



Unemployment-insurance federal conformity

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**State laws must
meet federal
requirements**

**Benefits paid on
wages in two
quarters**

**Taxes based on
wages in four
quarters**

**Dept. of Labor
says difference
in benefit
payments and
tax rates is out of
conformity with
federal law**

What is conformity?

Unemployment insurance is a partnership among federal and state governments: the federal government pays to run the program, while the states carry it out. States have significant flexibility to establish tax and benefit levels, but must remain consistent (in conformity) with federal law. If they don't, the employers in that state are not eligible for a credit on their federal unemployment taxes (about \$300 million for 2008).

In late 2006, the federal Department of Labor informed the Employment Security Department that a provision of Washington state law is out of conformity with federal unemployment-insurance laws. The provision in question is commonly known as "pay at 2, charge at 4."

Benefits calculated at "pay at 2"

Under current law, the amount of unemployment benefits a person can receive is calculated as a percentage of how much that person earned in the **two** quarters of the base year in which he or she made the most money. The base year is the first four of the last five calendar quarters.

Taxes calculated at "charge at 4"

Under state law, each employer's unemployment taxes are calculated by dividing the total cost of all unemployment benefits charged to the employer in the past four years by its total taxable payroll for that same period.

Most employers are not charged dollar-for-dollar for the benefits paid to their workers. Instead, they are charged based on the worker's wages in all **four** quarters of the last year – not just the two quarters in which he or she earned the most money. This difference may lower an employer's tax rates, while the extra benefit costs are spread across all employers.

Example: There are two businesses, each with one employee. Worker A works full-time year-round and earns the same amount each quarter. Worker B works full-time half the year and part-time the other half. Because benefits are paid based on wages in the two highest quarters, both workers receive the same amount of benefits each week if they are laid-off.

However, Worker A's employer will be charged more for those benefits because employers are charged for wages in all four quarters of the year.

	Worker A	Worker B
1 st Quarter	\$9,100	\$2,000
2 nd Quarter	\$9,100	\$9,100
3 rd Quarter	\$9,100	\$9,100
4 th Quarter	\$9,100	\$8,500
Weekly benefit (based on two highest qtrs.)	\$350	\$350
Charged to employer (based on all four qtrs.)	\$350	\$287

The issue in Washington

According to the federal Department of Labor (DOL), combining two-quarter averaging for calculating benefits with four-quarter averaging for calculating taxes does not conform with federal law because federal law requires that tax rates directly correlate with an individual employer's experience with unemployment. DOL sent a reminder letter in September 2008, seeking assurances that Washington's experience-rating provisions will be amended during the 2009 legislative session.

Contacts

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