

IC 22-4-10

Chapter 10. Employer Contributions

IC 22-4-10-1

Payments; time; amounts instead of contributions; election; interest and penalties; joint applications

Sec. 1. (a) Contributions shall accrue and become payable from each employer for each calendar year in which it is subject to this article with respect to wages paid during such calendar year. Where the status of an employer is changed by cessation or disposition of business or appointment of a receiver, trustees, trustee in bankruptcy, or other fiduciary, contributions shall immediately become due and payable on the basis of wages paid or payable by such employer as of the date of the change of status. Such contributions shall be paid to the department in such manner as the department may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in an employer's employ. When contributions are determined in accordance with Schedule A as provided in IC 22-4-11-3, the department may prescribe rules to require an estimated advance payment of contributions in whole or in part, if in the judgment of the department such advance payments will avoid a debit balance in the fund during the calendar quarter to which the advance payment applies. An adjustment shall be made following the quarter in which an advance payment has been made to reflect the difference between the estimated contribution and the contribution actually payable. Advance payment of contributions shall not be required for more than one (1) calendar quarter in any calendar year.

(b) Any employer which is, or becomes, subject to this article by reason of IC 22-4-7-2(g) or IC 22-4-7-2(h) shall pay contributions as provided under this article unless it elects to become liable for "payments in lieu of contributions" (as defined in IC 22-4-2-32).

(c) Except as provided in subsection (e), the election to become liable for "payments in lieu of contributions" must be filed with the department on a form prescribed by the department not later than thirty-one (31) days following the date upon which such entity qualifies as an employer under this article, and shall be for a period of not less than two (2) calendar years.

(d) Any employer that makes an election in accordance with subsections (b) and (c) will continue to be liable for "payments in lieu of contributions" until it files with the department a written notice terminating its election. The notice filed by an employer to terminate its election must be filed not later than thirty (30) days prior to the beginning of the taxable year for which such termination shall first be effective.

(e) Any employer that qualifies to elect to become liable for "payments in lieu of contributions" and has been paying contributions under this article, may change to a reimbursable basis by filing with the department not later than thirty (30) days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election

shall not be terminable by the organization for that and the next year.

(f) Employers making "payments in lieu of contributions" under subsections (b) and (c) shall make reimbursement payments monthly. At the end of each calendar month the department shall bill each such employer (or group of employers) for an amount equal to the full amount of regular benefits plus the part of benefits not reimbursed by the federal government under the Federal-State Extended Unemployment Compensation Act of 1970 paid during such month that is attributable to services in the employ of such employers or group of employers. Governmental entities of this state and its political subdivisions electing to make "payments in lieu of contributions" shall be billed by the department at the end of each calendar month for an amount equal to the full amount of regular benefits plus the part of benefits not reimbursed by the federal government under the Federal-State Extended Unemployment Compensation Act of 1970 paid during the month that is attributable to service in the employ of the governmental entities.

(g) Payment of any bill rendered under subsection (f) shall be made not later than thirty (30) days after such bill was mailed to the last known address of the employer or was otherwise delivered to it, unless there has been an application for review and redetermination filed under subsection (i).

(h) Payments made by any employer under the provisions of subsections (f) through (j) shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the employer.

(i) The amount due specified in any bill from the department shall be conclusive on the employer unless, not later than fifteen (15) days after the bill was mailed to its last known address or otherwise delivered to it, the employer files an application for redetermination. If the employer so files, the employer shall have an opportunity to be heard, and such hearing shall be conducted by a liability administrative law judge pursuant to IC 22-4-32-1 through IC 22-4-32-15. After the hearing, the liability administrative law judge shall immediately notify the employer in writing of the finding, and the bill, if any, so made shall be final, in the absence of judicial review proceedings, fifteen (15) days after such notice is issued.

(j) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to IC 22-4-29, apply to past due contributions.

(k) Two (2) or more employers that have elected to become liable for "payments in lieu of contributions" in accordance with subsections (b) and (c) may file a joint application with the department for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Such group account shall be established as provided in regulations prescribed by the commissioner.

(Formerly: Acts 1947, c.208, s.1001; Acts 1955, c.317, s.4; Acts 1971, P.L.355, SEC.18.) As amended by Acts 1977, P.L.262, SEC.17;

Acts 1981, P.L.209, SEC.6; P.L.18-1987, SEC.33; P.L.135-1990, SEC.1; P.L.21-1995, SEC.70; P.L.235-1999, SEC.9; P.L.108-2006, SEC.10; P.L.175-2009, SEC.8.

IC 22-4-10-2

Fractional part of cent

Sec. 2. In the payment of any contribution, a fractional part of a cent shall be disregarded unless it amounts to one-half cent (1/2 cent) or more, in which case it shall be increased to one cent (1 cent).
(Formerly: Acts 1947, c.208, s.1002.)

IC 22-4-10-3

Rates

Sec. 3. (a) This subsection applies before January 1, 2011. Except as provided in section 1(b) through 1(e) of this chapter, each employer shall pay contributions equal to five and six-tenths percent (5.6%) of wages, except as otherwise provided in IC 22-4-11-2, IC 22-4-11-3, IC 22-4-11.5, and IC 22-4-37-3.

(b) This subsection applies after December 31, 2010. Except as provided in section 1(b) through 1(e) of this chapter and IC 22-4-37-3, each employer shall pay contributions equal to the amount determined or estimated by the department under section 6 of this chapter, IC 22-4-11-2, IC 22-4-11-3.5, and IC 22-4-11.5.
(Formerly: Acts 1947, c.208, s.1003; Acts 1971, P.L.355, SEC.19.) As amended by P.L.225-1985, SEC.1; P.L.108-2006, SEC.11; P.L.175-2009, SEC.9; P.L.110-2010, SEC.25; P.L.2-2011, SEC.6.

IC 22-4-10-4

Experience accounts; separate accounts

Sec. 4. (a) Except as provided in section 1(b) through 1(e) of this chapter, the commissioner shall maintain within the fund a separate experience account for each employer and shall credit to such account all contributions paid by such employer on its behalf except as otherwise provided in this article.

(b) The commissioner shall also maintain a separate account for each employer electing to make payments in lieu of contributions as provided in section 1(b) through 1(e) of this chapter and shall charge to such account all benefits chargeable to such employer and credit to such account all reimbursements made by such employer.
(Formerly: Acts 1947, c.208, s.1004; Acts 1951, c.307, s.1; Acts 1965, c.190, s.3; Acts 1971, P.L.355, SEC.20.) As amended by P.L.18-1987, SEC.34; P.L.21-1995, SEC.71; P.L.108-2006, SEC.12.

IC 22-4-10-4.5

Employer surcharge; interest payment on state advances from federal unemployment account

Sec. 4.5. (a) This section applies to a calendar year that begins after December 31, 2010, to an employer:

(1) that is subject to this article for wages paid during the calendar year;

(2) whose contribution rate for the calendar year was determined under this chapter, IC 22-4-11, IC 22-4-11.5, or IC 22-4-37-3; and

(3) that:

(A) has been subject to this article during the preceding thirty-six (36) consecutive calendar months; and

(B) has had a payroll in each of the three (3) preceding twelve (12) month periods;

if, during the calendar year, the state is required to pay interest on the advances made to the state from the federal unemployment account in the federal unemployment trust fund under 42 U.S.C. 1321.

(b) In addition to the contributions determined under this chapter, IC 22-4-11, IC 22-4-11.5, or IC 22-4-37-3 for calendar year 2011, each employer shall pay an unemployment insurance surcharge that is equal to thirteen percent (13%) of the employer's contribution determined under this chapter, IC 22-4-11, IC 22-4-11.5, or IC 22-4-37-3 for the calendar year.

(c) For a calendar year that begins after December 31, 2011, in which employers are required to pay the unemployment insurance surcharge described in subsection (b), the department shall determine, not later than January 31, the surcharge percentage for that year based on factors that include:

(1) the interest rate charged the state for the year determined under 42 U.S.C. 1322(b); and

(2) the state's outstanding loan balance to the federal unemployment account on January 1 of the year.

(d) The unemployment insurance surcharge described in subsection (b) is payable to the department quarterly at the same time as employer contributions are paid under section 1 of this chapter. Failure to pay the unemployment insurance surcharge as specified in this section is considered a delinquency under IC 22-4-11-2.

(e) The department:

(1) may use amounts received under this section to pay interest on the advances made to the state from the federal unemployment account in the federal unemployment trust fund under 42 U.S.C. 1321; and

(2) shall deposit any amounts received under this section and not used for the purposes described in subdivision (1) in the unemployment insurance benefit fund established under IC 22-4-26.

(f) Amounts paid under this section and used as provided in subsection (e)(1) do not affect and may not be charged to the experience account of any employer. Amounts paid under this section and used as provided in subsection (e)(2) must be credited to each employer's experience account in proportion to the amount the employer paid under this section during the preceding four (4) calendar quarters.

As added by P.L.2-2011, SEC.7.

IC 22-4-10-4.6

Unemployment insurance solvency fund; establishment; investment; interest; nonreverting

Sec. 4.6. (a) The unemployment insurance solvency fund is established for the purpose of paying interest on the advances made to the state from the federal unemployment account in the federal unemployment trust fund under 42 U.S.C. 1321. The fund shall be administered by the department.

(b) Money received by the department from the unemployment insurance surcharge that the department elects to use for the purposes described in section 4.5(e)(1) of this chapter shall be deposited in the fund for the purposes of the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited at least quarterly in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

As added by P.L.2-2011, SEC.8.

IC 22-4-10-5

Voluntary payments

Sec. 5. Any employer may make voluntary payments in addition to the contributions required under this article, and the same shall be credited to its experience account. Such voluntary contributions shall not be used in the computation of reduced rates unless such contributions are paid prior to the expiration of one hundred twenty (120) days after the beginning of the year for which such rates are effective. Such payments shall be included in the experience account as of the computation date only if they are made within thirty (30) days following the date upon which the department mails notice that such payments may be made with respect to a calendar year. Such voluntary payments when accepted from an employer will not be refunded in whole or in part.

(Formerly: Acts 1947, c.208, s.1006; Acts 1951, c.295, s.8.) As amended by P.L.144-1986, SEC.100; P.L.18-1987, SEC.35.

IC 22-4-10-5.5

Repealed

(Repealed by P.L.110-2010, SEC.38.)

IC 22-4-10-6

Successor employers

Sec. 6. (a) When:

- (1) an employing unit (whether or not an employing unit at the time of the acquisition) becomes an employer under IC 22-4-7-2(a);
- (2) an employer acquires the organization, trade, or business, or substantially all the assets of another employer; or
- (3) an employer transfers all or a portion of the employer's trade

or business (including the employer's workforce) to another employer as described in IC 22-4-11.5-7;

the successor employer shall, in accordance with the rules prescribed by the department, assume the position of the predecessor with respect to all the resources and liabilities of the predecessor's experience account.

(b) Except as provided by IC 22-4-11.5, when:

(1) an employing unit (whether or not an employing unit at the time of the acquisition) becomes an employer under IC 22-4-7-2(b); or

(2) an employer acquires a distinct and segregable portion of the organization, trade, or business within this state of another employer;

the successor employer shall assume the position of the predecessor employer with respect to the portion of the resources and liabilities of the predecessor's experience account as pertains to the distinct and segregable portion of the predecessor's organization, trade, or business acquired by the successor. An application for the acquiring employer to assume this portion of the resources and liabilities of the disposing employer's experience account must be filed with the department on prescribed forms not later than thirty (30) days immediately following the disposition date or not later than ten (10) days after the disposing and acquiring employers are mailed or otherwise delivered final notice that the acquiring employer is a successor employer, whichever is the earlier date. This portion of the resources and liabilities of the disposing employer's experience account shall be transferred in accordance with IC 22-4-11.5.

(c) Except as provided by IC 22-4-11.5, the successor employer, if an employer prior to the acquisition, shall pay at the rate of contribution originally assigned to it for the calendar year in which the acquisition occurs, until the end of that year. If not an employer prior to the acquisition, the successor employer shall pay the rate of two and seven-tenths percent (2.7%) unless the successor employer assumes all or part of the resources and liabilities of the predecessor employer's experience account, in which event the successor employer shall pay at the rate of contribution assigned to the predecessor employer for the period starting with the first day of the calendar quarter in which the acquisition occurs, until the end of that year. However, if a successor employer, not an employer prior to the acquisition, simultaneously acquires all or part of the experience balance of two (2) or more employers, the successor employer shall pay at the highest rate applicable to the experience accounts totally or partially acquired for the period starting with the first day of the calendar quarter in which the acquisition occurs, until the end of the year. If the successor employer had any employment prior to the date of acquisition upon which contributions were owed under IC 22-4-9-1, the employer's rate of contribution from the first of the year to the first day of the calendar quarter in which the acquisition occurred would be two and seven-tenths percent (2.7%).

(Formerly: Acts 1947, c.208, s.1007; Acts 1951, c.295, s.9; Acts

1955, c.317, s.5; Acts 1967, c.310, s.12; Acts 1969, c.300, s.2; Acts 1971, P.L.355, SEC.21; Acts 1975, P.L.252, SEC.1.) As amended by P.L.20-1986, SEC.5; P.L.18-1987, SEC.36; P.L.21-1995, SEC.72; P.L.98-2005, SEC.6; P.L.108-2006, SEC.13.

IC 22-4-10-7

Successor employers; experience account; benefits; discrepancy in experience accounts

Sec. 7. (a) Except as provided by IC 22-4-11.5, when an employing unit (whether or not an employing unit prior thereto) assumes all of the resources and liabilities of the experience account of a predecessor employer, as provided in section 6 of this chapter, amounts paid by such predecessor employer shall be deemed to have been so paid by such successor employer. The experience of such predecessor with respect to unemployment risk, including but not limited to past payrolls and contributions, shall be credited to the account of such successor.

(b) The payments of benefits to an individual shall not in any case be denied or withheld because the experience account of an employer does not reflect a balance and total of contributions paid to be in excess of benefits charged to such experience account.

(Formerly: Acts 1947, c.208, s.1008; Acts 1951, c.295, s.10; Acts 1971, P.L.355, SEC.22.) As amended by P.L.98-2005, SEC.7.