

ALABAMA DEPARTMENT OF WORKFORCE
UNEMPLOYMENT COMPENSATION
ADMINISTRATIVE CODE

CHAPTER 480-4-2
TAX

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480-4-2-.14 Employing Unit's Records.

(1) Every employing unit having employment performed for it shall maintain records as hereinafter indicated and shall preserve such records in a manner to afford reasonable protection against damage or loss for a period of not less than five years after the calendar year in which the remuneration with respect to such services was paid, or, if not paid, was due.

(2) Form and Contents. Such records shall be kept in such form as to make it possible to determine through inspection true and accurate information with reference to each worker as follows:

(a) Full name and social security number.

(b) State or states in which the worker's services are performed; and if any such services are performed outside this State and are not incidental to the services within this State, his base of operation (or if there is no base of operations, then the place from which services are directed or controlled and his residence by state.)

(c) The date on which the worker was hired, rehired or returned to work after a temporary lay-off and date separated from work and the reason therefor.

(d) The beginning and ending dates of each pay period.

(e) The total remuneration paid in any pay period for services occurring on or after January 1, 1940, and the date of payment showing separately:

1. Cash remuneration, including special payments of any kind (such as bonuses, gifts, vacation or annual leave pay, etc.).

2. Reasonable cash value of remuneration in any medium other than cash with the exception of that paid for domestic or agricultural service (determined in accordance with rule 480-4-2-.21) including special payments such as gifts, etc.

(f) Amounts paid as allowances or reimbursement for traveling or other business expenses, date of payments and the amounts of such expenditures actually incurred and accounted for by the worker.

(g) With respect to pay periods in which the worker performs services in both covered employment and noncovered work records should clearly report:

1. Hours spent in covered employment.

2. Hours spent in noncovered work.

(h) Records should be maintained in such a manner to make it possible to determine with respect to any worker:

1. Earnings by pay period weeks, if paid on a weekly basis, or if not so paid, then by calendar weeks or by such other seven - consecutive - day period as the Director may prescribe as to any individual or group of individuals.

2. Weeks of less than full-time work.

3. Time lost due to worker's unavailability for work.

(i) When it appears to the Director that an employing unit has failed to maintain the records of employment required by Code of Ala. 1975, §25-4-116 and these rules the Director shall:

1. Inform such employing unit of the requirements for the maintenance of adequate payroll records, and

2. The Director shall demand in writing that such employer keep and maintain the payroll records required by this rule. Such demand notice of non-compliance shall be personally served upon the employing unit or sent by registered or certified mail to the employing unit's last known address.

3. Failure to keep true and adequate records shall result in fines and penalties as prescribed in Code of Ala. 1975, §25-4-116 and 25-4-145 of the law.

(3) In the event any employing unit maintains employment records elsewhere than in the State of Alabama, such employing unit shall designate an agent in the State of Alabama from whom such records may be requisitioned by the Director or his authorized representative, and any information contained therein shall be delivered to such agent by the employing unit upon demand therefor by the Director or his authorized representative.

Author: Curtis C. Hall

Statutory Authority: Code of Ala. 1975, §25-2-7, 25-2-8 and 25-4-111.

History:

480-4-2-.15 Identification Of Workers - Social Security Account Numbers.

(1) Every employer shall ascertain the social security account number of each worker employed by him in employment.

(2) If an employer has in his employ a worker engaged in employment who does not have such an account number, he shall request the worker to show him a receipt issued by an office of the Social Security Administration indicating that the worker has filed an application for an account number. The receipt shall be retained by the worker.

(3) If a worker fails to report to his employer his correct account number or to show him a receipt issued by an office of the Social Security Administration indicating that he has filed an application for an account number, the employer shall inform the worker that Regulation 106 of the Bureau of Internal Revenue,

United States Treasury Department, under the Federal Insurance Contributions Act, provides that:

(a) Each worker shall report to every employer for whom he is engaged in employment his social security number and his name exactly as shown on the account number card issued to him by the Social Security Administration.

(b) Each such worker who has not secured an account number shall file an application for an account number on Form SS-5 of the Treasury Department, Bureau of Internal Revenue. The application shall be filed on or before the seventh day after the date on which the worker first performs employment for wages; except that the application shall be filed on or before the date the worker leaves the employ of his employer if such date precedes such seventh day. Copies of Form SS-5, "Application for a Social Security Account Number" can be secured at any field office of the Social Security Administration, a public employment office or at the local post office.

(c) If, on the fourteenth day after the date on which the worker first performs employment for wages for the employer, or on the day on which he leaves the employ of the employer, whichever is the earlier, the worker does not have an account number and has not shown the employer a receipt issued to the worker by an office of the Social Security Board indicating that he has filed an application for an account number, the worker shall furnish the employer an application on Form SS-5, completely filled in and signed by the worker. If a copy of Form SS-5 is not available, the worker shall furnish the employer a written statement, signed by the worker, of the date of the statement, the worker's full name and address, date and place of birth, father's full name, mother's full name before marriage, worker's sex and race, and a statement as to whether the worker had previously filed an application on Form SS-5 and, if so, the date and place of such filing. Furnishing the employer with an executed Form SS-5, or statement in lieu thereof, does not relieve the worker of his obligation to make an application on Form SS-5 as required in subsection (2) of this section.

(4) Every employer shall inform his workers, in instances in which the information is pertinent, that in accordance with Regulation 106 of the Bureau of Internal Revenue, United States Treasury Department:

(a) Any worker who has lost his account number card may secure a duplicate card by applying at the field office of the Social Security Administration nearest the worker's place of employment.

(b) Any worker may have his account number changed at any time by applying to a field office of the Social Security Administration and showing good reason for a change. Any worker whose name is changed by marriage or otherwise, or who has stated incorrect information on Form SS-5, should report such change or correction to a field office of the Social Security Administration. Copies of Form OAAN-7003, "Employee's Request for Change in Records," for making such reports, may be obtained from any field office of the Social Security Administration, the central office of the Alabama Unemployment Compensation Agency, or a public employment office.

(c) Any worker who has more than one account number shall report all numbers to the field office of the Social Security Administration nearest his place of employment, or to a public employment office.

(5) If a worker fails to comply with the requirements enumerated under Paragraph (3) of this rule, his employer shall execute a Form SS-5, "Application for a Social Security Account Number," or statement signed by the employer, setting forth as fully and as clearly as possible the worker's full name, his present or last known address, date and place of birth, father's full name, mother's full name before marriage, the worker's sex and race, and a statement as to whether an application for an account number has previously been filed by the worker, and if so, the date and place of such filing. The execution of a Form SS-5 or submission of a statement in lieu thereof by the employer does not relieve the worker of his obligation to make an application on Form SS-5 as required under subparagraph (3) (b).

(6) Every employer shall report a worker's account number in making any report required by the Director with respect to such worker. If the worker has no such number, but has shown his employer a receipt indicating that he has filed application for one, the employer shall, in making any report required by the Director with respect to such worker, report the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the worker exactly as shown in the receipt. If the worker fails to show his employer either such number or such receipt, the employer shall attach to any report required by the Director with respect to such worker the statement or Form SS-5 executed in compliance with Section (3) (c) or Section (5) of this rule.

Author: William E. Parsons

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8 and 25-4-111

History: Effective September 30, 1982.

480-4-2-.16 General Reports.

(1) Reports and Instructions. Every employing unit shall make such reports as the Director may require, and shall comply with instructions printed upon any report form issued by the Director pertaining to the preparation and return of such report. (See Rule 480-4-1-.07.)

(2) Employing Units required to File Report to Determine Liability. Each employing unit engaged in doing business in the State of Alabama on or after January 1, 1944, shall file a report to determine liability with the Unemployment Compensation Agency on a form supplied by the Department. Every employing unit which subsequently begins business in the State of Alabama in any manner whatsoever, whether by succession to a business already being operated, by starting a new business, by change in partnership, or otherwise, shall, within 20 days after beginning such business, inform the Department of that fact, request the report to determine liability, and make and file the report as required.

(3) Change in Status. Every subject employer who shall sell, convey, or otherwise dispose of his business, or all or any substantial part of the assets thereof, or who shall cease business for any reason, whether voluntarily or by being in bankruptcy, or otherwise, shall immediately report such fact, in writing, to the Director, stating the name and address of the person, firm or corporation to whom such business, or all or any substantial part of the assets thereof, shall have been sold, conveyed or otherwise transferred, and in cases of bankruptcy, receivership or similar situations, such employer shall report the name and address of the trustee, receiver, or other official placed in charge of the business. Upon the death of any employer, such report shall be made by his personal representative upon his appointment by the court. In the event no personal representative is appointed, such report shall be made by the heir, or heirs, succeeding to the interest of the employer. In the event of a dissolution of partnership or joint venture, such report shall be made by the former partners or joint adventurers.

(4) For the purpose of paragraph (3) of this rule, "substantial" part of a business shall be any identifiable part which, if considered alone, would constitute the employing unit an employer subject to the provisions of the unemployment compensation law.

Author: Curtis C. Hall

Statutory Authority: Code of Ala. 1975, §25-2-7, 25-2-8 and 25-4-111.

History: Effective September 30, 1982.

480-4-2-.17 Contribution Payments, Reimbursement Payments And Reports.

(1) Payments of contributions or payments in lieu of contributions required under the unemployment compensation law shall be submitted by each employer with contribution reports and wage-earning reports in accordance with the provisions of this rule. Payments shall be made as described in subsection (a), (b), and (c) below, under this Section (1):

(a) Acting under the provisions of Code of Ala. 1975, §14-1-23, the Alabama Department of Industrial Relations hereby establishes a requirement that payments of \$25,000 or more shall be made by electronic funds transfer through the use of an Automated Clearing House debit transaction.

(b) Employers filing electronic or Interactive Voice Response System contribution and wage reports under the provisions of the Department of Industrial Relations Administrative code 480-4-2-.32 shall make payments by electronic funds transfer through the use of an Automatic Clearing House debit transaction.

(2) Payment of Contributions by Tax Paying Employer.

(a) Except as otherwise provided in sections 3-7 of this rule, contributions shall be payable for each calendar quarter with respect to wages paid during such calendar quarter for employment occurring on or after January 1, 1940.

(b) Except as otherwise provided in subsections (2)(c) through 2(g) of this rule, quarterly contributions shall become due on or before the last day of the month next following the close of the quarter for which they are payable and shall become delinquent on the first working day of the following month.

(c) The first contribution payment of any employing unit which becomes an employer at any time during a calendar year shall become due on, and shall be paid on or before, the last day of the month next following the close of the calendar quarter in which such employing unit satisfies the conditions with respect to becoming an employer. Such payment shall include contributions which have accrued for the entire period beginning January 1 of such calendar year up to and including the calendar quarter in which the employing unit satisfies the conditions with respect to becoming an employer; provided, the first contribution payment of any employing unit which elects, with the written approval of such election by the Director, to become an employer, shall become due on, and shall be paid on or before, the last day of the month next following the close

of the calendar quarter in which the conditions of becoming an employer by election are satisfied, and shall include contributions with respect to all wages paid for employment occurring on and after the date stated in such approval (as of which date such employing unit became an employer) up to and including the calendar quarter in which the conditions of becoming an employer by election are satisfied.

(d) Whenever the Director or his authorized representative has, in writing, advised an employing unit that it has been determined not to be an employer or that services for it do not constitute employment, and it is thereafter established that there did exist a legal obligation on the part of such employing unit to pay contributions, such accrued contributions shall become due with accrued interest thereon 15 days after such employing unit is informed of its liability.

(e) Whenever the Director finds that collection of contributions from a particular employer may be jeopardized because of bankruptcy or removal or other factors he may advance the due date of such employer's contributions and report to such date, succeeding the period with respect to which they have accrued, as he deems advisable.

(f) The Director may, at his discretion upon such findings or upon such request of an employer, require payment of contributions from such employer monthly rather than quarterly. Monthly contributions shall become due on, and shall be paid on or before, the tenth day of the month next following the close of the month for which they are payable.

(g) The Director may at his discretion furnish an employer written permission to pay delinquent contributions in installments. Any arrangement for payment in installments must make provision for the payment of interest on the past due delinquent contribution balances beginning with the last day of the month following the period with respect to which such contributions accrued and ending with the date on which each such installment is paid. In the event that such employer fails to pay an installment in full when it falls due, the entire unpaid balance of contributions, interest and penalty will become due including any additional interest accrued to the date of payment. No written permission for the payment of contributions in installments shall preclude subsequent collection action pursuant to Code of Ala. 1975, §25-4-134 of the law against such employer under the provisions of subparagraph (1) (a) 4 of this rule.

(h) Payment of contributions and reports received through the mail shall be deemed to have been made and received by the Department on the date of an official U.S. Postal Service

postmark. Postal meters will not substitute for official U.S. Postal Service postmark.

(3) Payment in Lieu of Contributions by Reimbursing Employers.

(a) Each non-profit reimbursing employer or group of such employers shall at the end of the calendar quarter or any other period that the Director may prescribe pay the total amount of regular benefits plus one-half of the extended benefits paid to any former employee during such quarter. Such payments shall be made within 20 calendar days after notice of billing is mailed by the Director.

(b) Each reimbursing governmental employer shall submit their computed advance payment amounts to the Director on or before the 10th day of the beginning of each calendar quarter.

(4) Filing of Quarterly Wage and Contribution Reports and Reports for Reimbursing Employers.

(a) Each employer shall not later than the due date required for the payment of contributions, file a quarterly employer's contribution and wage report for such quarter by phone (Interactive Voice Response System or internet) based upon wages paid with respect to employment within this state and computed in accordance with the Code and these rules.

1. For those nonprofit employers and state and local government employers whose payment is a reimbursement of benefits paid, the reimbursing employers' quarterly report together with the report reflecting employment and wage shall be filed with the Director on or before the due date in accordance with the instructions contained thereon. Reports shall be filed for each quarter during which the employer is subject to the law.

2. Failure to receive report forms shall not relieve the employer from the responsibility for filing required forms on or before the due date or to pay any contribution due.

3. Employer to file report even when no payroll. Every qualified or subject employer is required to send in an employer's wage and contribution or a wage report each quarter even though an employer finds that for some particular quarter no contributions are due, or they have no employees during the period covered.

4. The signature or electronic authorization of the owner, responsible officer, or authorized agent of the employer will be required certifying that the information is true and correct to the best of the signer's knowledge and belief.

5. A copy of each such report shall be preserved by each such employer for a period of 5 years from the end of the calendar year in which the quarterly report falls within.

(5) Interest prescribed by the Unemployment Compensation Law on a delinquent contribution or reimbursing payment shall be computed from and including the day following the due date up to and including the day payment is made, as shown by the date of the official U. S. Postal Service postmark thereon, if mailed. Interest shall be computed at the rate of one percent for each full month and for any period of less than one full month at the rate of one thirtieth (1/30) of one percent for each day or fraction thereof.

(6) Penalties. Failure to submit payments and reports as required in accordance with instructions thereon and as provided in the above rules shall be subject to penalties imposed under Code of Ala. 1975, §§25-4-53, 25-4-133 and 25-4-145 of the Law.

(7) Waiver of Interest and/or Penalties. The Director or his designees may for good reason compromise or waive any civil penalty or interest charge arising under provisions of the law if the imposition of interest and/or penalty would be deemed to be inequitable. In the request for compromise or waiver of any interest or penalty imposed by the provisions of law, the burden shall be upon the employer to establish to the satisfaction of the Director or his designees that the imposition of interest and/or penalty would be inequitable.

(8) Application of Payments to Delinquent Accounts.

(a) When delinquency exists in the employer's account and payment in an amount less than the total amount due is submitted, the Agency shall apply the payment to the delinquency in such a manner as the employer directs.

(b) In the absence of specific directions, the Agency shall apply a partial payment in such a manner as to satisfy all contributions due first, followed by interest and then penalty.

Author: Charlotte Lackey, Unemployment Compensation Division

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-50 and 25-4-111.

History: Effective September 30, 1982. **Amended:** Filed April 10, 2008; effective May 15, 2008. **Amended:** Filed May 13, 2009; effective June 17, 2009.

480-4-2-.18 Filing Of Surety Bond, Cash Deposit Or Interest-Bearing Deposit For Non-Profit Organizations.

(1) The Department shall require a surety bond, cash deposit or interest-bearing deposit from non-profit organizations electing to make payments in lieu of contributions. The surety shall not be in excess of the rate prescribed in Code of Ala. 1975, §25-4-51(b)

(7)a. nor less than 0.5 percent of the past year's payroll as defined therein (if there was no payroll, then the estimated payroll for the current year) as determined by the Unemployment Compensation Agency.

(2) Certain factors shall be taken into consideration in determining the rate. These include, but shall not be limited to:

(a) The turnover rate and the amount of seasonal employment.

(b) The method of financing the non-profit organization and the prospects for continued financing.

(c) The cash reserve.

(d) Capital investments.

(e) Other factors that would indicate the actual cost of paying unemployment benefits to former employees and the ability of the non-profit organization to pay such cost promptly.

(3) The surety bond will be filed on a form furnished or approved by the department and shall be issued by an organization licensed and authorized to issue bonds in this state. The surety bond shall be in force for not less than two full calendar years and shall be renewed not less frequently than at two-year intervals. The Director shall require adjustments in a previously filed bond as he/she deems appropriate.

(4) Money deposited as a surety bond, shall be maintained by the Director in an escrow account and may be used to satisfy any unpaid payments in lieu of contributions. The Director may review the adequacy of the cash deposit and require adjustments in the amount as he/she deems necessary.

(5) Money deposited as surety in interest-bearing accounts shall be held in an account assigned to the Director in a bank or financial institution licensed to do business in Alabama. The bank or financial institution must file a collateral security agreement on a form furnished or approved by the department. An assignment of depository account will be filed on a form furnished or approved by the department and monthly statements of the account

shall be issued by the financial institution where the deposit is held to the Department. The Director shall require adjustments in the amount of deposit as deemed necessary.

Author: Byron Abrams, Director, Unemployment Compensation

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

History: Effective September 30, 1982. **Amended:** Filed October 12, 2000; effective November 16, 2000.

480-4-2-.19 Employer Responsibilities.

(1) Posting of Notices and Notifications

Every employer (including every employing unit which has, with the approval of the Secretary, become an employer by election under the provisions of the law) shall provide notification of the potential availability of unemployment benefits to individual employees at the time of their separation from employment. Notices to the employees may be made by letter, email, text message, or flyer, and must contain the following information:

Employer Notification to Employees of the Availability of Unemployment Compensation

Unemployment Insurance (UI) benefits are available to workers who are unemployed and who meet the requirements of Alabama UI eligibility laws. You may file a UI claim in the first week that employment stops, or work hours are reduced.

For assistance or more information about filing a UI claim visit www.labor.alabama.gov

You will need to provide the Alabama Department of Labor's UI division with the following information in order for the state to process your claim:

1. Your full legal name;
2. Your Social Security Number; and
3. Your authorization to work (if you are not a US Citizen or resident).

To file a UI claim by phone, call: 1-866-234-5382

To file a UI claim online, visit:

<https://continuedclaims.labor.alabama.gov>

If you have questions about the status of your UI claim, you can call the Alabama Department of Labor at 1-800-361-4524 or check your claim status online at

<https://uiclaimstracker.labor.alabama.gov>

Every employer shall additionally post and maintain printed notices to its workers informing them that it is liable for contributions under the Alabama Unemployment Compensation Law and has been so registered by the Secretary. Such notices shall be furnished by the Secretary in such numbers as he/she may determine to be necessary and shall be posted and maintained in conspicuous places near the actual location where the workers' services are performed. Such notices shall also include information as to the workers' rights to benefits and instructions as to the procedure for registering for work and for filing claims for benefits. No such notice shall be posted or maintained by any person or employing unit to whom an unemployment compensation account number has not been assigned by the Secretary or who has ceased to be an employer.

(2) Separation Information

(a) When a former employee files a new or additional claim for unemployment compensation, the Alabama Unemployment Compensation Agency notifies the last bona fide employer and requests information regarding the reason for the claimant being separated. This employer must return the Form BEN 241, Request for Separation Information, by no later than the response due date listed on the form. Failure of the employer to provide this information may be construed to mean that the separation was under conditions that would not be disqualifying. Failure of the employer to provide this information may also deny relief of charges to the employer's experience rating for an overpayment that is caused by the separating employer's failure to respond timely or adequately.

1. An employer may request a separate mailing address for the purpose of receiving requests for separation information and other correspondence regarding a claim for unemployment benefits. This address is in addition to the address to which the quarterly tax reports are to be mailed. A request for a separate mailing address shall be in writing and signed by the employer or its authorized representative. The name and address of each separate unit must be included. All requests will be subject to approval by the Secretary or his/her authorized representative. If approved, proper reporting instructions will be mailed to the employer. The Secretary may for good cause and after proper notice to the employer revoke the approval for separate mailing addresses.

2. The date of mailing, as disclosed by the official U.S. Postal Service postmark, shall be the date that the information was furnished. If the information is received by any method other than the U.S. Mail, the date of actual receipt shall govern.

(b) Notice of discharge for a dishonest or criminal act committed in connection with work, an act of sabotage or an act endangering the safety of others may be furnished by the employer to the Alabama Unemployment Compensation Agency immediately following such discharge. This voluntary notice should be in writing and should include the worker's name, social security number, date of separation and circumstances resulting in such discharge. The failure to provide advance notice of such discharge in no way precludes the Secretary from acting upon such information furnished timely in response to the first Agency notice to the employer of a claim.

1. Once a claim is filed, the last separating employer is furnished a Notice of Claim and Request for Separation Information, (Form Ben-241). Base period employers other than the last separating employer are notified of the claim by a Notice of Potential Charge to Your Tax Rating Account (Form Ben-8A). Information furnished by the respective employers in response to these will be considered timely notice to the Secretary as required by Section 25-4-78(3)a, and acted upon accordingly, including monetary redetermination of the claim, provided such response is furnished to the Agency within the time specified on either form. (The required return date and local office address is printed on each Ben 241. Form Ben 8A must be returned to the Department of Labor, Unemployment Compensation Agency, 649 Monroe Street, Montgomery, Alabama 36131, within fifteen (15) days following the mailing date shown on the form).

(c) When the determination is made, a Form BEN-8, Employer Notice of Determination, is mailed to the last bona fide employer. This notifies the employer that a determination has been made and informs the employer of the appeal rights available.

(d) When a claimant is paid benefits, Form BEN-8A, Notice of Potential Charge to Your Tax Rating Account, is mailed to all base period employers other than a separating employer (except State Accounts). These employers may enter a reason for and date of separation and return the form, to be received in the Unemployment Compensation Agency no later than fifteen (15) days after the initial mailing date. Based on this separation reason, if the law provides, these employers may be granted partial or total relief from the charges to their experience rating account; except as provided in Section 2(b) of this rule.

Author: Joseph S. Ammons, General Counsel

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

History: Filed September 30, 1982, August 10, 1983, January 23, 1984. **Amended:** Filed September 7, 1995; effective October 12, 1995. **Amended:** Published September 30, 2020; effective November 14, 2020.

Ed. Note: This rule is intended to implement §25-4-78, 25-4-91(c) (1) (2), 25-4-91(d) (1) (2), and 25-4-111, Code of Ala. 1975, as amended through February 24, 1983.

480-4-2-.20 Successorship Or Merger Of Non-Profit Employers.

(1) When two non-profit employers merge, one being a Contributing employer (NT) and the other a reimbursing employer (NR) and the surviving entity is the contributing employer, the following will occur:

(a) The surviving entity will remain in its contributory status so long as it elects to do so under the provision of Code of Ala. 1975, §25-4-51(a) (3).

(b) The wage records of the merging reimbursing employer prior to the merger will be changed to reflect the change from a reimbursing to contributory account.

(c) The employment experience of the merging account will be combined with and considered in computing the tax rate for the surviving entity at the next rate computation time.

(d) Benefit costs in connection with any claim being paid at the time of the merger based on wages with the reimbursing employer prior to the merger will be continued on a reimbursable basis and will be the responsibility of the surviving entity.

(e) Any claim filed after the effective date of the merger will be handled as if the wages had been earned with a contributory employer.

(2) When two or more non-profit employers merge and at least one of the merging employers is a contributing employer and the surviving entity is a reimbursing employer, the following will occur:

(a) The surviving entity will remain in its reimbursing status so long as it elects to do so under the provisions of Code of Ala. 1975, §25-4-51(a) (3).

(b) The wage records of the merging contributory employer prior to the merger will be changed to reflect the change from the contributory to reimbursing account.

(c) The employment experience of the merging contributory account will be flagged for inclusion in the rate computation in the event the reimbursing employer later terminates its option as provided in Code of Ala. 1975, §25-4-51(a)(3)b.

(d) Any claim which is based upon benefit wages earned with the contributory employer in current payment status at the time of the merger will be charged to the surviving employer.

(3) If two or more non-profit employers, regardless of benefit financing, are absorbed into a third, newly established organization, that organization shall be considered liable under the successorship clauses, but shall be given the initial option of benefit financing as if it were a newly liable, non-profit employer.

Author: Curtis C. Hall

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8 and 25-4-111.

History: Effective September 30, 1982

480-4-2-.21 Wages And Value Of Remuneration Other Than Cash.

(1) Code of Ala. 1975, §25-4-16 of the law defines wages as "every form of remuneration paid or received for personal services including the cash value of any remuneration paid in any medium other than cash. The reasonable cash value of remuneration paid in any medium other than cash shall be determined in accordance with rules prescribed by the Director."

(2) Board, lodging, and any other forms of payment received or payable as remuneration for services performed by an employee, in addition to or in lieu of money payments, constitute wages. When deductions from cash payment for services have been made because partial payment was made other than in cash, the original full wage amount due shall constitute wages.

(3) The Director shall determine or approve the reasonable cash value of all payments in kind, and the cash value as so determined or approved shall be used for purposes of all contributions and benefit determinations.

(4) If a reasonable cash value for such board, lodging, or other payment is agreed upon in any contract of hire, expressed or implied the amount so agreed upon, if more than rates prescribed by the Director, shall be deemed the value of such board, lodging, or other payment in no case shall the reasonable cash value be less than the board and lodging rates prescribed herein.

(5) Until and unless in a given case a rate for board and lodging is determined to be otherwise by the Director, board and lodging furnished in addition to money wages, shall be deemed to have not less than the following reasonable cash value:

- (a) Full board and room weekly..... \$63.00
- (b) Meals,
 per week..... 42.00 per
 meal..... 2.00
- (c) Lodging,
 per week..... 21.00
 per day..... 3.00

(d) The value of meals furnished an employee by an employer on the premises of an employer for its convenience is not "wages" and not reportable as such.

(e) The value of lodging furnished an employee by an employer for its convenience and as a condition of employment is not "wages" and not reportable as such.

(6) Remuneration for services rendered in any medium other than cash is not considered wages for agricultural or domestic services or for services not in the course of employers usual and normal trade or business (casual labor).

(7) Prior to January 1, 1986, gratuities or tips paid to an employee by an employer, from money left by a customer or patron, constitute wages and must be reported for the purpose of determining his contribution liability under the law; provided,

(a) the employer utilizes such money to enhance any employees' remuneration; or

(b) when the employer requires patrons to pay an amount as a service charge to be divided solely at the discretion of the employer; or

(c) to the extent any employer uses such tip or gratuity in meeting the minimum wage law. Provided, however, that the excess amount of tips received above the minimum wage requirement, unless otherwise meeting the requirement of wages, shall not be considered wages.

(d) On and after January 1, 1986, the amount of all tips received by a person while performing services which constitute employment as defined in Section 25-4-10, Code of Ala. 1975, as amended are "wages" and are reportable as such pursuant to Section 25-4-16, Code of Ala. 1975, as amended, provided the amount of tips is \$20 or more in a month. This includes tips received by an employee directly from a patron

or person and reported in a written statement to the employer, amounts charged to a customer as tips by the employer, added by the customer to a bill or statement (including credit cards used to pay the bill), or otherwise known to the employer and paid over to the employee by the employer.

(8) Wages paid include both wages actually received by the worker and wages constructively paid. Wages are constructively paid when they are credited to the account of or set apart for a worker without any substantial restriction as to the time and manner of payment or condition upon which payment is to be made and must be available to him so that they may be drawn upon by him at any time, and their payment brought within his own control and disposition, although not then actually reduced to possession.

(9) Wages payable means wages earned, including wages earned and paid as well as wages earned and unpaid.

(10) Wages will be assignable and reported in the calendar quarter in which they are paid.

(11) Back Pay Awards made to a worker resulting from a ruling by a governmental agency or an employer/union arbitration agreement are considered wages. These amounts will be considered taxable and reportable by the employer in the quarter during which the back pay is actually paid by the employer. For unemployment benefit monetary determinations the back-pay amounts will be distributed over the quarters they would have normally been paid to avoid an unfavorable effect on a benefit claim. (See rule 480-4-2-.28).

Author: William E. Parsons

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

History:

480-4-2-.22 Group Accounts.

(1) For the purpose of Code of Ala. 1975, §25-4-51(b) (9), Alabama Unemployment Compensation Law, two or more eligible employers with substantial common interest may file a joint written application for establishment of a group account. The written application shall identify the various members of the group and a group representative to act as agent for the group and shall be accompanied by written proof of action by the ruling body of each member. If the application is approved, the Director shall establish the group account in accordance with the provisions of Code of Ala. 1975, §25-4-51(b) (9).

(2) New members may be added to, and active members may withdraw from, such group account, with approval of the Director, upon written application duly filed.

(3) The representative, acting as agent for the members of such group account, shall be responsible for dealing with the Director relative to obligations of each member under the law making all payments to the Director, and all notices and statements from the Director as required in said law sent to said representative shall be deemed to have been sent to any member of the group to whom it might relate.

(4) Any surety bond or cash deposits required to be furnished by the provisions of Code of Ala. 1975, §25-4-51(b)7 of the Alabama Unemployment Compensation Law shall be for the group and the amount thereof shall be determined in the same manner as it provided in Rule 480-4-2-.18.

Author: W. R. Hartin

Statutory Authority: Code of Ala. 1975, §25-2-7, 25-2-8 and 25-4-111.

History:

480-4-2-.23

Application For Protest And Review Of Tax Rate Liability, Benefit Charge Statements, Assessment and Misclassified Worker Status.

(1) Applications for Review and Protest. All applications for review of determinations regarding the taxing provisions and all protests as provided for herein must be in writing, signed by the protesting party, or their authorized power of attorney and contain a short and concise statement of the facts and grounds upon which it is believed that the action to which review is sought or protested is in error. Application for review and protest should be filed with Tax Operations, Department of Labor Building, Montgomery, AL 36131 marked according to the type of protest. For liability concerns, including successorship determinations, to the attention of the Status Unit; for tax rate notice and benefit charge statement concerns to the attention of Experience Rating; and for misclassified worker concerns to the attention of Chief of Tax. Such application of protest must be received from the employer within the time period prescribed by statute or rules.

(2) Burden of Proof. The original determination of the Agency shall be considered prima facie correct. The burden of proof shall be on the protesting party to establish by evidence that the determination of the Agency was in error.

(3) Determination of liability of the Employer. Employing units, whether newly liable or a successor to another already liable employer, will have their liability under the Alabama Unemployment Compensation Law determined promptly upon receipt of all the required information prescribed by statute or these rules. The employing unit will be notified of the determination of their liability by regular mail to the employer's last known address of

record. If the employer disagrees with the final determination of liability, an administrative review of the facts involved in the liability decision will be conducted at the written request of the employer. The request shall be made within fifteen (15) days of the date the notice of determination is mailed and shall be directed to Tax Operations, Status Unit. Should the employer fail to meet the fifteen (15) day deadline, the opportunity to protest liability is expired and the determination becomes final.

With respect to newly liable employers only, if the employer does not agree with the determination of the review, the employer will be given an opportunity for a Circuit Court Appeal through the tax rate notice. In the case of an employer who is not yet tax rated, the opportunity will be extended to them via the US Postal Service to the last known address of record or by electronic mail last provided by the employer or employer's representative. The liability determination shall be prima facie correct, and the burden shall be on the employer to show that such liability determination is not correct.

For those employers who become liable due to the acquirement of another company (successorship), if the employer is not satisfied with the determination of that review, the employer will be given an opportunity for an appeal to Circuit Court through the tax rate notice, US Postal Service or electronic mail. The liability determination shall be prima facie correct, and the burden shall be on the employer to show that such liability determination is not correct.

If the employer's liability date changes, it may be necessary to update the already liable unemployment tax account. This will not afford the employer another opportunity in which to protest their status as a liable employer; however, they may protest the date of employment liability only by requesting an administrative review.

(4) Application for Review of Benefit Charge Statements or Reimbursable Costs.

(a) An employer may request a review of the quarterly benefit wage statement within thirty (30) days from the date of notification as sent via internet or regular mail to the employer's last known address. Otherwise, the statement will be conclusive and final upon the employer for all purposes and for all proceedings whatsoever.

(b) Application for review will be subject to the provisions of rule 480-4-2-.23(2).

(c) The review process of the benefit wage charge statement shall be conducted pursuant to the Code of Ala. 1975, §25-4-54(c)(4) of the Alabama Unemployment Compensation Law.

(5) Application for Review of Tax Rate Notice.

(a) An employer may apply for a review of the computation of his/her benefit wage percentage and his contribution rate as fixed by his benefit wage percentage provided such application is filed as subject to the provisions in rule 408-4-2.23(2) and received within thirty (30) days of the date of notification on the tax rate notice. This protest will only apply to the numbers used to provide the tax rate itself. This will not be another opportunity in which to protest the employer's liability as a new or successor employer. For those employers who may receive a paper copy of their tax rate notice (as opposed to a downloadable version) the same provisions of rule 408-4-2.23(2) apply. The paper tax rate notice will be mailed via the US postal service to the last known address of record provided by the employer or employer's representative. The employer may request an administrative review within thirty (30) days of the date of notification/mail date on the tax rate notice. As above in (5)(a) the protest will only apply to the numbers used to provide the tax rate itself.

(b) The Secretary, after an administrative review, will issue his/her ruling promptly. Any employer may appeal such ruling within thirty (30) days from the date of the Secretary's ruling to the Circuit Court of any county as provided in Code of Ala. 1975, §25-4-54(h) of the Alabama Unemployment Compensation Law.

(6) Review and protests of assessment.

(a) In cases where an employer fails to comply with the taxing and reporting provisions of the Law and rules, the Secretary may initiate assessment proceedings against such employer pursuant to Code of Ala. 1975, §25-4-134.

(b) Whenever, the Secretary shall make an assessment against an employer, proper notice shall be given to the employer by registered or certified mail setting forth the amount of the assessment, purpose of the assessment and time and place for hearing, if applicable. This notice will be mailed via US Postal Service to the last known address of record provided by the employer or employer's representative.

(c) If the employer fails to make and file reports with this Department, the Secretary may issue a written notice by registered or certified mail to the employer's last known address of record provided by the employer or employer's representative. Within fifteen (15) days from the date of notice, such employer fails or refuses to make a report(s), the Secretary shall make a report(s) as he/she may reasonably obtain, and shall issue an assessment upon contributions and penalties due thereon and interest at the rate of one percent per month, or fraction thereof, from the date such contributions were due. Once this time has passed and the

employer has not voluntarily provided the reports, the Department will make an assessment of the amount due and send by certified mail to the employer a notice of this final assessment. The employer must request an administrative hearing within fifteen (15) days and show cause as to why the assessment should not be final. The employer may at that time provide correct wage information for the quarters due. This hearing is not a formal hearing but is a time in which to provide the actual payroll records. This assessment shall be final unless an appeal is made within thirty days of the date of the final assessment pursuant to Code of Ala. 1975, §25-4-134(3)b. This appeal pertains only to those numbers used for the assessment and will not be considered an appeal to the liability of an employer or independent contractor status of employees.

(d) Employer must pay the assessment so made before the appeal is due or post a supersedes bond.

(e) If the employer fails to make full payment on reports which have been filed with this Department within thirty (30) days of the date due, the Secretary may assess the correct amount of contributions, penalties due thereon and interest at the rate of one percent per month, or fraction thereof, from date such contributions were due. This assessment shall be final unless an appeal is made within thirty days of the date of the final assessment pursuant to Code of Ala. 1975, §25-4-134(3)b. This appeal pertains only to those numbers used for the assessment and will not be considered an appeal to liability of the employer or independent contractor status of employees. There is no opportunity for an administrative hearing and the employer must appeal to Circuit Court within Montgomery County, the county where the employer resides, or his/her business is located.

(f) Employer must pay the assessment so made before the appeal is due or post a supersedes bond.

(g) If the employer makes a report(s) with this Department found to be incorrect, incomplete or insufficient, the Secretary may issue a written notice by registered or certified mail to his/her last known address of record. If within fifteen (15) days from the date of notice, such employer fails or refuses to make such report(s) complete, correct or sufficient, the Secretary shall make a report(s) as he/she may reasonably obtain, and shall without further notice or hearing assess contributions and penalties due thereon and interest at the rate of one percent per month, or fraction thereof, from the date such contributions were due. This assessment shall be final unless an appeal is made within thirty days of the date of the final assessment pursuant to Code of Ala. 1975, §25-4-134(3)b. This appeal pertains only to those numbers used for the assessment and will not be

considered an appeal to the liability of an employer or independent contractor status of employees. There is no opportunity for an administrative hearing and the employer must appeal to Circuit Court within Montgomery County, the county where the employer resides, or his/her business is located.

(h) Employer must pay the assessment so made before the appeal is due or post a supersedes bond.

(7) Review of the Determination of Employee/independent contractor Status.

The employing unit will be notified of the determination that the previously unreported workers have been misclassified and have been determined to be employees by this Department. This letter will be sent by US Postal Service to the last known address of record or by electronic mail last provided by the employer or employer's representative.

(a) If the employer disagrees with the final determination, an administrative review of the facts involved in the decision will be conducted at the written request of the employer. The request shall be made within thirty (30) days of notice of determination mail the date the notice of determination is mailed and shall be directed to the attention of Tax Operations. This appeal request should be made by a corporate officer or duly authorized power of attorney.

(b) This appeal will be subject to the provisions of rule 480-4-2-.23(2). This appeal will apply only to the status of misclassified workers found to be employees by this Department.

(c) Upon the determination from the Administrative Hearing Officer, should the employer be dissatisfied with the outcome of the decision, the employer may appeal within thirty (30) days of the date affixed on the decision to Circuit Court within Montgomery County, the county where the employer resides, or his/her business is located.

(d) Employer must pay the assessment so made before the appeal is due or post a supersedes bond.

Author: Jo Doyal, Arthur F. Ray, II

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

History: September 30, 1982. **Amended:** Filed January 2, 2014; effective February 6, 2014. **Amended:** Filed August 13, 2019; effective September 27, 2019.

480-4-2-.24 Appointment Of Hearings Officer On Contested Tax Cases.

(1) The appointment of a hearing officer in tax matters shall be in accordance with Rule 480-1-1-.05.

(2) The proceedings on any contested tax matters before a hearings officer shall be presented and heard generally in the manner prescribed in rules 480-1-4-.06 through 480-1-4-.09.

(3) The decision and subsequent appeal rights shall be in accordance with the Code of Ala. 1975, §§25-4-54(c)(4), 25-4-54(h), 25-4-97 and 25-4-134.

Author: George Cocoris

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8 and 25-4-111.

History:

480-4-2-.25 Agents, Other Individuals Or Firms Representing Employers In Unemployment Compensation Matters.

(1) An agent, tax practitioner, accounting firm, attorney, or any other firm or individual that represents or intervenes on behalf of an employer in any unemployment compensation matter shall have on file with this department:

- (a) A notarized Power of Attorney, or
- (b) A letter of documentation from the employer.
- (c) These documents must contain the following:
 1. The employer's full trade name, address and assigned account number.
 2. The name and address of the agent or firm representing the employer. If an employer or a representative of a firm is covered by Alabama law, the assigned account number shall be included.
 3. A statement that such agent or firm is duly authorized to represent the employer. If not a general authorization, the limitation of authority or the areas or activities covered by the authorization must be stated.
 4. The signature of the employer.

(2) The Power of Attorney should be signed and dated within the last twelve (12) months upon receipt by the Department.

In the event that the power of attorney is beyond the twelve (12) month period requested, the employer may indicate an existing relationship between the employer and the agent or firm representing the employer by written letter to the Department of Labor. The letter must be written on company letterhead, signed by a corporate officer or sole proprietor, must state the agent or firm is authorized to represent the employer in both benefit and/or tax matters, and must be accompanied by the original power of attorney.

(3) The document will be kept on file in the department and should the authorization be revoked or changed for any reason, the department is to be notified immediately.

Author: Jo Doyal, Experience Rating

Statutory Authority: Code of Ala. 1975, §25-2-7, 25-2-8, 25-4-111.

History: September 30, 1982. **Amended:** Filed January 2, 2014; effective February 6, 2014.

480-4-2-.26 Termination Of Employer Accounts.

(1) Once an employing unit is determined liable it shall remain liable until it is terminated under one of the provisions provided by law:

(a) Approval of a written request from the employer for termination of coverage.

(b) Employment ceases due to the transfer of his business to a successor-in-interest.

(c) As of a January 1 following two (2) consecutive calendar years during which the employer employed no individuals in covered employment.

An employer who has no employees or payroll temporarily or has ceased to operate his business will not be terminated unless one of the above criteria is met but can, be administratively inactivated upon the recommendation by the department or upon the written request of the employer. Upon the determination and approval of the recommendation or request, the department shall notify the employer by written notice sent to his last known address of record. The notice shall inform the employer of his inactive status, that no quarterly reporting forms will be forthcoming, and he is to notify the Department immediately should he resume paying wages in Alabama. If, at any time prior to termination of coverage, an inactive account is found to have paid wages employed individuals in any quarter which

causes the termination criteria not to have been met, such employer account shall be reactivated (reassigned) with a contribution rate computed by the department. The employer shall be sent a written notice of his reactivation (reassignment) and contribution rate to his address of record. All appropriate quarterly reports and contributions will be obtained.

(2) An employing unit who meets one of the above criteria for termination of account and remains delinquent for either quarterly reports and/or contributions for periods prior to termination will be legally terminated.

(3) If an Indian tribe fails to make required payments, including contributions, payments in lieu of contributions, or payment of penalties or interest, or failure to post a required payment bond, within 90 days of a final notice of delinquency, the Director will immediately notify the United States Internal Revenue Service and the United States Department of Labor.

(a) However, administrative procedure for collections of delinquent reports and/or contributions will continue to be pursued by the Department of Industrial Relations until disposition is made of the delinquency.

Author: James Webb, Unemployment Compensation Division Director
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

History: **Amended:** April 1, 1983, May 6, 1983. **Amended:** Filed October 3, 2002; effective November 7, 2002.

480-4-2-.27 Employer Elections To Cover Multistate Workers.

(1) Arrangement. The following rule shall govern the Alabama Unemployment Agency in its administrative cooperation with other states subscribing to the Interstate Reciprocal Coverage Arrangement, hereinafter referred to as the Arrangement.

(2) Definitions. As used in this regulation, unless the context clearly indicates otherwise:

(a) **Agency** means any officer, board, commission or other authority charged with the administration of the Unemployment Compensation law of a participating jurisdiction;

(b) **Interested jurisdiction** means any participating jurisdiction to which an election submitted under this regulation is sent for its approval; and "interested agency" means the agency of such jurisdiction;

(c) **Jurisdiction** means any State of the United States, the District of Columbia, Puerto Rico and the Virgin Islands or

with respect to the Federal Government, the coverage of any Federal unemployment compensation law;

(d) **Participating jurisdiction** means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated.

(e) **Services "customarily performed"** by an individual in more than one jurisdiction means services performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

(3) Submission and Approval of Coverage Elections under the Interstate Reciprocal Coverage Arrangement.

(a) Any employing unit may file an election, on Form UC-RC-8, to cover under the law of a single participating jurisdiction all of the services performed for him by any individual who customarily works for him in more than one participating jurisdiction.

Such form shall contain a statement to the effect that such individual consents to such election. Such an election may be filed, with respect to an individual, with any participating jurisdiction in which (1) any part of the individual's services are performed; (2) the individual has his residence; or (3) the employing unit maintains a place of business to which the individual's services bear a reasonable relation.

(b) The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election.

If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose employment compensation law the individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable; and shall notify the agency of the elected jurisdiction accordingly.

In case its law so requires, any such interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

(c) If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and

the electing employing unit of its action and of its reason therefor.

(d) Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

(e) In case any such election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw its election within ten days after being notified of such action.

(4) Effective Period of Elections.

(a) Commencement. An election duly approved under this regulation shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

(b) Termination.

1. The application of an election to any individual under this regulation shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one participating jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such funding is mailed to all parties affected.

2. Except as provided in sub-paragraph (1), each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

3. Whenever an election under this regulation ceases to apply to any individual under sub-paragraph (1) or (2) the electing unit shall notify the affected individual accordingly.

4. Reports and Notices by the Electing Unit.

(i) The electing unit shall promptly notify each individual affected by its approved election, on the Form UC-RC-7, supplied by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.

(ii) Whenever an individual covered by an election under this regulation is separated from his employment, the electing unit shall again notify him, forthwith, as to the jurisdiction under whose unemployment compensation law his services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify him as to the procedure for filing interstate benefit claims.

(iii) The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires him to perform services in a new participating jurisdiction.

(iv) The Director, Unemployment Compensation Agency, Department of Industrial Relations, State of Alabama has the authority to approve or disapprove reciprocal coverage elections in accordance with this rule.

Author: W. R. Hartin

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

History: Effective September 30, 1982.

480-4-2-.28 Credit For Rehire Of Former Employees.

The law provides for certain credits to employer's benefit wage records because of reemployment by such employers of their former employees who have drawn unemployment compensation benefits. Any employer claiming a credit to his benefit wage record because of his reemployment of a former employee, shall file a notice on Form UC-213. Form UC-213 must be fully completed and filed with the Experience Rating Section, Department of Industrial Relations, 649 Monroe Street, Montgomery, Alabama 36130, and must be received timely as provided in Code of Ala. 1975, §25-4-54(c)(3) as amended. A receipt for Form UC-213 will be furnished to the employer upon request.

Author: Rex Granger

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

History: Effective September 30, 1982.

480-4-2-.29 Back Pay Awards.

If a worker who has been wrongfully separated from a job is reinstated to that job retroactively and is paid wages for that period in which he was separated, the following actions are provided:

(a) The amount of back pay is defined as "wages" in Code of Ala. 1975, §25-4-16. For tax payment and reporting purposes this payment is to be reported during the quarter it is paid and taxes paid thereon in the same manner as wages paid to other workers during that quarter. This provision applies only to back pay awards made on or after May 28, 1980, except those ordered prior to that date by a court or the National Labor Relations Board (NLRB).

1. If the worker receiving back pay has been paid unemployment benefits for any week during the period covered, the amendment to Code of Ala. 1975, §25-4-78(8) requires:

(i) The claim be reopened, even after the end of the benefit year and a redetermination be issued assessing a disqualification for each week of unemployment falling within the award period, under Code of Ala. 1975, §25-4-77, as "not unemployed." This of course is an appealable determination.

(ii) The amount of benefits paid during the disqualification period be determined, an overpayment established in that amount and the employer advised of the amount. The employee (claimant) must also be notified. This, again, is appealable.

(iii) The employer making the payment must deduct the amount of the overpayment from the payment and immediately transmit that amount to the Department, except in those cases resulting from action by the National Labor Relations Board.

(iv) The amount of restitution must be credited against the overpayment and the claimant's MBA restored.

(v) Benefit wage or benefit cost charges to the employer's experience rating or reimbursement account will be removed and credit applied in the year and quarter in which the restitution of the overpayment is received.

(b) The law requires the employer to deduct the overpayment amount from the award except in those cases resulting from action by the NLRB. The employer must determine the amount to be deducted, by preparing a Notice of Back Pay Award (Form BEN-290) or such other form as the Director may prescribe. This notice contains a request that the Department compute the amount of benefits paid to the employee in question. This request will be processed and the employer notified of the amount of overpayment to be collected.

(c) It should be noted that these provisions apply only to individuals who were separated from their jobs and are returned with pay, on a retroactive basis. It does not apply when the worker is not separated as in the case of retroactive awards made for demotions or discriminatory promotions, etc.

(d) Because of an agreement between the Department and the NLRB as a result of a Supreme Court decision, the employer deduction requirement of Code of Ala. 1975, §25-4-78(f) is not to be applied to back pay awards resulting from a National Labor Relations Board back pay order, settlement agreement or adjustment. Therefore, an employer will no longer be required to deduct and transmit benefits previously paid to the employee, from a back-pay award resulting from National Labor Relations Board involvement. All employers will be required to continue providing the Department with notice of the issuance of a National Labor Relations Board back pay award prior to payment to the employee on Form Ben 290, currently in use. Form Ben 290 should be forwarded to the attention of Claims Investigation and Collections Unit, Department of Industrial Relations, Montgomery, as far in advance of the issuance of the award as is possible to facilitate collection arrangements.

(e) The employer's experience rating account will be given an appropriate credit at the time the overpayment resulting from the National Labor Relations Board award is established. Reimbursing employers will be given an appropriate credit against their benefit costs as the overpayment is collected by the Department.

Author: William E. Parsons

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

History: September 30, 1982.

480-4-2-.30 Charging And Non-Charging Benefit Wages.

(1) With respect to the provisions of Code of Ala. 1975, §25-4-16, Wages; Code of Ala. 1975, §25-4-51, Rate of Contributions; Code of Ala. 1975, §25-4-54, Contribution rates for employers chargeable with benefit wages; and Code of Ala. 1975, §25-4-78,

Disqualification for Benefits, of the Alabama Unemployment Compensation Law, every employer shall be charged or non-charged with benefit wages in accordance with above statutes. In addition to those categories of employers specifically identified, benefit wage charges shall be made against covered Alabama employers in those cases where former employee-claimants are paid benefits, based on Alabama wages, by another state, hereinafter called the "paying state" under the combined wage arrangement.

(a) Contributory (Tax Rate) Employers.

1. Employers paying contributions to the Fund on a tax rate basis shall be charged with benefit wages resulting from claims paid by the paying state under the combined wage arrangements on the same basis as if the benefits had been paid by the State of Alabama, except as set out below.

2. Contributory employers shall be non-charged for benefit wages under the following circumstances:

(i) If benefits would have been denied the claimant had the claim been filed in Alabama either due to monetary ineligibility or because of an applicable disqualification under the provision of Code of Ala. 1975, §25-4-78(b), 78(c)(1), 78(c)(2) of the Alabama Unemployment Compensation Law.

(ii) For fifty (50) percent of the benefit wages if the claimant would have been assessed a disqualification under the provisions of Code of Ala. 1975, §25-4-78(c)(3) of the Alabama Unemployment Compensation Law.

3. For the purposes of making charges of benefit wages to contributory employers under these provisions charges shall be limited to those wages used by the paying state or the Alabama taxable wage base, whichever is less.

(b) Employers Making Payments in Lieu of Contributions (Reimbursing Employers).

1. Reimbursing employers, those making payments in lieu of contributions as provided in Code of Ala. 1975, §25-4-51(a)(3), 25-4-51(a)(4) and 25-4-51(a)(5) of the Alabama Unemployment Compensation Law, shall be required to pay to the Fund an amount equal to the amount of regular benefits and the required share of extended benefits paid, that is attributable to service in the employ of such employer, to individuals for weeks of unemployment paid by the paying state under the combined wage arrangement on the basis of the base period and rates of payments used by the paying state.

(c) Benefit wage charges and benefit cost based on wages paid by a reimbursing employer shall be made to the appropriate employer account upon receipt of a statement of benefit payments from the paying state. Such benefit wages shall be reflected on the quarterly Benefit Wage Charge Statement; and such benefit cost shall be reflected on the Statement of Benefit Cost; and on other statements and/or notices rendered reimbursing employers at the end of the quarter during which a statement is received from a paying state.

Author: William E. Parsons

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

History: Effective September 30, 1982, Amended August 10, 1983.

480-4-2-.31 **Adjustments Or Refunds Of Employer And Employee Contributions.**

(1) Any adjustment or refund of contributions, interest and/or penalties, shall be made in accordance with the provisions of Code of Ala. 1975, §25-4-137(a) (b) (c).

(2) Any application by an individual employee for refund of excess employee contributions paid to the Alabama Unemployment Compensation Agency shall be received within 4 calendar years after the calendar year for which the refund is requested.

(3) Forms for applying for a refund of employee contributions are available from the Alabama Unemployment Compensation Agency upon request.

Author: Curtis C. Hall

Statutory Authority: Code of Ala. 1975, §25-2-7, 25-2-8 and 25-4-111.

History: Effective September 30, 1982.

480-4-2-.32 **Contribution And Wage Reporting Electronically.**

(1) Every employer subject to the provisions of the Alabama Unemployment Compensation Law with 5 or more employees covered by the Law shall submit the quarterly contribution and wage report required by the Law electronically (online internet filing, internet file transfer/upload), in lieu of paper, beginning with the report for the quarter ending June 30, 2008.

(2) Every employer subject to the provisions of the Alabama Unemployment Compensation Law with 4 or less employees covered by the Law shall submit the quarterly contribution and wage report required by the Law by phone (Interactive Voice Response System) or internet in lieu of paper, beginning with the report for the quarter ending June 30, 2009.

(3) Applicability.

(a) The determination of the applicability of this rule to a subject employer on the effective date of this rule shall be made by examining the number of employees reported on the quarterly wage reports for the previous fiscal year (July 1 through June 30).

1. If any of the previous fiscal year (July 1 through June 30) quarterly wage reports reported 25 or more employees, the employer shall be subject to this rule.

2. Any subject employer not reporting during the previous fiscal year (July 1 through June 30), or not reporting 5 or more covered employees during the previous fiscal year (July 1 through June 30), shall become subject to this rule, effective with the quarterly wage report following the first quarterly wage report subsequent to the end of the previous fiscal year (July 1 through June 30) on which 5 or more covered employees were reported.

(b) The applicability of this rule to any employer becoming subject to the Law after June 30, 2008, shall be determined, based on the estimated number of covered employees; but the employer shall automatically become subject to this rule, effective with the quarterly wage report following the first quarterly wage report on which 25 or more covered employees were reported.

(c) For the purposes of this rule, an employer having multiple reporting units shall be regarded as one employer. A bulk, filing system shall require master/subsidiary units to file electronically, as defined above, at the subsidiary unit level.

(d) It shall be the responsibility of each employer to ascertain whether or not he is subject to this rule and to obtain reporting instruction.

1. As a courtesy, the Department will notify employers who become subject to this rule and provide printed instructions; however, the failure of the Department to do so does not relieve the employer from the responsibility to comply.

(e) Any tax preparer who receives remuneration for filing one or more tax reports as a third-party representative of an employer shall file all quarterly contribution and wage reports required by law electronically, in lieu of paper.

(f) When an employer becomes subject to this rule, that employer shall remain subject, even if the number of covered employees decreases to less than 25.

(4) Any employer not subject to this rule may elect to become subject by requesting instructions and complying with said instructions. Such election is irrevocable.

(5) The provisions of any other rule to the contrary notwithstanding, printed instructions made available by the Director for complying with this rule shall have the force and effect of rules issued by the Director.

(6) All other requirements and instructions for contribution and wage reporting remain unchanged.

(7) Certain circumstances may warrant a temporary waiver from the Director to allow an employer to file in another manner approved by the Department. Each waiver or deferral shall be subject to re-evaluation at any time and may be revised or rescinded at the discretion of the Director. Temporary waiver requests must be submitted in writing and must include the business name, address, account number, and Federal Identification Number for the employer. The request must state the reason(s) why any method other than electronic filing is necessary. No waiver may be granted for a period greater than one (1) year.

(8) Any employer granted a waiver from electronic filing or phone filing, or any employer not subject to electronic filing under this rule, shall be required to file using the phone (IVR System).

(9) The Department shall return or reject to the employer any contribution and wage reports filed in the improper format, as determined by the Department under the provisions of this rule, and such contribution and wage reports returned shall not be counted as filed. Any employer who fails to file timely any contribution and wage reports shall be subject to the penalties provided by Code of Ala. 1975, §25-4-133(b).

Author: Charlotte Lackey, Unemployment Compensation Division
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-50, 25-4-111.

History: Amended: Filed January 4, 2005; effective February 8, 2005. **Amended:** Filed April 10, 2008; effective May 15, 2008.

Amended: Filed May 13, 2009; effective June 17, 2009.

480-4-2-.33 Penalty Rate.

The Alabama Department of Industrial Relations is cognizant that a minor mathematical error by a taxpayer can result in assessment of the penalty rate. In some cases, this could result in the imposition of a penalty severely disproportionate to the event which caused the penalty to be assessed. Therefore, for the purposes set out under the provisions of Code of Ala. 1975, §25-4-54(a) (5) (b) 1992, the term monies shall be defined as an

amount in excess of \$20.00 and shall not include interest or penalty.

Author: Frank Marsh, General Counsel

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

History: New Rule: Filed June 6, 1997; effective July 11, 1997.

480-4-2-.34 Common Ownership Acquisitions.

(1) In the case of liable existing entities where common ownership exist and there is a transfer of employees between entities, master and sub-unit accounts will be established and rates merged.

(2) Where there is common ownership and one existing liable company and another smaller company is formed from the initial company, wage transcripts will not be accepted. Master and sub-unit accounts will be established and the rates merged.

(3) Where common ownership exists in the case of a partial successor that is found to be a full-successor and the predecessor company will remain active, a master sub-unit account will be established and both companies will receive the rate of the predecessor company.

(4) In the case of a full successor between two liable companies with common ownership which occurs any time after the first day of the year, the remaining successor account will receive a new account number and the rates are merged where the rates differ. Where there is an acquirement of an existing liable company and a new company will be formed from that acquirement, the rate of the predecessor passes to the successor and a new account is assigned.

Author: Jo Doyal, Experience Rating Section; Marcia Davis, Status Unit

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-8, 25-4-111.

History: New Rule: Filed January 2, 2014; effective February 6, 2014.