



REPORT PURSUANT TO SPECIAL ACT NO. 22-13

Unemployment Compensation Experience Rates

Submitted by
Commissioner Danté Bartolomeo
Connecticut Department of Labor

To the Governor & General Assembly

LEGISLATIVE CHARGE

Special Act No. 22-13, AAC Unemployment Compensation Experience Rates.

Notwithstanding the provisions of section 31-225a of the general statutes, the Labor Department shall study the effects on certain businesses that had their experience rate increase despite the passage of public act 21-5. Not later than January 1, 2023, the Labor Department shall report, in accordance with the provisions of section 11-4a of the general statutes, to the joint standing committee of the General Assembly having cognizance of matters relating to labor regarding the findings of such study. Such report shall include any employer that had such rate increased, how many people were impacted and the cost to both the state and the employer.

APPLICABLE LAW

Public Act 21-5 AAC the Removal of COVID-19 Related Layoffs from the Unemployment Compensation Experience Account

Conn. Gen. Stat. Sec. 31-225a(a)

(8) "Experience period" means the three consecutive experience years ending on the computation date, except that (A) if the employer's account has been chargeable with benefits for less than three years, the experience period shall consist of the greater of one or two consecutive experience years ending on the computation date, [.] and (B) to the extent allowed by federal law and as necessary to respond to the spread of COVID-19, for any taxable year commencing on or after January 1, 2022, the experience period shall be calculated without regard to benefit charges and taxable wages for the experience years ending June 30, 2020, and June 30, 2021, when applicable....

Conn. Gen. Stat. Sec. 31-225a(d)

(d) The standard rate of contributions shall be five and four-tenths per cent. Each employer who has not been chargeable with benefits, for a sufficient period of time to have his or her rate computed under this section shall pay contributions at a rate that is the higher of (1) one per cent, or (2) the state's five-year benefit cost rate. For purposes of this subsection, the state's five-year benefit cost rate shall be computed annually on or before June thirtieth and shall be derived by dividing the total dollar amount of benefits paid to claimants under this chapter during the five consecutive calendar years immediately preceding the computation date by the five-year payroll during the same period, except that, to the extent allowed by federal law and as necessary to respond to the spread of COVID-19, for any taxable year commencing on or after January 1, 2022, the state's five-year benefit cost rate shall be calculated without regard to benefit payments and taxable wages for calendar years 2020 and 2021, when applicable. If the resulting quotient is not an exact multiple of one-tenth of one per cent, the five-year benefit cost rate shall be the next higher such multiple.

PRELIMINARY ISSUES

1. CONFIDENTIALITY

This report will provide relevant information within the confines of existing state and federal confidentiality laws. While Public Act 21-5 requires the agency to identify the individual employers who are adversely affected by the law, the Connecticut Department of Labor (CTDOL) has included:

- The number of employers impacted;
- The estimated financial impact; and,
- A comparison of these employers.

The agency is prohibited by state and federal law from revealing the identity of employers or unemployment insurance (UI) experience rates of individually named employers. Any exceptions to the federal law do not include public reports and equally, this report does not fall under state law exceptions.

- Conn. Gen. Stat. Sec. 31-254 and 20 CFR Part 603 prohibits disclosure revealing the name and identifying information of employers. 20 CFR 603(4)(b) provides that:
 - The U.S. Department of Labor interprets Section 303(a)(1), Social Security Act (SSA), to mean that “methods of administration” that are reasonably calculated to insure the full payment of UC [Unemployment Compensation] when due must include provision for maintaining the confidentiality of any UC information which reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particulars, and must include provision for barring the disclosure of any such information.
- Each state must have a law that provides for similar confidentiality. Conn. Gen. Stat. Sec. 31-254 provides that:
 - The administrator may require from any employer, whether or not otherwise subject to this chapter, any sworn or unsworn reports with respect to persons employed by him which are necessary for the effective administration of this chapter.... information obtained shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the employee's or the employer's identity, but any claimant at a hearing before a commissioner shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee of the administrator, or any other public employee, who violates any provision of this section shall be fined not more than two hundred dollars or imprisoned not more than six months or both and shall be dismissed from the service.
- Additionally, the U.S. Department of Labor Conformity and Compliance team requested specific assurance that CTDOL will not share the name of any employer or its tax rate pursuant to these privacy laws. (See email - CT HB 5442 (Enactment), below). As

confidentiality is required by state and federal law, the agency has given USDOL such assurances.

CTDOL has prepared this report to provide relevant and detailed information to the General Assembly while also ensuring Connecticut's compliance with those state and federal confidentiality laws applied specifically to the Labor Department.

2. CONFORMITY

The language of P.A. 21-5, proposed by the legislature and supported by the Office of the Governor after the expiration of Executive Order No. 7W, provided pandemic relief to employers. The Public Act was passed unanimously by the House and Senate. The Office of Legislative Research has summarized the Public Act, in part, as follows:

This act disregards an employer's benefit charges and taxable wages between July 1, 2019, and June 30, 2021, when calculating the employer's unemployment tax experience rate for taxable years starting on or after January 1, 2022. In effect, this means that the unemployment benefits paid to an employer's former employees during that period will not affect the employer's experience rate. The act's provisions apply to the extent allowed by federal law and as necessary to respond to the spread of COVID-19.

The act similarly disregards the statewide benefits and taxable wages for calendar years 2020 and 2021 when calculating the unemployment tax rate that will apply to new employers for tax years starting on or after January 1, 2022. Thus, the rate charged to employers who have not participated in the system long enough to have their own experience rates will not be affected by the benefits paid during those years.

All unemployment laws in each state must be in conformity and compliance with federal UI law. State laws and the administration of those laws must meet certain federal requirements for employers to qualify for credits against the tax imposed under the Federal Unemployment Tax Act (FUTA) and for State Workforce Agencies (like DOL) to receive federal grants to administer the UC program. The taxing provisions of FUTA greatly influence state coverage provisions because employers who pay contributions on services under an approved state law may credit their state contributions against the federal tax.

- An example of federal conformity and compliance requirements is provided in 20 C.F.R. Sec. 604.6, "a state's UC law must conform with, and the administration of its law must substantially comply with [federal requirements] for purposes of certification under (1) Section 3304(c) of the FUTA (26 U.S.C. 3304(c)), with respect to whether employers are eligible to receive credit against the Federal unemployment tax established by section 3301 of the FUTA (26 U.S.C. 3301), and (2) Section 302 of the SSA (42 U.S.C. 502), with respect to whether a State is eligible to receive Federal grants for the administration of its UC program."

All employers must be rated over the same time period using the same factors that bear a direct relation to the employers' experience with unemployment. In other words, employers with the same experience (specific to unemployment) must pay at the same tax rates. According to Unemployment Insurance Program Letter (UIPL) 29-83:

- “The experience of all employers subject to contributions under a State law must be measured by the same factor throughout the same period of time. If there is to be an adjustment to the method of measuring experience or in the computation of rates, the adjustment should apply uniformly; otherwise, there would be a distortion of relative experience.”

This requires any unemployment experience law passed in Connecticut to treat all employers uniformly. P.A. 21-5 used the same factors uniformly applied across all businesses in the state. In doing so, it benefited more than 87% of all employers by providing relief from experience rate increases related to pandemic-era layoffs, terminations, and shut-downs. Federal law would not allow us to benefit that 87% of employers without treating all employers uniformly.

REPORT

As mandated, CTDOL analyzed its data to determine the effect on the experience rates for the 12.39% of employers who saw an increase in their rates under the passage of Public Act 21-5. To meet the mandate of Special Act 22-13, CTDOL compared UI tax rates for all contributory employers for calendar year CY 2021, with UI tax rates for all contributory employers for CY 2022. CTDOL's data systems do not capture UI benefit non-charges at the employer level by the type of non-charge—the systems combine those UI benefits that were non-charged CTDOL is supplying statistics based upon the information in our system.

Out of the population of 117,521 contributory employers:

- 102,960 employers, or 87.61%, saw a decrease or no change in their experience rate
- 14,561 employers, or 12.39%, saw an increase in their experience rate

Focusing on the employers that saw an increase:

- 6,828 employers (6.63%) had an increase of \$165 per employee per year. The most common change in experience rating was from 1.9% to 3.0%, a 1.1% increase, and 1.1% of \$15,000 (the current taxable wage base) equals \$165 per employee per year
- 4,633 employers (4.49%) had increases of less than \$165 per employee per year, including 1,833 employers with an increase of less than \$50 per employee per year
- 1,745 employers (1.69%) had increases of \$166-\$300 per employee per year
- 708 employers (0.69%) had increases of \$301-\$400 per employee per year
- 487 employers (0.47%) had increases of \$401-\$500 per employee per year
- 139 employers (0.14%) had increases of \$501-\$600 per employee per year
- 15 employers (0.01%) had increases of \$601-700 per employee per year
- 6 employers (0.005%) had increases of \$735 per employee per year

See attached Increase Per Firm spreadsheet, Firms with Rate Increase chart, All Firms with Change in Rate chart and Firms with Rate Change by Industry spreadsheet.

The Special Act also requires the inclusion of the number of people impacted by the experience rate change. While the word “people” is not defined in the Special Act, CTDOL believes the intent is to determine how many employees are impacted as employers are specifically referenced in other sections. P.A. 21-5 only affects contributory employers; these are taxable employers who pay contributions into the UI Trust Fund. Employees do not contribute to the UI Trust Fund and are not impacted.

Finally, the Act requests the cost to the state. P.A. 21-5 has no fiscal impact on the state. Connecticut is a reimbursable employer, not a contributory employer.

- Conn. Gen Stat. Sec. 31-225(d) provides that “in lieu of contributions required of employers subject to this chapter, the state shall pay into the Unemployment Compensation Fund an amount equivalent to the amount of benefits charged to the state....”

CONCLUSION

Using the formula outlined in P.A. 21-5, 87.61% of the 117,521 contributory employers were provided relief from experience rate increases related to pandemic-era layoffs, terminations, and shut-downs while 12.39% of employers experienced an increase in the cost per employee per year. It is clear that due to the hundreds of thousands of claims, but for the passage and implementation of P.A. 21-5, the tax rate would have increased for many more employers.


As an example, one firm had a rate of 1.9% in 2021 and its rate rose to 3.0% in 2022. However, this firm had hundreds of weeks of benefits claimed in both 2020 and 2021. If these charges had been used to calculate a benefit ratio, we estimate that the ratio would have been at least 16%. If there were no public act, the firm would have been charged the maximum rate of 6.8%.


P.A. 21-5 ensured conformity under the law by holding all employers to a uniform standard. There is no provision in state or federal law that would permit cost containment for specific employers or industries. The law requires all contributory employers to be treated uniformly.

Respectfully Submitted,




Danté Bartolomeo
Commissioner


CT HB 5442
(Enactment).msg


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