NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE DIVISION
GOV. W. AVERELL HARRIMAN STATE OFFICE BUILDING CAMPUS
ALBANY, NY 12240-0322
(518) 457-5806

UNEMPLOYMENT INSURANCE COVERAGE FOR INDIAN TRIBES

The New York State Unemployment Insurance Law was recently amended to conform to the Federal Unemployment Tax Act (FUTA) by requiring the unemployment insurance coverage of Indian Tribes and by extending to Indian Tribes the same option afforded to State and local governments of reimbursing unemployment insurance costs instead of paying unemployment insurance taxes.

Indian Tribes may now elect to discharge their obligations under the Unemployment Insurance Law by reimbursing benefits paid to their former employees in lieu of tax contributions. Any Indian Tribe that elects to become liable under the reimbursement option shall, within 90 days of the approval date of its election, execute and file with the Commissioner of Labor a surety bond approved by the Commissioner as to the amount and form. Such surety bond shall continue in effect during periods covering such election, but may be revised annually as to the amount and form at the discretion of the Commissioner. Indian Tribes may make separate elections for the reimbursement option for itself and each subdivision, subsidiary, or business enterprise wholly owned by such Indian Tribe.

ELECTION OF BENEFIT REIMBURSEMENT OPTION

A request to elect the reimbursement option must be submitted in writing to the Unemployment Insurance Division before the beginning of the calendar year in which it is to apply or within 30 days after the calendar quarter in which the employer becomes liable under the Unemployment Insurance Law. If the application is approved, formal notice is sent to the employer.

The time for filing an election of the reimbursement option can be extended only in those instances where the employer can show that good cause exists for its failure to submit a timely application.

CHARGING OF BENEFITS

Charges are made to the accounts of employers electing the benefit reimbursement option according to the same general formula that applies to employers who discharge their liability by tax contributions.

Employers electing the benefit reimbursement option are notified currently, on a Notice of Benefit Reimbursement Charges, of all charges made against their accounts, thereby giving them the opportunity to review these charges and object if they believe that benefits have been improperly paid or improperly charged to their accounts.

OBLIGATIONS UPON ELECTION OF THE REIMBURSEMENT OPTION

Employers electing the reimbursement option are required to reimburse the Unemployment Insurance Fund on a dollar-for-dollar basis for all benefits paid to their former employees and charged to their accounts. This requirement applies to benefit payments that are calculated based on remuneration paid to employees on or after the date the election became effective.

Following the end of each calendar quarter, each employer that has elected the benefit reimbursement option is billed for the amount due. This quarterly billing represents the total amount of benefits charged to the employer's account in a particular quarter.

Payment for the billed amount is due on or before the last day of the month following the close of the calendar quarter or 15 days after the billing date, whichever is later. If the amount due is not paid by the due date, interest is assessed at the rate of 12% per year.

Failure of the Tribal entity to make required payments, including assessments of interest and penalty, within 90 days of receipt of the notice of delinquency, will cause the employer to lose the benefit reimbursement option, unless payment in full is received before the computation date (December 31) preceding the following calendar year. Any employer that loses the option to make payments in lieu of contributions due to late payment or nonpayment may request such option be reinstated prospectively as of the first day of the following calendar year if all contributions have been made timely and there are no outstanding amounts due.

Employers electing the reimbursement option must also file Form NYS-45, Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return (and Form NYS-45ATT, if applicable), to include the wage reporting and unemployment insurance information indicated in the instructions that accompany the form. This quarterly return is required even though no tax is payable and no benefit reimbursement may be due.

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 policy making or advisory position
* a person in a policy making or advisory position, the duties of which ordinarily do not require more than eight hours per week to perform
* an inmate of a custodial or penal institution

SHARING OF BENEFIT REIMBURSEMENT COSTS

Two or more employers can elect the benefit reimbursement option as a group for the purpose of sharing the cost of benefits paid to former employees. The members of the group shall be severally and jointly liable for reimbursement. Employers who wish to establish such a plan should apply in writing to the Liability and Determination Section at the above address.

VOLUNTARY TERMINATION OF THE BENEFIT REIMBURSEMENT OPTION

The election to become liable for benefit reimbursement can be terminated as of the first day of any calendar year by filing a written notice with the Liability and Determination Section before the beginning of such year. Thereafter, the employer becomes liable on a tax contribution basis.

TERMINATING COVERAGE

If, within 90 days of receipt of a notice of delinquency, an Indian Tribe fails to make required contributions, payments in lieu of contributions, payment of penalties or interest, or fails to post a required surety bond, the Commissioner of Labor may determine that services performed for the tribe shall not be treated as covered employment. Such a determination would result in the employees of the tribe not being covered for unemployment insurance. Termination of coverage would be effective on the first day of the quarter following the quarter in which notice of termination was mailed.

Termination of coverage for failure to make full payment will also cause the tribe to be liable for taxes under FUTA. The law requires notification to the Internal Revenue Service and United States Department of Labor when this occurs.

If the tribe loses coverage because of failure to pay, coverage may again begin as of the quarter following the calendar quarter in which all contributions, payments in lieu of contributions, interest and penalties have been paid.

CONTINUATION OF LIABILITY FOR REIMBURSEMENT OF BENEFIT COSTS

If the benefit reimbursement option is either terminated by the employer or cancelled by the Commissioner because of failure to make any of the required payments, the employer 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.

BENEFIT REIMBURSEMENT VERSUS TAX CONTRIBUTIONS

In determining whether the benefit reimbursement option should be selected over the tax contribution method, the key consideration is whether the annual amount of reimbursable benefits or the annual taxes will be greater.

Contributions due from those employers electing the tax contribution method will equal the employer's annual total tax rate multiplied by the first $8,500 of annual remuneration paid to each employee. 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 of 0.075%.

Newly liable employers, assigned a tax rate of 4.1% (the sum of a 3.4% normal tax rate, a 0.625% subsidiary rate and a 0.075% Re-employment Service Fund rate), will be required to pay an annual tax of up to $348.50 for each employee (reflecting the $8500 taxable wage base multiplied by a total tax rate of 4.1%). When an employer qualifies for a normal tax rate based on experience, the total rate can then range from 0.075% to 9.9%.

An account is established for each tax paying employer as a bookkeeping device to measure the employer's account balance, which is used in calculating the normal tax rate. The account balance is the sum of all taxes credited to the 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, nor can it be used to offset benefit payments should an employer change from the tax basis to benefit reimbursement. If an employer changes to the benefit reimbursement method, any account balance in the tax basis account is retained and would be used should the employer return to the tax basis at a later date.

Employers electing the benefit reimbursement option are required to 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, in which case the weekly benefit rate will be 1/25 of these earnings. The current weekly benefit rates range from $40 to $405. For further information regarding charges to employer accounts, request pamphlet IA 318.2, Unemployment Insurance Benefits - An Employers Guide.

Currently, a claimant is entitled to up to 26 regular benefit payments, all of which are chargeable to employers' accounts. An additional 13 weeks of Extended Benefits may be payable during periods of high unemployment, which are also charged to the employer's account.

Other factors that must be considered include:

- The potential number of employees who can be expected to qualify for unemployment insurance benefits using their employment with the employer;

- The length of time these workers are likely to be out of work before obtaining other employment;

- The weekly benefit rates of these employees, which will depend on their quarterly earnings in all covered employment during the base period used to establish their claims.

Questions regarding the benefit reimbursement option and tax contribution method may be directed to the Liability and Determination Section at the address and telephone number indicated on the title page of this publication.