



Employer ADVISOR

SUMMER 2023



BUYER BEWARE!


If you are selling, merging or buying a business, here's what you should know to avoid unexpected liabilities

Did you know it is the buyer's responsibility to request unemployment insurance account information before making vital purchasing decisions? It is important that you notify us if you are:

- selling your business
- merging with another business
- purchasing a business, or
- purchasing the "assets" of a business.

The purchaser's responsibility by statute 35A-4-305 (6) (b)(i) states that, "An employer's successor, successors, or assigns, if any, are required to withhold sufficient of the purchase money to cover the amount of the contributions and interest or penalties due and payable until the former owner produces a receipt from the division showing that they have been paid or a certificate stating that no amount is due. (ii) If the purchaser of a business or stock of goods fails to withhold sufficient purchase money, the purchaser is personally liable for the payment of the amount of the contributions required to be paid by the former owner, interest and penalties accrued and unpaid by the former owner, owners, or assignors."



- You can use the  function to communicate with an employer accounts expert.

We strongly encourage employers to request current unemployment account information from the selling party to avoid unexpected liabilities. Any asset purchase agreement stating that the acquiring party is not liable for any debt or accrued liabilities of the selling party can't be applied to any amount due for State Unemployment Contributions, interest or penalties. If all conditions are met to be a successor employer, the unemployment account history from the selling party will also be acquired and will impact future unemployment tax rates. The history acquired may lower the experienced rate assigned to your account or increase the unemployment tax rate due to benefit costs that have been charged to the predecessor's account. As a successor, you may also be liable for future benefits charged to the predecessor's account.

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OFFICER WAGES MUST BE REPORTED

Both the state of Utah and the IRS regard corporate officers as employees and their compensation must be reported. Furthermore, the reported compensation must be reasonable and adequate. What is reasonable and adequate compensation? Can't officers report for themselves whatever wages would be in the best interest of their businesses?

The IRS offers some guidance on this issue, suggesting that reasonable officer compensation should be based on factors such as: training and experience; duties and responsibilities; time and effort devoted to the business; dividend history; payments to non-shareholder employees; timing and manner of paying bonuses to key people; what comparable

businesses pay for similar services; compensation agreements; and the use of a formula to determine compensation. Reasonable compensation is the value that would ordinarily be paid for like services by like enterprises under like circumstances.

In short, officer wages should be equal to the work performed, not an arbitrary or token amount. The factors described are no different than those an employer might use to determine what wages to pay any other employee. They describe an assessment of that person's significance to the business, and what the market would be willing to pay for this service. Likewise, using these factors to assess the value of an officer's contribution to a business should result in reported compensation that is reasonable and adequate.

For more information, [click here](#).



WE PROSECUTE UNEMPLOYMENT INSURANCE FRAUD

After a UI adjudicator concludes that a claimant committed fraud, the DWS Prosecution Board evaluates the facts of the case to determine if criminal prosecution is warranted.

If the Prosecution Board decides to proceed, the prosecution specialist assembles the evidence, prepares the case, and submits it to the appropriate jurisdiction to be screened for criminal prosecution — typically as a felony — in the Utah District Courts. For a criminal case, the evidence must prove guilt beyond a reasonable doubt.

EMPLOYERS PLAY AN IMPORTANT ROLE: VERIFYING WAGES



UI claimants must report gross earnings every calendar week regardless of their pay period dates or pay date. Based on this weekly report DWS determines eligibility for the week and the amount of benefits.

If there are indications the claimant misreported their earnings we will ask you to verify their wages for the weeks in question. It is crucial that you provide the wage information on a daily or Sunday through Saturday weekly basis. This enables DWS to determine if the claimant reported accurate earnings and was paid correct benefit amounts.

Employers have a variety of payroll periods, often use outside payroll services, and sometimes hire third party representatives to resolve UI issues. If you delegate these responsibilities to a third party, you must work with this third party to provide the requested information to DWS.

After a case is selected for criminal prosecution, the prosecution specialist may need to contact you (or your representative) for additional evidence (e.g., time cards, pay stubs).

We appreciate the cooperation of all employers in our efforts to minimize claimant fraud and prosecute those claimants who commit fraud.