775
Toll-Free: (800) 232-4762
Fax: (907) 465-3374

Relay Alaska
telephone number
(800) 770-8973

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We are an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

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