

## **96.7 Employer contributions and reimbursements.**

1. *Payment.* Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. *Contribution rates based on benefit experience.*

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The account of an employer shall not be charged with benefits paid to an individual for unemployment that is directly caused by a major natural disaster declared by the president of the United States, pursuant to the federal Disaster Relief Act of 1974, if the individual would have been eligible for federal disaster unemployment assistance benefits with respect to that unemployment but for the individual's receipt of regular benefits.

(3) The amount of regular benefits charged against the account of an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based on employment with the employer during that quarter. The amount of extended benefits charged against the account of an employer for a calendar quarter of the base period shall not exceed an additional fifty percent of the amount of the individual's wage credits based on employment with the employer during that quarter. However, the amount of extended benefits charged against the account of a governmental entity which is either a reimbursable or contributory employer, for a calendar quarter of the base period shall not exceed an additional one hundred percent of the amount of the individual's wage credits based on employment with the governmental entity during that quarter.

(4) The department shall adopt rules prescribing the manner in which benefits shall be charged against the accounts of several employers for which an individual performed employment during the same calendar quarter.

(5) This chapter shall not be construed to grant an employer or an individual in the employer's service, prior claim or right to the amount paid by the employer into the unemployment compensation fund either on the employer's own behalf or on behalf of the individual.

(6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

*b.* (1) If an organization, trade, or business, or a clearly segregable and identifiable part of an organization, trade, or business, for which contributions have been paid is sold or transferred to a subsequent employing unit, or if one or more employing units have been reorganized or merged into a single employing unit, and the successor employer, having qualified as an employer as defined in section 96.19, subsection 16, paragraph "b", continues to operate the organization, trade, or business, the successor employer shall assume the position of the predecessor employer or employers with respect to the predecessors' payrolls, contributions, accounts, and contribution rates to the same extent as if no change had taken place in the ownership or control of the organization, trade, or business. However, the successor employer shall not assume the position of the predecessor employer or employers with respect to the predecessor employer's or employers' payrolls, contributions, accounts, and contribution rates which are attributable to that part of the organization, trade, or business transferred, unless the successor employer applies to the department within ninety days from the date of the partial transfer, and the succession is approved by the predecessor employer or employers and the department.

(2) Notwithstanding any other provision of this chapter, if an employer sells or transfers its organization, trade, or business, or a portion thereof, to another employer, and at the time of the sale or transfer, there is substantially common ownership, management, or control of the two employers, then the unemployment experience attributable to the sold or transferred organization, trade, or business shall be transferred to the successor employer. The transfer of part or all of an employer's workforce to another employer shall be considered a sale or transfer of the organization, trade, or business where the predecessor employer no longer operates the organization, trade, or business with respect to the transferred workforce and such organization, trade, or business is operated by the successor employer.

(3) Notwithstanding any other provision of this chapter, if a person is not an employer at the time such person acquires an organization, trade, or business of an employer, or a portion thereof, the unemployment experience of the acquired organization, trade, or business shall not be transferred to such person if the department finds such person acquired the organization, trade, or business solely or primarily for the purpose of obtaining a lower rate of contribution. Instead, such person shall be assigned the applicable new employer rate under paragraph "c".

In determining whether an organization, trade, or business or portion thereof was acquired solely or primarily for the purpose of obtaining a lower rate of contribution, the department shall use objective factors which may include the cost of acquiring the organization, trade, or business; whether the person continued the acquired organization, trade, or business; how long such organization, trade, or business was continued; and whether a substantial number of new employees were hired for performance of duties unrelated to the organization, trade, or business operated prior to the acquisition. The department shall establish methods and procedures to identify the transfer or acquisition of an organization, trade, or business under this subparagraph and subparagraph (2).

(4) The predecessor employer, prior to entering into a contract with a successor employer relating to the sale

or transfer of the organization, trade, or business, or a clearly segregable and identifiable part of the organization, trade, or business, shall disclose to the successor employer the predecessor employer's record of charges of benefits payments and any layoffs or incidences since the last record that would affect the experience record. A predecessor employer who fails to disclose or willfully discloses incorrect information to a successor employer regarding the predecessor employer's record of charges of benefits payments is liable to the successor employer for any actual damages and attorney fees incurred by the successor employer as a result of the predecessor employer's failure to disclose or disclosure of incorrect information. The department shall include notice of the requirement of disclosure in the department's quarterly notification given to each employer pursuant to paragraph "a", subparagraph (6).

(5) The contribution rate to be assigned to the successor employer for the period beginning not earlier than the date of the succession and ending not later than the beginning of the next following rate year, shall be the contribution rate of the predecessor employer with respect to the period immediately preceding the date of the succession, provided the successor employer was not, prior to the succession, a subject employer, and only one predecessor employer, or only predecessor employers with identical rates, are involved. If the predecessor employers' rates are not identical and the successor employer is not a subject employer prior to the succession, the department shall assign the successor employer a rate for the remainder of the rate year by combining the experience of the predecessor employers. If the successor employer is a subject employer prior to the succession, the successor employer may elect to retain the employer's own rate for the remainder of the rate year, or the successor employer may apply to the department to have the employer's rate redetermined by combining the employer's experience with the experience of the predecessor employer or employers. However, if the successor employer is a subject employer prior to the succession and has had a partial transfer of the experience of the predecessor employer or employers approved, then the department shall recompute the successor employer's rate for the remainder of the rate year.

c. (1) A nonconstruction contributory employer newly subject to this chapter shall pay contributions at the rate specified in the twelfth benefit ratio rank but not less than one percent until the end of the calendar year in which the employer's account has been chargeable with benefits for twelve consecutive calendar quarters immediately preceding the computation date.

(2) A construction contributory employer, as defined under rules adopted by the department, which is newly subject to this chapter shall pay contributions at the rate specified in the twenty-first benefit ratio rank until the end of the calendar year in which the employer's account has been chargeable with benefits for twelve consecutive calendar quarters.

(3) Thereafter, the employer's contribution rate shall be determined in accordance with paragraph "d", except that the employer's average annual taxable payroll and benefit ratio may be computed, as determined by the department, for less than five periods of four consecutive calendar quarters immediately preceding the computation date.

d. The department shall determine the contribution rate table to be in effect for the rate year following the computation date, by determining the ratio of the current reserve fund ratio to the highest benefit cost ratio on the computation date. On or before the fifth day of September the department shall make available to employers the contribution rate table to be in effect for the next rate year.

(1) The current reserve fund ratio is computed by dividing the total funds available for payment of benefits, on the computation date, by the total wages paid in covered employment excluding reimbursable employment wages during the first four calendar quarters of the five calendar quarters immediately preceding the computation date. However, in computing the current reserve fund ratio the following amounts shall be added to the total funds available for payment of benefits on the following computation dates:

(a) Twenty million dollars on July 1, 2004.

(b) Seventy million dollars on July 1, 2005.

(c) One hundred twenty million dollars on July 1, 2006.

(d) One hundred fifty million dollars on July 1, 2007, and on each subsequent computation date.

(2) The highest benefit cost ratio is the highest of the resulting ratios computed by dividing the total benefits paid, excluding reimbursable benefits paid, during each consecutive twelve-month period, during the ten-year period ending on the computation date, by the total wages, excluding reimbursable employment wages, paid in the four calendar quarters ending nearest and prior to the last day of such twelve-month period; however, the highest benefit cost ratio shall not be less than .02.

If the current reserve fund ratio, divided by the highest benefit cost ratio: Equals or But is The contribution rate exceeds less than table in effect shall be \$YUL 0.3 1 0.3 0.5 2 0.5 0.7 3 0.7 0.85 4 0.85 1.0 5 1.0 1.15 6 1.15 1.30 7 1.30 8

*"Benefit ratio"* means a number computed to six decimal places on July 1 of each year obtained by dividing the average of all benefits charged to an employer during the five periods of four consecutive calendar quarters immediately preceding the computation date by the employer's average annual taxable payroll.

Each employer qualified for an experience rating shall be assigned a contribution rate for each rate year that corresponds to the employer's benefit ratio rank in the contribution rate table effective for the rate year from the following contribution rate tables. Each employer's benefit ratio rank shall be computed by listing all the employers by increasing benefit ratios, from the lowest benefit ratio to the highest benefit ratio and grouping the employers so listed into twenty-one separate ranks containing as nearly as possible four and seventy-six hundredths percent of the total taxable wages, excluding reimbursable employment wages, paid in covered employment during the four completed calendar quarters immediately preceding the computation date. If an employer's taxable wages qualify the employer for two separate benefit ratio ranks the employer shall be afforded the benefit ratio rank assigned the lower contribution rate. Employers with identical benefit ratios shall be assigned to the same benefit ratio rank.

e. The department shall fix the contribution rate for each employer and notify the employer of the rate by regular mail to the last known address of the employer. An employer may appeal to the department for a revision of the contribution rate within thirty days from the date of the notice to the employer. After providing an opportunity for a hearing, the department may affirm, set aside, or modify its former determination and may grant the employer a new contribution rate. The department shall notify the employer of its decision by regular mail. Judicial review of action of the department may be sought pursuant to chapter 17A.

If an employer's account has been charged with benefits as the result of a decision allowing benefits and the decision is reversed, the employer may appeal, within thirty days from the date of the next contribution rate notice, for a recomputation of the rate. If contributions become due at a disputed contribution rate prior to the employer receiving a decision reversing benefits, the employer shall pay the contributions at the disputed rate but shall be eligible for a refund pursuant to section 96.14, subsection 5. If a base period employer's account has been charged with benefits paid to an employee at a time when the employee was employed by the base period employer in the same employment as in the base period, the employer may appeal, within thirty days from the date of the first notice of the employer's contribution rate which is based on the charges, for a recomputation of the rate.

f. If an employer has not filed a contribution and payroll quarterly report, as required pursuant to section 96.11, subsection 6, for a calendar quarter which precedes the computation date and upon which the employer's rate of contribution is computed, the employer's average annual taxable payroll shall be computed by considering the delinquent quarterly reports as containing zero taxable wages.

If a delinquent quarterly report is received by September 30 following the computation date the contribution rate shall be recomputed by using the taxable wages in all the appropriate quarterly reports on file to determine the average annual taxable payroll.

If a delinquent quarterly report is received after September 30 following the computation date the contribution rate shall not be recomputed, unless the rate is appealed in writing to the department under paragraph "e" and the delinquent quarterly report is also submitted not later than thirty days after the department notifies the employer of the rate under paragraph "e".

### *3. Determination and assessment of contributions.*

a. As soon as practicable and in any event within two years after an employer has filed reports, as required pursuant to section 96.11, subsection 6, the department shall examine the reports and determine the correct amount of contributions due, and the amount so determined by the department shall be the contributions payable. If the contributions found due are greater than the amount paid, the department shall send a notice by certified mail to the employer with respect to the additional contributions and interest assessed. A lien shall attach as provided in section 96.14, subsection 3, if the assessment is not paid or appealed within thirty days of the date of the notice of assessment.

b. If the department discovers from the examination of the reports required pursuant to section 96.11, subsection 6, or in some other manner that wages, or any portion of wages, payable for employment, have not been listed in the reports, or that reports were not filed when due, or that reports have been filed showing contributions due but contributions in fact have not been paid, the department shall at any time within five years after the time the reports were due, determine the correct amount of contributions payable, together with interest and any applicable penalty as provided in this chapter. The department shall send a notice by certified mail to the employer of the amount assessed and a lien shall attach as provided in paragraph "a".

c. The certificate of the department to the effect that contributions have not been paid, that reports have not been filed, or that information has not been furnished as required under the provisions of this chapter, is prima facie evidence of the failure to pay contributions, file reports, or furnish information.

4. *Employer liability determination.* The department shall initially determine all questions relating to the liability of an employing unit or employer, including the amount of contribution, the contribution rate, and successorship. A copy of the initial determination shall be sent by regular mail to the last address, according to the records of the department, of each affected employing unit or employer.

The affected employing unit or employer may appeal in writing to the department from the initial determination. An appeal shall not be entertained for any reason by the department unless the appeal is filed with the department within thirty days from the date on which the initial determination is mailed. If an appeal is not so filed, the initial determination shall with the expiration of the appeal period become final and conclusive in all respects and for all purposes.

A hearing on an appeal shall be conducted according to rules adopted by the department. A copy of the decision of the administrative law judge shall be sent by regular mail to the last address, according to the records of the department, of each affected employing unit or employer.

The department's decision on the appeal shall be final and conclusive as to the liability of the employing unit or employer unless the employing unit or employer files an appeal for judicial review within thirty days after the date of mailing of the decision as provided in subsection 5.

5. *Judicial review.* Notwithstanding chapter 17A, petitions for judicial review may be filed in the district court of the county in which the employer resides, or in which the employer's principal place of business is located, or in the case of a nonresident not maintaining a place of business in this state either in a county in

which the wages payable for employment were earned or paid or in Polk county, within thirty days after the date of the notice to the employer of the department's final determination as provided for in subsection 2, 3, or 4.

The petitioner shall file with the clerk of the district court a bond for the use of the respondent, with sureties approved by the clerk, with any penalty to be fixed and approved by the clerk. The bond shall not be less than fifty dollars and shall be conditioned on the petitioner's performance of the orders of the court. In all other respects, the judicial review shall be in accordance with chapter 17A.

6. *Jeopardy assessments.* If the department believes that the collection of contributions payable or benefits reimbursable will be jeopardized by delay, the department may immediately make an assessment of the estimated amount of contributions due or benefits reimbursable, together with interest and applicable penalty, and demand payment from the employer. If the payment is not made, the department may immediately file a lien against the employer which may be followed by the issuance of a distress warrant.

The department shall be permitted to accept a bond from the employer to satisfy collection until the amount of contributions due is determined. The bond shall be in an amount deemed necessary, but not more than double the amount of the contributions involved, with securities satisfactory to the department.

7. *Financing benefits paid to employees of governmental entities.*

a. A governmental entity which is an employer under this chapter shall pay benefits in a manner provided for a reimbursable employer unless the governmental entity elects to make contributions as a contributory employer. The election shall be effective for a minimum of one calendar year and may be changed if an election is made to become a reimbursable employer prior to December 1 for a minimum of the following calendar year.

However, if on the effective date of the election the governmental entity has a negative balance in its contributory account, the governmental entity shall pay to the fund within a time period determined by the department the amount of the negative balance and shall immediately become liable to reimburse the unemployment compensation fund for benefits paid in lieu of contributions. Regular or extended benefits paid after the effective date of the election, including those based on wages paid while the governmental entity was a contributory employer, shall be billed to the governmental entity as a reimbursable employer.

b. A governmental entity electing to make contributions as a contributory employer, with at least eight consecutive calendar quarters immediately preceding the computation date throughout which the employer's account has been chargeable with benefits, shall be assigned a contribution rate under this paragraph. Contribution rates shall be assigned by listing all governmental contributory employers by decreasing percentages of excess from the highest positive percentage of excess to the highest negative percentage of excess. The employers so listed shall be grouped into seven separate percentage of excess ranks each containing as nearly as possible one-seventh of the total taxable wages of governmental entities eligible to be assigned a rate under this paragraph.

As used in this subsection, "*percentage of excess*" means a number computed to six decimal places on July 1 of each year obtained by dividing the excess of all contributions attributable to an employer over the sum of all benefits charged to an employer by the employer's average annual payroll. An employer's percentage of excess is a positive number when the total of all contributions paid to an employer's account for all past periods to and including those for the quarter immediately preceding the rate computation date exceeds the total benefits charged to such account for the same period. An employer's percentage of excess is a negative number when the total of all contributions paid to an employer's account for all past periods to and including those for the quarter immediately preceding the rate computation date is less than the total benefits charged to such account for the same period.

As used in this subsection, "*average annual taxable payroll*" means the average of the total amount of taxable wages paid by an employer for insured work during the three periods of four consecutive calendar quarters immediately preceding the computation date. However, for an employer which qualifies on any computation date for a computed rate on the basis of less than twelve consecutive calendar quarters of chargeability immediately preceding the computation date, "*average annual taxable payroll*" means the average of the employer's total amount of taxable wages for the two periods of four consecutive calendar quarters immediately preceding the computation date.

The department shall annually calculate a base rate for each calendar year. The base rate is equal to the sum of the benefits charged to governmental contributory employers in the calendar year immediately preceding the computation date plus or minus the difference between the total benefits and contributions paid by governmental contributory employers since January 1, 1980, which sum is divided by the total taxable wages reported by governmental contributory employers during the calendar year immediately preceding the computation date, rounded to the next highest one-tenth of one percent. Excess contributions from the years 1978 and 1979 shall be used to offset benefits paid in any calendar year where total benefits exceed total contributions of governmental contributory employers. The contribution rate as a percentage of taxable wages of the employer shall be assigned as follows: If the The contribution Approximate percentage rate shall be: cumulative of excess taxable rank is: payroll \$YUL ase Rate0.9 14.3 ase Rate0.6 28.6 ase Rate0.3 42.9 ase Rate 57.2 ase Rate + 0.3 71.5 ase Rate + 0.6 85.8 ase Rate + 0.9 100.0

If a governmental contributory employer is grouped into two separate percentage of excess ranks, the employer shall be assigned the lower contribution rate of the two percentage of excess ranks. Notwithstanding the provisions of this paragraph, a governmental contributory employer shall not be assigned a contribution rate less than one-tenth of one percent of taxable wages unless the employer has a positive percentage of excess greater than five percent.

Governmental entities electing to be contributory employers which are not eligible to be assigned a contribution rate under this paragraph shall be assigned the base rate as a contribution rate for the calendar year.

c. For the purposes of this subsection, "*governmental reimbursable employer*" means an employer which makes payments to the department for the unemployment compensation fund in an amount equal to the regular and extended benefits paid, which are based on wages paid for service in the employ of the employer. Benefits paid to an eligible individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter. At the end of each calendar quarter, the department shall bill each governmental reimbursable employer for benefits paid during that quarter. Payments by a governmental reimbursable employer shall be made in accordance with subsection 8, paragraph "b", subparagraphs (2) through (5).

d. A state agency, board, commission, or department, except a state board of regents institution, shall, after approval of the billing for a governmental reimbursable employer as provided in subsection 8, paragraph "b", submit the billing to the director of the department of administrative services. The director of the department of administrative services shall pay the approved billing out of any funds in the state treasury not otherwise appropriated. A state agency, board, commission, or department shall reimburse the director of the department of administrative services out of any revolving, special, trust, or federal fund from which all or a portion of the billing can be paid, for payments made by the director of the department of administrative services on behalf of the agency, board, commission, or department.

e. If the entire enterprise or business of a reimbursable governmental entity is sold or otherwise transferred to a subsequent employing unit and the acquiring employing unit continues to operate the enterprise or business, the acquiring employing unit shall assume the position of the reimbursable governmental entity with respect

to the reimbursable governmental entity's liability to pay the department for reimbursable benefits based on the governmental entity's payroll to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the acquiring employing unit elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the acquiring employing unit's own payroll prior to or after the acquisition of the governmental entity's enterprise or business.

*f.* If a reimbursable instrumentality of the state or of a political subdivision is discontinued other than by sale or transfer to a subsequent employing unit as described in paragraph "e", the state or the political subdivision, respectively, shall reimburse the department for benefits paid to former employees of the instrumentality after the instrumentality is discontinued.

*8. Financing benefits paid to employees of nonprofit organizations.*

*a.* A nonprofit organization which is, or becomes, subject to this chapter, shall pay contributions under subsections 1 and 2, unless the nonprofit organization elects, in accordance with this paragraph, to reimburse the unemployment compensation fund for benefits paid in an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, which are based on wages paid for service in the employ of the nonprofit organization during the effective period of the election.

(1) A nonprofit organization may elect to become a reimbursable employer for a period of not less than two calendar years by filing with the department a written notice of its election not later than thirty days prior to the beginning of the calendar year for which the election is to be effective.

(2) A nonprofit organization which makes an election in accordance with subparagraph (1) shall continue to be a reimbursable employer until the nonprofit organization files with the department a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which the termination is to be effective.

(3) The department may for good cause extend the period within which a notice of election or termination of election must be filed and may permit an election or termination of election to be retroactive.

(4) The department, in accordance with rules, shall notify each nonprofit organization of any determination made by the department of the status of the nonprofit organization as an employer and of the effective date of any election or termination of election. A determination is subject to appeal and review in accordance with subsections 4 and 5.

*b.* Reimbursements for benefits paid in lieu of contributions shall be made in accordance with the following:

(1) At the end of each calendar quarter, the department shall bill each nonprofit organization which has elected to reimburse the unemployment compensation fund for benefits paid in an amount equal to the full amount of regular benefits and one-half of the amount of extended benefits paid during the quarter which are based on wages paid for service in the employ of the organization. Benefits paid to an individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter.

(2) The nonprofit organization shall pay the bill not later than thirty days after the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, unless the nonprofit organization has filed an application for redetermination in accordance with subparagraph (4).

(3) Reimbursements made by a nonprofit organization shall not be deducted, in whole or in part, from the wages of individuals in the employ of the nonprofit organization.



(4) The amount due specified in a bill from the department is conclusive unless, not later than fifteen days following the date the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an application for redetermination with the department setting forth the grounds for the application. The department shall promptly review the amount due specified in the bill and shall issue a redetermination. The redetermination is conclusive on the nonprofit organization unless, not later than thirty days after the redetermination was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an appeal to the district court pursuant to subsection 5.

(5) The provisions for collection of contributions under section 96.14 are applicable to reimbursements for benefits paid in lieu of contributions.

(6) If the entire enterprise or business of a reimbursable nonprofit organization is sold or otherwise transferred to a subsequent employing unit and the acquiring employing unit continues to operate the enterprise or business, the acquiring employing unit shall assume the position of the reimbursable nonprofit organization with respect to the nonprofit organization's liability to pay the department for reimbursable benefits based on the nonprofit organization's payroll to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the acquiring employing unit elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the acquiring employing unit's own payroll prior to or after the acquisition of the nonprofit organization's enterprise or business.

#### 9. *Indian tribes.*

a. For purposes of this chapter, employment by an Indian tribe shall be covered in the same manner and terms as provided for governmental entities and the same exclusions that are applicable for governmental entities shall also apply.

b. In financing benefits paid to employees of an Indian tribe under this chapter, a contribution rate shall be determined and contributions shall be assessed and collected from an Indian tribe in the same manner provided in this chapter for contributory employers, except that an Indian tribe shall have the option of electing to become a governmental reimbursable employer. An Indian tribe shall have the option to make a separate election as provided in this paragraph for itself and for each subdivision, subsidiary, or business enterprise wholly owned by the Indian tribe. The reimbursable status of an Indian tribe shall be in the same manner, to the same extent, and on the same terms as are applicable to all governmental reimbursable employers under this chapter.

c. If the department determines that an Indian tribe has failed to make any payment required pursuant to this chapter after providing the Indian tribe with ninety days' notice of this failure, the department may issue a determination that ceases coverage of all employment by that Indian tribe until such time as all payments are received by the department.

10. *Group accounts.* Two or more nonprofit organizations or two or more governmental entities which have become reimbursable employers in accordance with subsection 7 or subsection 8, paragraph "a", may file a joint application to the department for the establishment of a group account for the purpose of sharing the cost of benefits paid which are attributable to service in the employ of the employers. The application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection. Upon approval of the application, the department shall establish a group account for the employers effective as of the beginning of the calendar quarter in which the department receives the application and shall notify the group's agent of the effective date of the account. The account shall remain in effect for not less than one year until terminated at the discretion of the department or upon application by the group. Upon establishment of the account, each employer member of the group shall be liable for benefit reimbursements in lieu of contributions with respect to each calendar quarter in an amount which bears the same ratio to the

total benefits paid in the quarter which are attributable to service performed in the employ of all members of the group, as the total wages paid for service performed in the employ of the member in the quarter bear to the total wages paid for service performed in the employ of all members of the group in the quarter. The department shall adopt rules with respect to applications for establishment, maintenance, and termination of group accounts, for addition of new members to, and withdrawal of active members from group accounts, and for the determination of the amounts which are payable by members of the group and the time and manner of the payments.

11. *Temporary emergency surcharge.* If on the first day of the third month in any calendar quarter, the department has an outstanding balance of interest accrued on advance moneys received from the federal government for the payment of unemployment compensation benefits, or is projected to have an outstanding balance of accruing federal interest for that calendar quarter, the department shall collect a uniform temporary emergency surcharge for that calendar quarter, retroactive to the beginning of that calendar quarter. The surcharge shall be a percentage of employer contribution rates and shall be set at a uniform percentage, for all employers subject to the surcharge, necessary to pay the interest accrued on the moneys advanced to the department by the federal government, and to pay any additional federal interest which will accrue for the remainder of that calendar quarter. The surcharge shall apply to all employers except governmental entities, nonprofit organizations, and employers assigned a zero contribution rate. The department shall adopt rules prescribing the manner in which the surcharge will be collected. Interest shall accrue on all unpaid surcharges under this subsection at the same rate as on regular contributions and shall be collectible in the same manner. The surcharge shall not affect the computation of regular contributions under this chapter.

A special fund to be known as the temporary emergency surcharge fund is created in the state treasury. The special fund is separate and distinct from the unemployment compensation fund. All contributions collected from the temporary emergency surcharge shall be deposited in the special fund. The special fund shall be used only to pay interest accruing on advance moneys received from the federal government for the payment of unemployment compensation benefits. Interest earned upon moneys in the special fund shall be deposited in and credited to the special fund.

If the department determines on June 1 that no outstanding balance of interest due has accrued on advanced moneys received from the federal government for the payment of unemployment compensation benefits, and that no outstanding balance is projected to accrue for the remainder of the calendar year, the department shall notify the treasurer of state of its determination. The treasurer of state shall immediately transfer all moneys, including accrued interest, in the temporary emergency surcharge fund to the unemployment compensation fund for the payment of benefits.

[C39, § 1551.13; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 96.7; C79, 81, § 96.7, 96.19(21); 81 Acts, ch 19, § 37; 82 Acts, ch 1126, § 1]

83 Acts, ch 190, § 1320, 27; 84 Acts, ch 1255, § 47; 86 Acts, ch 1066, § 1; 86 Acts, ch 1166, § 2; 86 Acts, ch 1209, § 1; 87 Acts, ch 111, § 10, 11; 87 Acts, ch 222, § 4; 88 Acts, ch 1014, § 13; 88 Acts, ch 1109, § 10, 11; 88 Acts, ch 1274, § 28; 89 Acts, ch 296, § 14; 90 Acts, ch 1227, § 1; 90 Acts, ch 1261, § 29; 91 Acts, ch 45, § 5; 91 Acts, ch 268, § 426; 93 Acts, ch 23, § 13; 95 Acts, ch 109, § 4, 5; 96 Acts, ch 1121, § 35; 96 Acts, ch 1186, § 23; 98 Acts, ch 1051, § 1, 2; 99 Acts, ch 5, § 1; 2001 Acts, ch 111, § 2, 6; 2001 Acts, ch 163, § 1, 2; 2001 Acts, 1st Ex, ch 2, § 1, 4; 2003 Acts, ch 145, § 286; 2003 Acts, 1st Ex, ch 1, § 127129

[2003 Acts, 1st Ex, ch 1, § 127129 amendment to subsection 12 rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, ch 1175, § 65; 2004 Acts, 1st Ex, ch 1001, § 31, 32; 2005 Acts, ch 98, § 1

2004 implementation of July 1, 2003, repeal of subsection 12 applies to contribution rates for and after

calendar year 2004, see §96.7, subsection 12, Code 2003