



*The employees of the  
Unemployment Insurance Division wish  
you Happy Holidays!*

## 2011 Contribution Rate Notices

UI contribution rate notices for experience rated employers\* were mailed the week of December 14, 2010. If you did not receive your 2011 rate notice, please contact our office for a copy. Employers who disagree with their rate assignment must request a rate re-determination by January 14, 2011.

The contribution rates are adjusting from Schedule 5 in 2010 to Schedule 7 in 2011, resulting in rate increases for most employers. The continued economic downturns with high levels of unemployment benefit payments result in a lower UI trust fund. The trust fund balance is a principal factor in setting employer contribution rates. The fund balance on October 31, 2010 was \$123 million whereas on the same date last year, it was \$191 million.

\*Governmental entities rate notices are mailed in May and are in effect from July 1<sup>st</sup> through June 30<sup>th</sup>.

## Penalty Rates

If you received a penalty rate because you have a UI debt or have not filed all UI reports, it is in your best interest to resolve the delinquency. A penalty rate is 1 ½ times higher than the rate that would be assigned and remains in effect for the entire year. Resolving your delinquencies now may result in substantial savings in 2011. All reports must be filed and UI tax, penalty and interest must be paid by January 14, 2011 to avoid a penalty rate. If you have questions about your rate, UI debt or delinquent reports please call our office at 406-444-3834 or call your local Field Representative.

## 2011 Taxable Wage Base

The taxable wage base for experience rated employers for calendar year 2011 is \$26,300. The taxable wage base is 80% of the 2009 average annual wage in Montana.

## QuickBooks Users

If you use tax accounting software (such as QuickBooks) to prepare your UI quarterly reports, be sure to update both your contribution and AFT rates as shown on your 2011 rate notice to assure accuracy in calculating your UI payment. To avoid problems, please wait until after you have completed the fourth quarter 2010 payroll to update your software for the new rates and the 2011 taxable wage base.

## Avoid a Common 4th Quarter Wage Reporting Error

Health or accident insurance premiums paid by the employer are **NOT** considered wages for Unemployment Insurance purposes. This includes premiums paid by the employer for its employees, including S Corporation shareholder-employees regardless of the percentage of ownership. Reference 39-51-201 (24)(b)(i)(C), Montana Code Annotated.

## WOW (Electronic) Users

If you are getting a message when you log into WOW stating: "You must be on a secure connection to use WARP on the WEB", then please change the beginning of the web address you are using from "http" to "https". Everything else in the website address is the same: <https://wow.dli.mt.gov/wowjava/logon1.jsp> As long as the "https" is at the beginning of this website, when you type your log in information in the fields provided and press the log in button, you will be allowed in the WOW program.

## Discharging an Employee puts the Burden of Proof on the Employer

As an employer, you have an interest in *how* our agency makes a decision when an employee separates from your company. Your unemployment insurance account may be affected by the outcome of the determination. We rely upon your information to make the proper decision according to Montana law and rule.

For unemployment insurance purposes in Montana, only a discharge for reasons of misconduct, as defined by Montana law and rule in connection with the work is reason for disqualification. The burden of proof lies with the employer to provide concrete information to the agency demonstrating that the employee was discharged for reasons that may be considered misconduct under state law. The employer's response(s) regarding a separation is essential for making a proper decision. If misconduct cannot be proven on a separation, the claimant will be allowed benefits.

Although there may have been a number of events leading up to a discharge, the primary reason or event is called the "final incident". When conducting a discharge investigation, our agency will want to pinpoint the incident involved that led to your decision to discharge the employee "*on that particular day*".

In addition to establishing the final incident which led to the discharge, four basic factors are relevant when making a discharge for misconduct decision. For a proper decision we must have the critical information from you for each factor:

**Why was the employee discharged?** Why did you decide to discharge the employee on that particular day? You will need to provide concrete facts pertaining to the final incident. This should include what happened, when, who was involved, were there witnesses, did the person responding to our request for information actually witness the incident, and what effect did the employee's actions have on your business?

**What expectation was violated?** What standard of behavior, as outlined specifically in employee handbook, rules, agreements and/or practices of your company, was violated by the discharged employee, if applicable? If the discharge was due to failure to perform the job properly, what were the specific job duties of the claimant and how were those duties communicated to the claimant?

**What did you (the employer) do to maintain the employment relationship?** Was your action reasonable and did the claimant know the action or behavior they displayed could result in discharge? Except in cases of gross misconduct (theft, vandalism, etc), you must give employees an opportunity to correct and improve their conduct. Make sure they understand the consequences of their actions -- including possible termination. An employer should submit to our agency copies of signed policies and documentation of any disciplinary processes, warnings issued and any other specific behavior leading to the separation. Warnings should be signed by the employee or at the very least, a witness, that the employee was given the warning. If the separation involved damages to employer/employee/client property or theft, submit a dollar amount of the loss. If charges were filed, please provide documentation. If the claimant denies the incident, having received warnings, etc., the employer must provide documentation to support their statements.

**What did the employee do to maintain the employment relationship?** To what degree was the claimant able to control or prevent the events that resulted in the discharge? Was the claimant aware of the expectations of the workplace? If the employee was warned about a specific behavior, what did the employee do to modify his/her behavior to remain employed? Was the claimant previously, or ever, able to meet the work expectations? If not, why not?

Different situations may elicit a request for additional information. If information provided by the claimant and the employer conflicts, you may be asked additional clarifying questions. **In all cases of discharge, the burden of proof is the responsibility of the employer to answer all questions relevant to the separation.** When an employer fails to respond completely and timely, it is difficult to prove misconduct as defined under Montana law and rule, and benefits must be allowed to the claimant.

Another common misunderstanding is when an employee is discharged during a probationary period. Although an employee may be in their probationary period, if discharged, we still investigate to determine if misconduct occurred when making the decision for claimant eligibility and employer charging.

For further questions please call 406-444-1997.