



New York State Department of Labor  
Unemployment Insurance Division  
Liability and Determination Section  
State Office Campus  
Albany, NY 12240-0322  
888-899-8810

## Unemployment Insurance (UI) Coverage For Indian Tribes

The New York State Unemployment Insurance Law conforms to the Federal Unemployment Tax Act (FUTA) by requiring UI coverage of Indian Tribes. Indian Tribes become liable for UI purposes as of the first day of the calendar quarter in which they pay remuneration to persons in covered employment.

Indian Tribes can choose to either reimburse the Department for benefits actually paid to their former employees or remit regular UI tax contributions.

### Benefit Reimbursement versus Tax Contributions

To decide whether to select the Benefit Reimbursement option or the Tax Contribution option, you need to compare the cost of each program.

Contributions due from those employers electing the tax contribution method equal the employer's annual total tax rate multiplied by the taxable wage base. The total tax rate is made up of the normal tax rate and, under certain circumstances, a subsidiary tax (both of which reflect the employer's experience in the unemployment insurance system), plus a Re-employment Service Fund rate.

We assign a tax rate to all newly liable employers. This tax rate includes the normal tax rate, a subsidiary rate, and a Re-employment Service Fund rate. Employers must pay an annual tax reflecting the taxable wage base multiplied by a total tax rate. When an employer qualifies for a normal tax rate based on experience, the total rate ranges from 1.5% to 9.9%.

For example, if the newly liable employer tax rate is 4.1% and the taxable wage base is \$8,500, the annual tax per employee is \$348.50.

We set up an account for each tax-paying employer as a bookkeeping method to measure the employer's account balance. We calculate each employer's account balance on December 31 (the computation date) of each year. We use the account balance to determine the account percentage. The account percentage is used to determine the employer's normal and subsidiary tax rates. The account balance is the sum of all taxes credited to an employer account minus all benefits paid to former employees and charged to the account. It does not represent a cash amount available to the employer. The employer cannot use the account to offset benefit payments if an employer changes from the tax basis to benefit reimbursement. We keep any account balance in the tax basis account to be used if the employer returns to the tax basis option from the benefit reimbursement option.

Employers that choose the benefit reimbursement option must reimburse the Unemployment Insurance Fund, dollar-for-dollar, for benefits paid to their employees and charged to their accounts. The weekly benefit rate equals 1/26 of a claimant's highest quarter earnings in all covered employment during the base period used to establish the claim, unless the claimant's highest quarter earnings are \$3,575 or less. Then, the weekly benefit rate will be 1/25 of these earnings. Currently, weekly benefit rates range from \$65 to \$405. For more on charges to employer accounts, request the *Unemployment Insurance Benefits - An Employers Guide* (IA 318.2), available at [www.labor.ny.gov](http://www.labor.ny.gov) or call 888-899-8810.

Currently, a claimant is entitled to up to 26 full weekly benefit payments. The first seven full benefit payments are chargeable to the last employer the claimant worked for prior to filing the claim. The remaining 19 full weekly benefit payments are prorated among all employers in the claimant's base period based on the amount of wages paid by them. An additional 13 weeks of Extended Benefits may be payable during periods of high unemployment. Extended benefits are charged to the account of the Indian Tribe.

### **Other factors to consider:**

- How many employees do you expect to qualify for UI benefits using their employment with you?
- How long are these workers likely to be out of work before they find a job?
- What are the weekly benefit rates of these employees? (This depends on their quarterly earnings in all covered employment during the base period used to establish their claims.)

### **Requesting the Tax Contribution Option**

If you elect the tax contribution option, review the publication, *Experience Rating* (IA 318.12) for information on the charging of benefits options. Also, review the *Employer's Guide to Unemployment Insurance, Wage Reporting and Withholding Tax* (NYS-50) for your filing obligation under the tax option. Both forms are available at [www.labor.ny.gov](http://www.labor.ny.gov) or call 888-899-8810.

If you are currently liable under the reimbursable option and you wish to change to the tax contribution option, you must submit a written request for the change by December 31 of the year prior to the year you want the change to take effect. This request must be sent to the Liability and Determination Section at the address on the front of this form.

### **Requesting the Benefit Reimbursement Option**

There are two ways you can request the benefit reimbursement option:

- You may request the reimbursement option within thirty days of becoming liable under the UI Law, or
- If you are currently liable under the tax option and you wish to change to the reimbursement option, you must submit a written request for the change by December 31 of the year prior to the year you want the change to take effect. This request must be sent to the Liability and Determination Section at the address shown on the front of this form.

We may extend the date to change to the reimbursement option if you can show good cause exists for the late request.

If the Commissioner of Labor approves the reimbursement option:

- The tribe must execute and file a surety bond within 90 days after the approval of this election
- The Commissioner must approve the amount and the form of the initial surety bond
- The bond remains in effect while the reimbursement option is in effect
- The Commissioner may annually revise the amount and the form of the bond

Please note: Indian Tribes can request separate elections for the reimbursement option for itself and each subdivision, subsidiary, or business enterprise wholly owned by such Indian Tribe.

### **Charging of Benefits**

We base charges to an employer's account, regardless of whether they are a reimbursable employer or pay on a tax contribution basis, based upon their standing with regard to other employers in the claimant's base period (i.e. the last employer will be charged for the first seven weeks, and the remaining costs are assigned on a prorated basis to all employers in the claimant's base period).

If you choose the benefit reimbursement option, we send you a monthly *Notice of Benefit Reimbursement Charges*. This lists all charges made to your account for benefits paid to former employees. You should review these charges and advise us if you think benefits have been improperly paid or charged to your account.

## Your Obligations

Employers who choose the reimbursement option must reimburse the UI Fund on a dollar-for-dollar basis for all benefits paid to their former employees and charged to their accounts.

This applies to benefit payments calculated based on remuneration paid to employees on or after the date the election became effective.

If you choose the benefit reimbursement option, we will bill you at the end of each calendar quarter for the amount due. This quarterly bill is for the amount of benefits charged and/or credited to your account in that quarter.

Payment is due:

- By the last day of the month after the close of the calendar quarter or
- 15 days after the billing date

whichever is later. Interest is assessed on all late payments at the rate of 12% per year.

If you choose the Benefit Reimbursement option, you must file the *Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return* (NYS-45) (and NYS-45ATT, if applicable). You must include:

- The Employer Registration Number
- Withholding Tax Identification Number
- Employer name
- The quarter, the year and number of employees each month

To satisfy your UI and Wage Reporting requirements complete:

- Part A, line 1
- Part C, columns a, b and c

To determine if you have a withholding requirement, please see Publication NYS-50, *Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax* available at [www.labor.ny.gov](http://www.labor.ny.gov) or call 888-899-8810.

You can now file your NYS-45 electronically through the Department of Taxation and Finance's Online Tax Center at [www.ny.tax.gov](http://www.ny.tax.gov).

## Sharing of Benefit Reimbursement Costs

Two or more employers can choose the benefit reimbursement option as a group to share the cost of benefits paid to former employees. The members of the group shall be "severally and jointly" liable for reimbursement. Write to the Liability and Determination Section if you want to set up such a plan.

## Ending the Benefit Reimbursement Option

### Voluntary Election to End the Benefit Reimbursement Option

You can stop the benefit reimbursement option on the first day of any calendar year by filing a written notice with the Liability and Determination Section before the start of that year. You are then liable on a tax contribution basis. You remain liable for any benefits paid based on remuneration paid to employees up to the date of cancellation.

### Loss of the Benefit Reimbursement Option due to late payment or nonpayment

You have 90 days from when you receive a notice of delinquency from the Commissioner of Labor to make payment. If you do not pay in full by December 31, you will lose the benefit reimbursement option for the next calendar year. If you lose the benefit reimbursement option because of late payment or nonpayment, you may ask to have the benefit reimbursement option reinstated after a full calendar year without that option. You may ask to have the option reinstated as of January 1 of the year after the year you lost the option if:

- All your contributions are timely
- You have no outstanding amounts due

### Terminating Coverage for Employees

If, within 90 days of receipt of a notice of delinquency, an Indian Tribe fails to:

- Make required contributions
- Make payments in lieu of contributions
- Make payments of penalties or interest, or
- Post a required surety bond

The Commissioner of Labor may determine that services performed are not in covered employment. This termination of coverage will be effective on the first day of the quarter following the quarter that the notice of termination was mailed.

If the tribe loses coverage because of failure to pay:

- They become liable for taxes under FUTA
- The Internal Revenue Service and the United States Department of Labor receive notice of termination of coverage as required by law

Coverage cannot be resumed until the employer has paid all interest, penalties, contributions, and payments in lieu of contributions. At that time, coverage will begin in the quarter following the quarter all monies have been paid.

### Continuation of Liability for Reimbursement of Benefit Costs

The Tribe remains liable for the reimbursement of any benefits that are based on remuneration paid to employees before the date the termination or cancellation took effect when:

- The benefit reimbursement option is terminated by the Tribe, or
- Cancelled by the Commissioner of Labor because of failure to make any of the required payments

## **Other Considerations for Indian Tribes:**

### Excluded Employment

The term employment does not include services rendered for an Indian Tribe by:

- An elected official
- A member of a legislative body or of the judiciary
- A member of the State National Guard or Air National Guard (Except a person who renders such services as a regular State employee)
- A person serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency
- A person in a major non-tenured policymaking or advisory position
- A person in a policymaking or advisory position (Their duties cannot ordinarily require more than eight hours per week to perform.)
- An inmate of a custodial or penal institution

### Covered Employment

The term employment includes, but is not limited to, services rendered for an Indian Tribe by:

- Daytime students in elementary or secondary schools
- Children under the age of 14
- Babysitters under the age of 18 at the home of the employer
- Golf Caddies
- Persons under the age of 21 performing casual services consisting of yard work and household chores about a residence

### Reporting Wages

Indian tribes are not required to report the following payments to employees:

- Dismissal or severance payments
- Sick pay
- Moving expense reimbursement
- Disability payments

**Direct any questions about the Benefit Reimbursement Option or Tax Contribution Option to the Liability and Determination Section at the address and telephone number on the front of this form.**