

SOCIAL SECURITY

CHAPTER 440

HOUSE BILL NO. 1057

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

UNEMPLOYMENT REPORT ELECTRONIC FILING

AN ACT to create and enact a new section to chapter 52-04 of the North Dakota Century Code, relating to electronic filing of employer unemployment contribution and wage reports and electronic payment of contributions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 52-04 of the North Dakota Century Code is created and enacted as follows:

Electronic filing of contribution and wage reports - Electronic payment of contributions - Assessments. An employer that employs more than ninety-nine employees at any time shall file contribution and wage reports by an electronic method approved by the bureau beginning with the calendar quarter in which the employer first employs more than ninety-nine employees. An employer that does not comply with the requirements to file reports electronically is deemed to have failed to submit any employer's contribution and wage report as provided in section 52-04-11. All payers making payments on behalf of more than one employer shall make all payments electronically.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2007.

Approved March 2, 2007
Filed March 2, 2007

CHAPTER 441**HOUSE BILL NO. 1413**

(Representatives Dosch, Keiser)

**UNEMPLOYMENT INSURANCE TAX RATE
DETERMINATION**

AN ACT to amend and reenact subsections 5 and 6 of section 52-04-05 and subsections 2, 3, and 6 of section 52-04-06 of the North Dakota Century Code, relating to determination of unemployment insurance tax rates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁸ **SECTION 1. AMENDMENT.** Subsections 5 and 6 of section 52-04-05 of the North Dakota Century Code are amended and reenacted as follows:

5. Rates must be determined as follows:

- a. The income needed to pay benefits for the calendar year must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one one-hundredth of one percent is the average required rate needed to pay benefits.
- b. ~~If the positive employer maximum rate necessary to generate the amount of income needed to pay benefits is at least one percent, the positive employer minimum rate necessary to generate the amount of income necessary to pay benefits is the foregoing positive employer maximum rate, minus nine-tenths of one percent. If the positive employer maximum rate necessary to generate the amount of income needed to pay benefits is less than one percent, the range for the positive employer minimum rate necessary to generate the amount of income needed to pay benefits must be at least one-tenth of one percent and must be less than two-tenths of one percent, with the positive employer maximum rate necessary to generate the amount of income needed to pay benefits equal to the positive employer maximum rate, as used in this subsection, minus a multiple of the increment one-tenth of one percent as provided in subsection 2 of section 52-04-06 to fall within the range described above. Within the table of rate schedules to be utilized for each calendar year to establish the tax rates necessary to generate the amount of income needed to pay benefits, a rate schedule may not be used if it would generate less income than any rate schedule preceding it on the table of rate schedules. The positive employer minimum rate in the first rate schedule of the table of rate schedules is one-hundredth of one percent. The positive employer minimum rate in each subsequent rate schedule of the table of rate schedules is the previous rate schedule's~~

²⁰⁸ Section 52-04-05 was also amended by section 1 of Senate Bill No. 2035, chapter 442.

positive employer minimum rate plus one-hundredth of one percent. The negative employer minimum rate needed to generate the amount of income needed to pay benefits is the positive employer ~~maximum~~ minimum rate as described in this subsection plus ~~five and one-tenth~~ six percent.

- c. The positive employer ~~maximum~~ minimum rate necessary to generate the amount of income needed to pay benefits must be set so that all the rates combined generate the average required rate for income needed to pay benefits, multiplied by the ratio, calculated under subdivision d, needed to reach the solvency balance. The negative employer maximum rate necessary to generate the amount of income needed to pay benefits is the negative employer minimum rate necessary to generate the amount of income needed to pay benefits plus three and six-tenths percent. However, the maximum rate must be at least five and four-tenths percent.
 - d. The tax rate necessary to generate the amount of income needed to reach a solvency balance must be calculated by dividing the solvency balance by the amount of income estimated as needed to pay benefits and multiplying the resulting ratio times each rate, within the positive and negative rate arrays, as determined under this section to meet the average required rate needed to pay benefits as defined by subdivision a. The ratio calculated under this subdivision must also be multiplied by any rate calculated as required by subsection 6 to arrive at a final rate for a new business. All results calculated under this subdivision must be rounded to the nearest one-hundredth of one percent.
6. a. Except as otherwise provided in this subsection, an employer's rate may not be less than the negative employer minimum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year. If an employer in construction services has not been subject to the law as required, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. If an employer in nonconstruction services has not been subject to the law as required, the employer in nonconstruction services qualifies for a reduced rate if the account has been chargeable with benefits throughout the twelve-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. The executive director may provide any negative employer whose contributions paid into the trust fund are greater than the benefit charges against that employer's account, for a minimum of three consecutive years immediately preceding the computation date or subject to the law as required, with up to a thirty percent reduction to that employer's rate for any year if that employer has in place a plan approved by the bureau which addresses substantive changes to that employer's business operation and ensures that any rate reduction provided will not put the employer account back into a negative status.

- b. An employer that does not qualify under subdivision a is subject to a rate determined as follows:
- (1) For each calendar year new employers must be assigned a rate that is ~~one hundred fifty ninety~~ percent of the positive employer maximum rate or a rate of one percent, whichever is greater, unless the employer is classified in construction services. However, an employer must be assigned within the negative employer rate ranges for any year if, as of the computation date, the cumulative benefits charged to that employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year.
 - (2) New employers in construction services must be assigned the negative employer maximum rate.
 - (3) Assignment by the bureau of an employer's industrial classification for the purposes of this section must be the three-digit major group provided in the North American industrial classification system manual, in accordance with established classification practices found in the North American industrial classification system manual, issued by the executive office of the president, office of management and budget. Employers who are liable for coverage before August 1, 2001, remain under an industrial classification under the two-digit major group provided in the standard industrial classification manual unless they are classified in the construction industry within the standard industrial classification code.

SECTION 2. AMENDMENT. Subsections 2, 3, and 6 of section 52-04-06 of the North Dakota Century Code are amended and reenacted as follows:

2. For each calendar year the bureau shall establish a schedule of positive employer rate groups within the positive employer minimum rate and the positive employer maximum rate determined under section 52-04-05. Each successive rate group for positive employer rate groups must be assigned a rate equal to ~~one hundred twenty percent of the previous group's rate plus with a minimum increase of one-tenth of one percent and a maximum increase of four-tenths of one percent.~~ The number of rate groups in the positive employer schedule must be ~~the number required to provide for a rate group at each one-tenth of one percent interval between the positive employer minimum rate and the positive employer maximum rate determined under section 52-04-05 ten.~~ For each calendar year the bureau shall establish a schedule of negative employer rate groups with the negative employer minimum rate and the negative employer maximum rate determined under section 52-04-05. Each successive rate group for negative employer rate groups must be assigned a rate equal to the previous group's rate plus four-tenths of one percent. The number of rate groups in the negative employer schedule must be the number required to provide for a rate group at each four-tenths of one percent interval between the negative employer minimum rate and the negative employer maximum rate determined under section 52-04-05.

3. Positive employers must be assigned to the rate in the positive employer rate schedule in the rank order of their reserve ratios, as determined in subsection 1, with the highest reserve ratio positive employers assigned to the first positive employer rate. Each successively ranked positive employer must be assigned to a rate within the positive employer rate schedule so that ~~each rate within the rate schedule is assigned the same proportion~~ the first rate within the rate schedule is assigned sixty percent of the positive employer's prior year's taxable wages and each of the remaining nine rates within the rate schedule are assigned the same proportion of the remaining forty percent of the positive employer's prior year's taxable wages. Negative employers must be assigned to the rate in the negative employer rate schedule in the rank order of their reserve ratios, as determined in subsection 1, with the highest reserve ratio negative employers assigned to the first negative employer rate. Each successively ranked negative employer must be assigned to a rate within the negative employer rate schedule so that each rate within the rate schedule is assigned the same proportion of the negative employer's prior year's taxable wages.

6. If an employer has a quarterly taxable payroll in excess of fifty thousand dollars and at least three times its established average annual payroll or the average annual payroll is zero, and the employer's cumulative lifetime reserve balance is positive, then the tax rate for that employer is ~~one hundred fifty~~ ninety percent of the positive employer maximum rate in effect that year or a rate of one percent, whichever is greater, beginning the first day of the calendar quarter in which it occurred and for the remainder of the calendar year. If the employer's cumulative lifetime reserve balance is negative, then the tax rate for that employer is the negative employer maximum rate of contribution in effect that year, beginning the first day of the calendar quarter in which it occurred and for the remainder of the calendar year.

Approved March 9, 2007

Filed March 12, 2007

CHAPTER 442**SENATE BILL NO. 2035**

(Legislative Council)
(Industry, Business, and Labor Committee)

UNEMPLOYMENT INSURANCE TAX RATES

AN ACT to amend and reenact subdivision d of subsection 5 of section 52-04-05 of the North Dakota Century Code, relating to determination of unemployment insurance tax rates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁹ **SECTION 1. AMENDMENT.** Subdivision d of subsection 5 of section 52-04-05 of the North Dakota Century Code is amended and reenacted as follows:

- d. The tax rate necessary to generate the amount of income needed to reach a solvency balance must be calculated by dividing the solvency balance by the amount of income estimated as needed to pay benefits and multiplying the resulting ratio times each rate, within the positive and negative rate arrays, with a minimum multiplier of one hundred percent for the negative rate array, as determined under this section to meet the average required rate needed to pay benefits as defined by subdivision a. The ratio calculated under this subdivision must also be multiplied by any rate calculated as required by subsection 6 to arrive at a final rate for a new business. All results calculated under this subdivision must be rounded to the nearest one-hundredth of one percent.

Approved March 2, 2007
Filed March 2, 2007

²⁰⁹ Section 52-04-05 was also amended by section 1 of House Bill No. 1413, chapter 441.

CHAPTER 443**HOUSE BILL NO. 1278**

(Representatives Wald, Keiser)
(Senator Klein)

CONSTRUCTION PROJECT RISK PROTECTION

AN ACT to amend and reenact section 52-04-06.1 of the North Dakota Century Code, relating to construction project risk protection.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-04-06.1 of the North Dakota Century Code is amended and reenacted as follows:

52-04-06.1. Construction project risk protection.

1. Any project in this state with an estimated construction cost of at least fifty million dollars which is planned to be completed or discontinued within a period of seven years is subject to this section. The general or prime contractor, or the owner in those situations in which there is no general or prime contractor, of a project that meets the criteria specified under this section shall post the bond or irrevocable letter of credit required in subsection 2 before commencement of construction work on the project and shall report annually, within thirty days of the anniversary date the project becomes subject to this section, to the bureau any change in the construction costs of projects subject to this section.
2. If the bureau determines that the project is or will be within the criteria stated by this section, the bureau shall require the general or prime contractor, or the owner in those situations in which there is no general or prime contractor, for whom the project is being constructed, on behalf of each employing unit, excluding design and engineering firms, to post a bond executed by a surety company authorized to do business in the state or an irrevocable letter of credit from a federal deposit insurance corporation insured state or nationally chartered bank authorized to do business in the state which will insure payment for all benefits claimed by employees of all employing units working on the project. The bureau may adjust the amount of bond or irrevocable letter of credit required under this subsection to cover any significant increases or decreases in project construction costs reported by the general or prime contractor or owner. If any general or prime contractor or owner fails to comply with this subsection, the bureau may apply to any court of this state within the jurisdiction in which the contractor or owner is found, located, or transacts business to obtain an order to compel the general or prime contractor or owner to post the required bond or irrevocable letter of credit required under this subsection. Any failure to obey an order of the court may be punished by the court as a contempt of court.
3. The amount of bond or irrevocable letter of credit must be the difference between the estimated benefits paid and estimated contributions, multiplied by fifty percent. The estimation of contributions expected must be made as follows: multiply the current year's ~~negative~~ positive

employer minimum rate ~~or six percent, whichever is greater~~ times the current year's taxable wage base times the estimated number of employees on the project using figures from project plans, times the number of years between the start date and the estimated completion date of the project. The estimation of benefits paid must be made as follows: ~~the ratio of benefits charged to contributions paid in the most recent three fiscal years by employers in the construction industry multiplied by the estimated contributions~~ multiply the estimated number of employees, from the project plans, times the current year's maximum weekly benefit amount times the duration, twelve weeks for the first year and twelve weeks for subsequent years, times the number of years between the start date and the completion date rounded up to the next whole number.

4. Thirty months after the completion or discontinuance of the project, the bureau shall determine the total benefits paid to employees of the employing unit or units. If the total amount paid to the employees of the unit or units exceeds the total amount of contributions collected from the units under the North Dakota Unemployment Compensation Law, the general or prime contractor, or the owner in those situations in which there is no general or prime contractor, shall pay the total amount of benefits paid to the employees of the units which exceeded the total amount of contributions collected from the unit or units. If the general or prime contractor, or the owner in those situations in which there is no general or prime contractor, does not pay the payment requirement, job service North Dakota shall collect the payment from the surety company that executed the surety bond or bank that issued the irrevocable letter of credit. The general or prime contractor, or the owner in those situations in which there is no general or prime contractor, shall remain liable for any amount of benefits paid to the employees working on the project which exceeds the amount of contributions collected from the employers who worked on the project which is not covered by the amount of the bond or irrevocable letter of credit.
5. For the purposes of this section, a project includes all entities that employ or contract for the employment of, or is employing directly or indirectly through agents, independent contractors, or subcontractors, excluding design and engineering firms. Each employing unit, whether contractor, subcontractor, or otherwise, involved in the project is subject to this section, excluding design and engineering firms.
6. Each employing unit having employees working on a project subject to this section, excluding design and engineering firms, shall maintain separate records for all employment on the project showing each individual's name, social security number, wages paid, and the dates the wages were paid. The employers shall submit separate reports from other employment subject to the North Dakota Unemployment Compensation Law under a separate reporting account established for the project.
7. This section applies to projects for which bids are let after August 1, 2001.
8. The determination of whether a project is subject to this section must be made in the same manner as provided for in section 52-04-17.

9. This section does not apply to any project in which the state is the owner or contractor.

Approved April 17, 2007
Filed April 18, 2007

CHAPTER 444**HOUSE BILL NO. 1056**

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

FEDERAL ADVANCE INTEREST REPAYMENT FUND

AN ACT to amend and reenact section 52-04-22 of the North Dakota Century Code, relating to the unemployment insurance federal advance interest repayment fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-04-22 of the North Dakota Century Code is amended and reenacted as follows:

52-04-22. Federal advance interest repayment fund - Continuing appropriation. There is created the federal advance interest repayment fund, to which will be credited all assessments collected by the division for the purpose of paying interest due on federal advances to the state trust fund. The fund must consist of all interest collected on delinquent contributions, all penalties provided by the Unemployment Compensation Law, and funds borrowed from sources other than federal advances which are placed in this fund. All moneys accruing to this fund in any manner must be maintained in this separate interest-bearing account at the Bank of North Dakota or invested in deposits of the Bank of North Dakota.

Moneys in this fund may also be used for the purpose of repaying funds placed in this fund which are borrowed from sources other than federal advances and for the purpose of paying interest due on other than federal advances. However, moneys in this fund may not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of the moneys be available to finance expenditures for the administration of the bureau.

Moneys in this fund may also be used for the purpose of paying principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota. Moneys in this fund also may be used for the purpose of paying principal and interest costs associated with the acquisition and renovation of land and building to be used as an office facility by job service North Dakota in Bismarck, North Dakota. Moneys in this fund may be used for the purpose of paying the costs of repair, renovation, or alteration of job service-owned office facilities. Moneys in this fund may be used for the purpose of paying the replacement rate charged for use of state fleet vehicles. Moneys in this fund may be used for the purposes of reemployment programs to ensure the integrity of the unemployment insurance program in this state. Moneys in this fund are hereby appropriated for the purposes specified in this section including the purpose of paying principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota. Moneys in this fund are appropriated for the purpose of paying the principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Bismarck, North Dakota. Moneys in this fund are appropriated for the purpose of paying the costs of repair, renovation, or

alteration of job service-owned office facilities. Moneys in this fund are appropriated for the purpose of paying the replacement rate charged for use of state fleet vehicles. Moneys in this fund are appropriated for the purposes of reemployment programs to ensure the integrity of the unemployment insurance program in this state.

Approved April 11, 2007
Filed April 13, 2007