Advocacy
for Unemployed Workers & Employers
Cadillac Place · 3024 W. Grand Blvd., Suite 13-150 · Detroit, MI 48202

Penalties and Interest on Claimants and Employers

What the law says: This issue is covered in Sections 15(a), 15(b), 15(i) 15(h), and 54(c) of the M*ichigan Employment Security Act*. The law says that the following penalties and interest apply for late filings of tax returns or late tax payments:

Interest for Overdue Tax Payment and Unpaid Benefit Overpayments – Section 15(a)

Interest accrues on unpaid taxes and unpaid benefit overpayments at the rate of 1.0% a month, computed daily, but not more than 50% of tax owed for the quarter. This means that for every day during a month when there is a tax payment owing, additional interest accrues. A new (successor) business owner can inherit the interest charges due from the previous (predecessor) business owner.

Penalty for Failing to File a Tax Report – Section 15(i) and Section 54(c)

In addition to the interest for a late tax payment, a separate penalty applies when the employing unit, or an owner, director, officer, or agent of the employing unit fails to file a quarterly tax report (Form UIA 1020). The penalty is 10% of the contributions due on the un-filed report. (The penalty is applied once the report is filed and the amount of contributions due is determined. However, the UIA may also make an estimate of the amount of taxes due, and assess a penalty, and interest, accordingly. See the Factsheet on "Willful Neglect.") The minimum penalty is $5.00 and the maximum is $25.00 for each tax report the employer failed to file.

Negligence Penalty - Section 15(h)

If part of a missing tax payment is due to an employer's negligence or disregard of the UIA's rules, but is not due to fraud, the employer will be assessed a penalty of 5% of the total amount owed, in addition to any other interest or penalties already owed.

Fraud Penalty – 54(b)

If it is determined that some or all of a missing payment is due to an employer's fraudulent attempt to avoid tax payments, the penalty will then vary, depending on the amount of tax withheld. The penalty may be two times the amount fraudulently withheld if the amount withheld is under $500 and up to four times the amount if $500 or more, plus imprisonment up to 5 years, or community service of up to 10,400 hours, or a combination of both. In addition, a person who obtains or withholds an amount of benefits or payments exceeding $3,500 but less than $25,000 as a result of a knowing false statement or willful failure to disclose a material fact, may be prosecuted for a felony and be subject to fraud penalties. For detailed information on fraud penalties, please refer to the Fact Sheet on *General Penalty Provisions, Including for Intentional Misrepresentation (Fraud)*.

Examples: An employer hires a new bookkeeper in February of 2010, and the bookkeeper does not file a UIA report for the first calendar quarter of 2010 until August 8, 2011. The bookkeeper filed reports for the second and third calendar quarters on time. However, he does not make a tax payment on any of the calendar quarters until November 1, 2011. That payment is for the first, second, and third quarters.

Because the tax report for the first quarter was late, a 10% penalty applies, with a maximum of $25.00. Because the tax payments for the first and second quarters were late, interest accrues for overdue payments from each of those quarters at the rate of 1.0% per month on the entire tax amount owed.

The payment made on November 1 will be applied in the following order: (1) penalty for the late tax report for the first quarter; (2) interest for the first quarter; (3) principal for the first quarter; (4) interest for the second quarter; (5) principal for the second quarter (6) principal for the third quarter.

If an employee fails to file a quarterly wage report, a penalty of $50 applies, and an additional $250 penalty applies for each additional quarter the report is late. A report corrected within 14 days of Notice from the UIA of an error will incur no penalty.

Proof at the Hearing: The UIA has the burden of proving the amount of the interest and penalties. The employer can bring business records to prove the UIA was wrong. The employer's evidence could include, for example, cancelled checks to prove that UIA received a payment but failed to credit the employer, or received the payment on time but recorded it as being received late. The employer could also produce a certified mail receipt showing that the item was mailed.

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Willful Neglect

What the law says: This issue is covered by Section 15(i) of the *Michigan Employment Security Act*. The law says that if an employer fails to file a Form UIA 1020, Employer's Quarterly Tax Report, and the tax return is late by more than 30 days, and UIA makes a determination that the failure to file the reports is willful, the UIA may assess the principal amount due, as well as interest and penalties. This is called a "willful neglect" determination.

Example: The employer has not filed a tax report (Form UC 1020) for the calendar quarter ending March 31. The tax report was due by the 25th day of the month following the end of the calendar quarter; therefore, the report was due April 25, 2011 As of May 26, the report is more than 30 days overdue. After making a determination that the default of the employer to file the report was willful, the UIA may estimate taxes due and impose whatever interest and penalties would apply to that estimated amount of taxes due.

Proof at the Hearing: The Unemployment Insurance Agenc has the burden of proving that the employer failed to file the tax return and that the failure to file was willful. The employer can bring business records to disprove the UIA.

For Further Help: The Unemployment Insurance Agency (UIA) Advocacy Program: The UIA Advocacy Program can provide assistance to employers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, option #2.