

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 666

Introduced by Riepe, 12.

Read first time January 18, 2023

Committee:

1 A BILL FOR AN ACT relating to the Employment Security Law; to amend
2 sections 48-649.03, 48-650, and 48-652, Reissue Revised Statutes of
3 Nebraska; to change provisions relating to voluntary contributions
4 and notice of determination regarding the experience account and the
5 combined tax rate of an employer; and to repeal the original
6 sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-649.03, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 48-649.03 (1) Once benefits have been payable from and chargeable to
4 an employer's experience account throughout the preceding four calendar
5 quarters and wages for employment have been paid by the employer in each
6 of the two preceding four-calendar-quarter periods, the employer's
7 combined tax rate shall be calculated according to this section. The
8 combined tax rate shall be based upon the employer's experience rating
9 record and determined from the employer's reserve ratio.

10 (2) The employer's reserve ratio is the percent obtained by dividing
11 (a) the amount by which the employer's contributions credited from the
12 time the employer first or most recently became an employer, whichever
13 date is later, and up to and including September 30 of the year the rate
14 computation is made, plus any part of the employer's contributions due
15 for that year paid on or before October 31 of such year, exceed the
16 employer's benefits charged during the same period, by (b) the employer's
17 average annual taxable payroll for the sixteen-consecutive-calendar-
18 quarter period ending September 30 of the year in which the rate
19 computation is made. For an employer with less than sixteen consecutive
20 calendar quarters of contribution experience, the employer's average
21 taxable payroll shall be determined based upon the four-calendar-quarter
22 periods for which contributions were payable.

23 (3) Each eligible experience rated employer shall be assigned to one
24 of twenty rate categories with a corresponding experience factor as
25 follows:

26	Category	Experience Factor
27	1	0.00
28	2	0.25
29	3	0.40
30	4	0.45
31	5	0.50

1	6	0.60
2	7	0.65
3	8	0.70
4	9	0.80
5	10	0.90
6	11	0.95
7	12	1.00
8	13	1.05
9	14	1.10
10	15	1.20
11	16	1.35
12	17	1.55
13	18	1.80
14	19	2.15
15	20	2.60

16 Eligible experience rated employers shall be assigned to rate
17 categories from highest to lowest according to their experience reserve
18 ratio, with category one assigned to accounts with the highest reserve
19 ratios and category twenty assigned to accounts with the lowest reserve
20 ratios. Each category shall be limited to no more than five percent of
21 the state's total taxable payroll, except that:

22 (a) Any employer with a portion of its taxable wages falling into
23 two consecutive categories shall be assigned to the lower category;

24 (b) No employer with a reserve ratio calculated to five decimal
25 places equal to the similarly calculated reserve ratio of another
26 employer shall be assigned to a higher rate than the employer to which it
27 has the equal reserve ratio; and

28 (c) No employer with a positive experience account balance shall be
29 assigned to category twenty.

30 (4) The state's reserve ratio shall be calculated annually by
31 dividing the amount available to pay benefits in the Unemployment Trust

1 Fund and the State Unemployment Insurance Trust Fund as of September 30,
2 plus any amount of combined tax owed by employers eligible for and
3 electing annual payment status for the four most recent quarters ending
4 on September 30 in accordance with rules and regulations adopted by the
5 commissioner, by the state's total wages from the four calendar quarters
6 ending on September 30. For purposes of this section, total wages means
7 all remuneration paid by an employer in employment. The state's reserve
8 ratio shall be applied to the table in this subsection to determine the
9 yield factor for the upcoming rate year.

10 State's Reserve Ratio	Yield Factor
11 1.45 percent and above	= 0.70
12 1.30 percent up to but not including 1.45	= 0.75
13 1.15 percent up to but not including 1.30	= 0.80
14 1.00 percent up to but not including 1.15	= 0.90
15 0.85 percent up to but not including 1.00	= 1.00
16 0.70 percent up to but not including 0.85	= 1.10
17 0.60 percent up to but not including 0.70	= 1.20
18 0.50 percent up to but not including 0.60	= 1.25
19 0.45 percent up to but not including 0.50	= 1.30
20 0.40 percent up to but not including 0.45	= 1.35
21 0.35 percent up to but not including 0.40	= 1.40
22 0.30 percent up to but not including 0.35	= 1.45
23 Below 0.30 percent	= 1.50

24 The commissioner may adjust the yield factor determined pursuant to
25 the preceding table to a lower scheduled yield factor if the state's
26 reserve ratio is 1.00 percent or greater. Once the yield factor for the
27 upcoming rate year has been determined, it is multiplied by the amount of
28 unemployment benefits paid from combined tax during the four calendar
29 quarters ending September 30 of the preceding year. The resulting figure
30 is the planned yield for the rate year. The planned yield is divided by
31 the total taxable wages for the four calendar quarters ending September

1 30 of the previous year and carried to four decimal places to create the
2 average combined tax rate for the rate year.

3 (5) The average combined tax rate is assigned to rate category
4 twelve as established in subsection (3) of this section. Rates for each
5 of the remaining nineteen categories are determined by multiplying the
6 average combined tax rate by the experience factor associated with each
7 category and carried to four decimal places. Employers who are delinquent
8 in filing their combined tax reports as of October 31 of any year shall
9 be assigned to category twenty for the following calendar year unless the
10 delinquency is corrected prior to December 31 of the year of rate
11 calculation.

12 (6) In addition to required contributions, an employer may make
13 voluntary contributions to the fund to be credited to his or her account.
14 Voluntary contributions by employers may be made up to the amount
15 necessary to qualify for one rate category reduction. Voluntary
16 contributions received after February 28 ~~January 10~~ shall not be used in
17 rate calculations for the same calendar year.

18 (7) As used in sections 48-648 to 48-654, the term payroll means the
19 total amount of wages during a calendar year, except as otherwise
20 provided in section 48-654, by which the combined tax was measured.

21 Sec. 2. Section 48-650, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 48-650 (1) The commissioner shall determine the rate of combined
24 tax applicable to each employer pursuant to sections 48-649 to 48-649.04
25 and may determine, at any time during the year, whether services
26 performed by an individual were employment or for an employer.

27 (2) Notice of a determination of liability or combined tax rate
28 shall be promptly given to the employer by electronic notice or by
29 mailing such notice to the employer's last-known address or the address
30 of a representative designated in writing by the employer. The address of
31 record of an employer on the effective date of this act shall continue to

1 be the address of record of such employer unless changed by the employer.
2 An employer that becomes subject to the Employment Security Law on or
3 after the effective date of this act shall designate its preferred method
4 of contact and designated representative, if any, at the time of its
5 initial registration. An employer may change its election at any time.

6 (3) Any ~~such~~ determination under subsection (1) of this section
7 shall become conclusive and binding upon the employer unless, within
8 thirty days after ~~receiving the prompt mailing of notice thereof to his~~
9 ~~or her last-known address or in the absence of mailing within thirty days~~
10 ~~after the delivery of such notice,~~ the employer files an appeal with the
11 department in accordance with rules and regulations adopted and
12 promulgated by the commissioner. No employer shall have standing, in any
13 proceeding involving his or her combined tax rate or combined tax
14 liability, to contest the chargeability to his or her account of any
15 benefits paid in accordance with a determination, redetermination, or
16 decision pursuant to sections 48-629 to 48-644 except upon the ground
17 that the services on the basis of which such benefits were found to be
18 chargeable did not constitute services performed in employment for him or
19 her and only in the event that he or she was not a party to such
20 determination, redetermination, or decision or to any other proceedings
21 under the Employment Security Law in which the character of such services
22 was determined. A full and complete record shall be kept of all
23 proceedings in connection with such hearing. All testimony at any such
24 hearing shall be recorded but need not be transcribed unless there is a
25 further appeal. The employer shall be promptly notified of a hearing
26 officer's decision which shall become final unless the employer or the
27 commissioner appeals within thirty days after the date of service of the
28 decision of the hearing officer. The appeal shall otherwise be governed
29 by the Administrative Procedure Act.

30 Sec. 3. Section 48-652, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 48-652 (1)(a) A separate experience account shall be established for
2 each employer who is liable for payment of combined tax. Whenever and
3 wherever in the Employment Security Law the terms reserve account or
4 experience account are used, unless the context clearly indicates
5 otherwise, such terms shall be deemed interchangeable and synonymous and
6 reference to either of such accounts shall refer to and also include the
7 other.

8 (b) A separate reimbursement account shall be established for each
9 employer who is liable for payments in lieu of contributions. All
10 benefits paid with respect to service in employment for such employer
11 shall be charged to his or her reimbursement account, and such employer
12 shall be billed for and shall be liable for the payment of the amount
13 charged when billed by the commissioner. Payments in lieu of
14 contributions received by the commissioner on behalf of each such
15 employer shall be credited to such employer's reimbursement account, and
16 two or more employers who are liable for payments in lieu of
17 contributions may jointly apply to the commissioner for establishment of
18 a group account for the purpose of sharing the cost of benefits paid that
19 are attributable to service in the employ of such employers. The
20 commissioner shall adopt and promulgate such rules and regulations as he
21 or she deems necessary with respect to applications for establishment,
22 maintenance, and termination of group accounts authorized by this
23 subdivision.

24 (2) All contributions paid by an employer shall be credited to the
25 experience account of such employer. State unemployment insurance tax
26 payments shall not be credited to the experience account of each
27 employer. Partial payments of combined tax shall be credited so that at
28 least eighty percent of the combined tax payment excluding interest and
29 penalty is credited first to contributions due. Contributions with
30 respect to prior years which are received on or before January 31 of any
31 year shall be considered as having been paid at the beginning of the

1 calendar year. All voluntary contributions which are received on or
2 before February 28 ~~January 10~~ of any year shall be considered as having
3 been paid at the beginning of the calendar year.

4 (3)(a) Each experience account shall be charged only for benefits
5 based upon wages paid by such employer. No benefits shall be charged to
6 the experience account of any employer if:

7 (i) Such benefits were paid on the basis of a period of employment
8 from which the claimant (A) left work voluntarily without good cause, (B)
9 left work voluntarily due to a nonwork-connected illness or injury, (C)
10 left work voluntarily with good cause to escape abuse as defined in
11 section 42-903 between household members as provided in subdivision (1)
12 of section 48-628.13, (D) left work from which he or she was discharged
13 for misconduct connected with his or her work, (E) left work voluntarily
14 and is entitled to unemployment benefits without disqualification in
15 accordance with subdivision (3), (5), or (11) of section 48-628.13, or
16 (F) was involuntarily separated from employment and such benefits were
17 paid pursuant to section 48-628.17; and

18 (ii) The employer has filed timely notice of the facts on which such
19 exemption is claimed in accordance with rules and regulations adopted and
20 promulgated by the commissioner.

21 (b) No benefits shall be charged to the experience account of any
22 employer if such benefits were paid during a week when the individual was
23 participating in training approved under section 236(a)(1) of the federal
24 Trade Act of 1974, 19 U.S.C. 2296(a)(1).

25 (c) Each reimbursement account shall be charged only for benefits
26 paid that were based upon wages paid by such employer in the base period
27 that were wages for insured work solely by reason of section 48-627.01.

28 (d) Benefits paid to an eligible individual shall be charged against
29 the account of his or her most recent employers within his or her base
30 period against whose accounts the maximum charges hereunder have not
31 previously been made in the inverse chronological order in which the

1 employment of such individual occurred. The maximum amount so charged
2 against the account of any employer, other than an employer for which
3 services in employment as provided in subdivision (4)(a) of section
4 48-604 are performed, shall not exceed the total benefit amount to which
5 such individual was entitled as set out in section 48-626 with respect to
6 base period wages of such individual paid by such employer plus one-half
7 the amount of extended benefits paid to such eligible individual with
8 respect to base period wages of such individual paid by such employer.
9 The commissioner shall adopt and promulgate rules and regulations
10 determining the manner in which benefits shall be charged against the
11 account of several employers for whom an individual performed employment
12 during the same quarter or during the same base period.

13 (4)(a) An employer's experience account shall be terminated one
14 calendar year after such employer has ceased to be subject to the
15 Employment Security Law, except that if the commissioner finds that an
16 employer's business is closed solely because one or more of the owners,
17 officers, partners, or limited liability company members or the majority
18 stockholder entered the armed forces of the United States, or of any of
19 its allies, such employer's account shall not be terminated and, if the
20 business is resumed within two years after the discharge or release from
21 active duty in the armed forces of such person or persons, the employer's
22 experience account shall be deemed to have been continuous throughout
23 such period.

24 (b) An experience account terminated pursuant to this subsection
25 shall be reinstated if:

26 (i) The employer becomes subject again to the Employment Security
27 Law within one calendar year after termination of such experience
28 account;

29 (ii) The employer makes a written application for reinstatement of
30 such experience account to the commissioner within two calendar years
31 after termination of such experience account; and

1 (iii) The commissioner finds that the employer is operating
2 substantially the same business as prior to the termination of such
3 experience account.

4 (5) All money in the Unemployment Compensation Fund shall be kept
5 mingled and undivided. In no case shall the payment of benefits to an
6 individual be denied or withheld because the experience account of any
7 employer does not have a total of contributions paid in excess of
8 benefits charged to such experience account.

9 (6)(a) For benefit years beginning before September 3, 2017, if an
10 individual's base period wage credits represent part-time employment for
11 a contributory employer and the contributory employer continues to employ
12 the individual to the same extent as during the base period, then the
13 contributory employer's experience account shall not be charged if the
14 contributory employer has filed timely notice of the facts on which such
15 exemption is claimed in accordance with rules and regulations adopted and
16 promulgated by the commissioner.

17 (b) For benefit years beginning on or after September 3, 2017, if an
18 individual's base period wage credits represent part-time employment for
19 an employer and the employer continues to employ the individual to the
20 same extent as during the base period, then the employer's experience
21 account, in the case of a contributory employer, or the employer's
22 reimbursement account, in the case of a reimbursable employer, shall not
23 be charged if the employer has filed timely notice of the facts on which
24 such exemption is claimed in accordance with rules and regulations
25 prescribed by the commissioner.

26 (7) If a contributory employer responds to the department's request
27 for information within the time period set forth in subsection (1) of
28 section 48-632 and provides accurate information as known to the employer
29 at the time of the response, the employer's experience account shall not
30 be charged if the individual's separation from employment is voluntary
31 and without good cause as determined under section 48-628.12.

1 Sec. 4. Original sections 48-649.03, 48-650, and 48-652, Reissue
2 Revised Statutes of Nebraska, are repealed.