



MONTANA UNEMPLOYMENT INSURANCE (UI) QUARTERLY NEWS & REMINDERS

Unemployment Insurance (UI) Legislation Effecting Employers:

HB80-Unemployment Insurance's general revisions bill, clarifies that:

- Partners, sole proprietors and LLC members (who file tax as either a sole proprietorship or partnership) should not report their business draws as wages.
- Private experience rated employers will not be charged for benefits paid to:
 - victims of domestic violence,
 - individuals who quit to accompany their military spouse due to a mandatory military transfer, and
 - replacement workers who are laid off when the former employee returns from active military duty,whereas a government rated employer and non-profits that elect to be covered as a reimbursable employer are charged with benefits paid in these circumstances.
- The department may intercept lottery winnings to repay a UI debt, if the individual owing the debt was not cooperating with the department in repaying the debt.
- The department may seek District Court assistance in enforcing a subpoena.
- Volunteer participants in Americorps or VISTA programs are not subject to UI.

2011 New Unemployment Insurance Tax Rules of Interest to Employers

Several new UI Tax rules were adopted this past quarter. Most became effective April 15, 2011. These rules include:

- 24.11.2506: Clarifies corporate officers and LLC members (if filing taxes as a corporation) who perform services and receive remuneration must report a reasonable wage. The rule provides guidance for determining a reasonable wage to report for UI purposes.
- 24.11.2407: Authorizes UI to apply the "AB Test" (A - free from control and direction, and B - established in their own trade, occupation or business) to individuals who are not required to have an Independent Contractor exemption certificate.
- 24.11.2511: Implements a new per diem rate for meals and lodging for interstate truck drivers. Beginning April 15, 2011, this rate is \$44 per day.
- 24.11.2515: Clarifies military differential pay is excluded from wages if paid to an employee who is called to active military duty for more than 30 days.
- 24.11.2208: Clarifies the rate calculation for an employer's account that is reactivated within five years.
- 24.11.915 (Effective 05/29/11): Strengthens our practice of nondisclosure of personally identifying information.

For the full text of each of the rules above please visit our website at <http://uid.dli.mt.gov/>. For questions regarding any UI Tax rules please feel free to contact our central office or your UI Field Representative.

Independent Contractor Requirements

If a business pays an independent contractor and the worker does not have a valid Independent Contractor Exemption Certificate, the business may be charged for UI taxes on the independent contractor's payments. UI law defines an independent contractor as one who is working under a valid Independent Contractor Exemption Certificate. The law requires that independent contractors either have the exemption or purchase workers' compensation insurance coverage on themselves. Failure to obtain the exemption or workers' compensation insurance may result in the worker being treated as an employee of the hiring agent. Hiring agents may be responsible for claims for injuries or occupational diseases and for payment of premium on their wages. To be conclusively presumed to be an independent contractor, the Department of Labor & Industry (DLI) must: approve an application for an independent contractor exemption certificate based upon a submission of a complete application after April 28, 2005, and; the person must be working under the Independent Contractor exemption certificate.

When you contract for any type of service with an individual, confirm the individual has a valid independent contractor exemption certificate by asking them for a copy or independent contractors with approved exemption certificates can be found at: <http://mtcontractor.com>

Reporting Wages for Alien Workers?

Some aliens should not be included on Montana Unemployment Insurance reports. Employers should confirm the visa type for alien workers to assure they have not overpaid UI taxes.

The following Visa holders are not subject to Montana UI taxes: workers identified in 8 U.S.C. 1101(a)(15)(F) or (a)(15)(H)(ii)(a), or (a)(15)(J), or (a)(15)(M) or (a)(15)(Q).

If wages paid to exempt aliens were included on a UI report, please copy the report and indicate workers who are exempt, explain why workers are exempt, and mail the information to Helena. Corrections must be requested within five years of each report's due date.

Records To Be Kept By Employer

A complete explanation of the records you must keep is in [Section 24.11.2704](#) of the Administrative Rules of Montana. For a copy of this rule, go to our website at: <http://uid.dli.mt.gov/> under the UI Rules tab. Your records must be available for inspection by the department or its authorized representative. A field representative may audit your records to confirm quarterly reports were filed correctly and you are complying with the law. The field representatives will also answer your questions and help you understand Montana Unemployment Insurance.

Records requested for UI Audits typically include:

- Individual employee earnings records, Payroll Journal, General Ledger, General Journal, Detailed General Ledger, Master Vendor List, Chart of Accounts, Canceled Checks/Bank Statements
- Cash Disbursement Journal and/or Check Register, Petty Cash Vouchers
- Business Income Tax returns, Profit & Loss Statement, Balance Sheet
- IRS Form 940, Federal Unemployment Tax Report
- IRS Forms W-2, W-3 & 1099 Annual wage reports
- Federal & State Quarterly Wage/Tax withholding reports (Forms 941, UI-5)
- Copies of Contracts with Subcontractors & Independent Contractors; IC Exemptions for Subcontractors
- Annual Corporate Report to the Secretary of State (C-4), Corporate Minute Books, Corporate Charter, Stock Register.