

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
UNEMPLOYMENT INSURANCE AGENCY

State Unemployment Tax Act (SUTA) Dumping
Annual Report
For Calendar Year 2014

TABLE OF CONTENTS

As mandated by Section 22b of the Michigan Employment Security Act, the Unemployment Insurance Agency (Agency) shall provide an annual written report to the chairpersons of the standing committees and the appropriations subcommittees of the house and senate having jurisdiction over legislation pertaining to unemployment compensations. This report shall include all of the following information in a form that does not identify individual employers:

| | | |
|--------|---|---|
| (i) | The procedures the Agency has adopted to prevent SUTA Dumping | 3 |
| | Employer Communication and Education Procedures | 3 |
| | Detection and Enforcement Procedures | 5 |
| (ii) | The number of SUTA Dumping investigations opened during the year | 7 |
| (iii) | The average length of time to resolve a SUTA dumping investigation and the number of investigations pending for more than 6 months and for more than 1 year | 7 |
| (iv) | The number of cases brought before an administrative law judge or the board of review and the Agency's success rate in those cases | 8 |
| (v) | The amount of money recovered as a result of implementing the provisions of this section | 8 |
| (vi) | The amount of the balance or deficit in the unemployment compensation fund | 8 |
| (vii) | The estimated fiscal impact of SUTA Dumping on the unemployment compensation fund balance and the factual basis for the estimate | 8 |
| (viii) | The number of full-time employees assigned to, and the number of employee hours devoted to, SUTA Dumping prevention, investigation, and remediation | 9 |
| (ix) | The number of SUTA Dumping investigations that involved the transfer of employees to or from an employee leasing company | 9 |
| (x) | The number of investigations in which an employee leasing company was found to have participated in SUTA Dumping | 9 |
| (xi) | The number of employee leasing companies operating in Michigan | 9 |

SUTA Dumping

Employer Communication and Education Procedures

(i) A. General Information

Through education, detection and enforcement, the Agency seeks to reduce State Unemployment Tax Act (SUTA) Dumping. The Agency takes the following steps to communicate with and educate the employer community on the amendments to the Michigan Employment Security (MES) Act and SUTA Dumping:

1. Communication with Employer Community

The Agency has developed informational materials to educate employers regarding amendments to the MES Act and SUTA Dumping and mails the information to employers. The information is distributed through the Quarterly Tax Report mailings, special mailings, meetings and educational forums with the employer community.

2. UIA Website

The Agency maintains a section devoted to SUTA Dumping education on its website (www.michigan.gov/uia). The website includes: state legislation, federal information, *Employer Advisor* articles, Frequently Asked Questions, informational letters sent to all employers, a webcast, news releases and a fact sheet related to SUTA Dumping.

3. Employer Advisor

To provide on-going communication regarding SUTA Dumping, the Agency publishes articles in the *Employer Advisor* which is an online quarterly newsletter made available to the approximately 200,000 active employers in the state of Michigan.

4. UIA Outreach

The Agency conducts Employer Seminars throughout the state which cover a variety of unemployment topics, including issues related to SUTA Dumping.

5. Employer Handbook

The Agency's *Employer Handbook* is an online comprehensive guide for employers. It is revised as necessary to include updated information on the SUTA Dumping provisions of the MES Act as well as additional information about SUTA Dumping and other topics.

6. Updated Forms

Treasury Form 518, "Michigan Business Taxes Registration Booklet," is available in electronic format (http://www.michigan.gov/documents/518_3620_7.pdf). UIA Schedule B which must be used to disclose possible transfer of business has been made available to employers as a stand-alone form and is available on the Agency's website (www.michigan.gov/uia). Successorship may also now be reported using the Agency's online services known as MiWAM (Michigan Web Account Manager). MiWAM allows for the electronic posting of most Agency forms.

Eventually, all reporting will be done electronically. The development of online forms will allow most Agency business to be conducted using online systems and electronic forms.

7. Quality Assurance

The Agency conducts quality assurance reviews throughout the process to improve communication with the employer community and solicit recommendations to improve service to its customers.

8. Electronic Filing

The Agency now requires electronic filing of quarterly tax reports for most employers. This allows the Agency to limit filing of reports contrary to its decisions by restricting access to only those recognized employer accounts.

SUTA Dumping

Detection and Enforcement Procedures

- 1) Referrals for possible SUTA Dumping are received from the Discoveries function within the MiDAS system; external sources such as employers, claimants, and other states; and internal sources, including the Bureau of Labor Market Information and Strategic Initiatives (LMI), Attorney General's Office, other state agencies, and the Agency's Claimant Customer Relations, Office of Employer Ombudsman, Problem Resolution Offices, Remote Initial Claims Centers (RICCs) and Benefit Fraud Detection Unit.
- 2) Based on Agency review of the referrals, a decision is made as to whether a SUTA Dumping investigation is needed. Some automated leads are now being changed into investigations.
- 3) If a SUTA Dumping investigation is considered necessary, a referral is forwarded to the Agency's SUTA Investigators for investigation.
- 4) The SUTA investigators then obtain documentation related to the case. Documentation may include internal records, ownership information, business activity information, asset and payroll transfers, tax filings registration reports and other correspondence obtained by the Agency. Websites and corporate filings are also reviewed.
- 5) Documentation is reviewed by the auditor/investigator assigned. If necessary, an audit and/or investigation is scheduled and an audit letter is mailed to the employer confirming the audit date, time and location. Enclosed with the letter is a brochure that explains the audit process and the records needed. An audit will reveal if the payroll reporting is proper. A SUTA Dumping investigation will reveal if proper employer liability is established. If an audit is completed, it must be made clear that the audit does not provide information regarding the employer's liability or possible SUTA Dumping. Audits and investigations provide separate and distinct information. Employers often times confuse the two types of review.
- 6) The auditor may also conduct a financial tax audit at either the company's business location or the office of its financial advisor. A financial audit is conducted in compliance with Chapter Seven of the US Department of Labor Tax Performance System as mandated by federal law. Typically, a financial audit will reveal only if the employer is properly recording its payroll on the company subject to audit. Financial audits do not disclose proper or improper transfers of business or improper use of multiple accounts.

- 7) After the audit is completed, a closing conference is held with the employer at which time the auditor will provide a letter that outlines the steps for the remainder of the process. This conference deals only with an audit, not with any SUTA investigation. Results from a SUTA investigation are written into a Determination and mailed to the employer.
- 8) The results of the audit and/or investigation are reviewed for quality and completeness.
- 9) The information is sent to the SUTA section manager via the automated case process with a recommended action from the auditor or investigator. The SUTA section manager will review the auditor's or investigator's findings and recommendation. If the SUTA reviewer agrees, the SUTA reviewer forwards the recommendation of action and reassigns the case to the tax office for issuance of a written Determination. If additional information is required to issue a Determination, the case is returned to the auditor or investigator to collect the information needed.
- 10) The Agency prepares a Determination(s) that details its decision which is mailed to the employer's address of record.
- 11) By law, the employer has 30 days to file a written protest to the Determination. Upon issuance of a Determination, the tax underpayment, interest and, as appropriate, penalty will be posted to the employer's account.
- 12) If the employer protests the Determination in a timely manner, the written information in the protest will be considered. Following a review of the protest, a Redetermination is issued which affirms, modifies, or reverses the Determination. An employer may appeal the Redetermination to the Michigan Administrative Hearings System (MAHS) for a full evidentiary hearing before an Administrative Law Judge (ALJ). If the employer requests an appeal hearing, the appeal is forwarded to MAHS. MAHS will obtain the necessary jurisdictional documents and schedule a hearing.
- 13) The decision of the ALJ may be appealed by the aggrieved party to the Michigan Compensation Appellate Commission (MCAC). Upon stipulation by the employer and the Agency, the matter may be appealed directly to Circuit Court.
- 14) A decision of the Circuit Court may be further appealed, by leave, to the Michigan Court of Appeals, and ultimately, by leave, to the Michigan Supreme Court.
- 15) Upon issuance of a Determination or when a settlement has been reached, if applicable, adjustments will be made to the employer account. The employer has an option of entering into a payment plan.

If at any time the employer refuses or fails to comply with the Agency's audit or requests for information (pursuant to Section 9 of the MES Act and Rule 190 of the Administrative Rules), the following steps may occur:

- a. The auditor contacts the employer (via letter, email, phone call, or in person) and requests additional information.
- b. If the information is not provided within five business days, a letter is mailed requesting the information within ten business days.
- c. If the employer still fails to comply, a subpoena is issued (pursuant to Section 9 of the MES Act).
- d. If the employer does not comply with the subpoena, the Labor Division, Unemployment Unit of the Office of Attorney General, may upon request, issue a demand letter citing the subpoena and requiring the requested information due within ten business days.
- e. If the employer does not comply with the demand letter, the Agency will issue its decisions based on the best available information.

(ii) The number of SUTA Dumping investigations opened during the year.

As of December 31, 2014, there have been 59 SUTA Dumping investigations opened since January 1, 2014, citing possible violations of Sections 22, 22b, 54b, and/or Section 54(b) of the MES Act.

(iii) The average length of time to resolve a SUTA Dumping investigation and the number of investigations pending for more than 6 months and for more than 1 year.

The statistics listed below are for all SUTA investigations reported in the MIDAS system. Some older historic cases are not included.

Our automated tracking system indicates there have been 27 investigations pending for more than 6 months but less than 1 year and 56 investigations pending for more than 1 year.

Please note that in previous calculations, (regarding the length of time it takes to resolve a SUTA Dumping investigation) the beginning of the period is the date the investigation began and the end of the period is the date the Determination was issued, or the date when it is concluded that no SUTA Dumping has occurred. An appeal process is available to the parties pursuant to the MES Act, and includes both administrative and judicial appeal process rights. This has not previously been factored into this timeline. This may vary from the manner in which time is currently calculated.

- (iv) The number of cases brought before an administrative law judge or the board of review and the Agency's success rate in those cases.

There have been 20 cases brought before an ALJ, three cases brought before MCAC and two cases brought before Circuit Court in 2014. Of the cases brought before an ALJ, 3 were affirmed, 5 were modified, 3 were withdrawn, 2 were reversed and for the remaining 7 cases, we have not received a decision by year end. Most cases withdrawn are due to settlement, which is considered favorable to the Agency. Of the cases appealed to MCAC, 1 case was affirmed and 2 cases were modified. Of the cases appealed to the Circuit Court, both were modified. If we consider cases affirmed, modified and withdrawn as favorable, and reverses as unfavorable, the Agency has a success rate of almost 89%.

- (v) The amount of money recovered as a result of implementing the provisions of this section.

Based on historical data, the Agency collects on average, approximately \$3 million per year.

- (vi) The amount of the balance or deficit in the unemployment compensation fund.

As of December 31, 2014, the balance for Michigan's Unemployment Insurance Agency's Trust Fund is a surplus of approximately \$2.054 billion.

- (vii) The estimated fiscal impact of SUTA Dumping on the unemployment compensation fund balance and the factual basis for the estimate.

It is estimated that in 2015 the additional tax liability will be approximately \$3.0 million. This estimate is based upon historical amounts collected.

(viii) The number of full-time employees assigned to, and the number of employee hours devoted to, SUTA Dumping prevention, investigation, and remediation.

The estimated staff time used to prevent, investigate and remediate SUTA cases is approximately 11,440 hours, which is equivalent to 5.5 full time employees

(ix) The number of SUTA Dumping investigations that involved the transfer of employees to or from an employee leasing company.

There was one SUTA Dumping investigation in 2014 which involved an employee leasing company (also known as a Professional Employer Organization (PEO)).

(x) The number of investigations in which an employee leasing company was found to have participated in SUTA Dumping.

There were no investigations in 2014 which found an employee leasing company to have intentionally violated SUTA Dumping rules.

(xi) The number of employee leasing companies operating in Michigan.

According to the Agency records, as of December 31, 2014 there were 416 active companies in Michigan identifying themselves as employee leasing companies.

The number of employee leasing companies registered in Michigan includes a variety of different status types. There are 112 companies that have registered as employee leasing companies but are currently inactive on the Agency's computer systems. There are also 781 employee leasing companies shown as terminated. The status of some accounts may be subject to dispute.

Unemployment records may differ from other state agencies such as licensing because of varying rules and requirements. Most PEO entities are licensed by group account or on a consolidated basis. Most PEO's registered for unemployment are done by individual corporation or subsidiary. This leads to a larger apparent number of unemployment accounts than would be found as licensed entities.