



# MICHIGAN EMPLOYER LIABILITY

TOOLKIT

UNEMPLOYMENT INSURANCE AGENCY

## MICHIGAN EMPLOYER LIABILITY TOOLKIT

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# Introduction

The purpose of this toolkit is to explain when an employing unit becomes a liable employer under the Michigan Employment Security (MES) Act to pay unemployment taxes in Michigan and how to register. The toolkit will highlight the following topics:

- Employing Unit.
- Employer Defined.
- Employer and Employment Types.
- Common Exempt Employing Units.
- Employing Unit Registration.
- Information Needed to Register.



## Employing Unit

Before a business or an individual is determined by the Unemployment Insurance Agency (UIA) to be liable, the UIA refers to the business or the individual as an employing unit.

## Employer Defined

To become a liable employer, UIA uses the following requirements in Section 41 of the MES Act to determine if the employing unit is an Employer and then notifies the new employer for the decision.

## Summary of Section 41

41(1)

**The employing unit meets either payroll or employment criteria**

- Payroll – The employing unit pays \$1000; or more in wages within a calendar year.
- Employment - the employing unit has at least one worker in 20 different weeks in a calendar year.

41(2)

**The employer/employing unit acquires existing Michigan business**

- Employing unit that acquires the organization, trade, or business, or 75% or more of the assets of another organization.
- Employing unit that becomes a transferee of business by any other means other than in the ordinary course of trade from an employer, if there is substantially common ownership, management, or control.

41(3)

**Employer after total transfer of business**

The employer is assigned clean-up account if filing last payroll after total transfer of business.

41(4)

**The employing unit elects to become an employer**

The employing unit elects to pay unemployment insurance tax. For instance, a church organization that is exempt under the Act. This must be effective in the current year.

41(5)

**The agricultural employing unit meets either payroll or employment criteria**

- Payroll – Having total of cash payroll of \$20,000 within a calendar quarter.
- Employment – Having at least 10 agricultural workers in each of 20 different weeks in a calendar year.

41(6)

**The household employing unit meets payroll criteria**

- Employing unit meets payroll criteria for domestic services.
- The employer pays total cash of \$1,000 in a calendar quarter.

41(7)

**FUTA Subjectivity**

The employer is filing Federal Unemployment Tax Act with IRS in other states.

## Employer Acquisition (Business Transfer)

This type of acquisition can either be mandatory or a voluntary transfer resulting in transfer of experience (the tax rate history), which can be total, partial, or no transfer, from the existing business.

### Forms of Acquisition

- Sale of business.
- Transfer in the form of acquiring the use of Michigan assets like lease.
- Incorporating an existing business.
- Merger of existing entities.
- Reorganization.

### Mandatory Transfer

- The employing unit acquires 75% or more assets and there is no common ownership interest between the entities.
- Transfer involving common ownership interest between the entities. The percentage of assets does not matter in this type of acquisition.

Mandatory transfer may result in rating transfer:

- Total Rating - 100% assets and/or payroll acquisition of the business or
- Partial Rating - less than 100% assets and/or payroll acquisition of the business.

**Form 1184, *Employer's Report on Partial Transfer of Business***, is needed if the acquisition is less than 100%. Information provided by the employer will assist in determining what percentage of the former owner experience to transfer.

### Voluntary Transfer

Voluntary transfer is always a partial transfer of experience.

- The employing unit acquires less than 75% assets of an existing Michigan business.
- **Form 1184-1, *Report and Agreement on Partial Transfer of Business Certification***, is required to secure consent from both parties involved in this type of sale to determine what percentage of the former owner's rating history to be transferred. Assigning a portion of the former's owner rate history will require submitting the Form 1184-1 with the registration documents either 518 or **Standalone Schedule B Form** if notifying UIA for the first time about the acquisition.

## Tax Debt Transfer or Assessment Under Section 15(g) of (MES) Act

Outstanding taxes due (contributions) on the predecessor account is transferred or assessed to the successor employer who then becomes liable for the unpaid taxes and interest but -

- Employing unit must acquire the organization, trade, business, or 75% or more of Michigan business.
- Determined as successor under Section 41(2) by UIA.
- Both parties remain responsible until the debt is paid.

### Exception to Transfer the Debt

Amount due from the seller is more than the amount of liability. The employer needs to provide independent valuation of the business at the time of the transfer.

### Other Responsibilities

If the previous employer failed to file any quarterly tax reports, the successor will be taxed at a higher tax rate.

- Either the purchaser or seller may request from UIA, in writing, not less than 10 days before the transfer of business, Form UIA 1395, *Clearance of Account*, to find out any amounts owed to UIA.
- By law, the seller must provide the buyer with certain unemployment insurance information at least two days before an offer to purchase is accepted on **Form UIA 1027, *Business Transferor's Notice to Transferee of Unemployment Tax Liability and Rate***, covering:
  - ① Seller unemployment tax rate.
  - ② Outstanding liabilities.
  - ③ Details about jobless benefit payments and taxes.
  - ④ Employees laid off in the year before the sale.
  - ⑤ Names of all current employees.

## Employer and Employment Types

Section 14 of the Michigan Employment Security (MES) Act authorizes the UIA to determine whether an employing unit qualifies as a Michigan Employer to file and pay UIA quarterly taxes and whether the services performed are employment as an employee or independent contractor.

### Limitation to Issue Determination

Michigan law specifies how far back UIA shall issue determination or redetermination.

- In the absence of fraud, the requirement is current year plus prior 3 years.
- The requirement shall be 6 years if fraud is determined.

### Employer Types

Employing units that are determined as Michigan employers can either be contributing or reimbursing.



### Contributing Employer

Most employers are contributing employers and the taxes they pay to UIA are called Contributions.

**Report** – Required to file quarterly taxes.

**Payment** – Quarterly taxes due to be paid are based on tax rate assigned up to the taxable wage base limit.

**Tax Rate** – Assigned annually based on employer’s history of payroll, taxes paid, and benefit payments made to former employees.

**The following employing units fall under contributing employers:**

- For-profit employing units by default.
- Non-profit employing units by default but may elect as reimbursing employer.

## Client Level Reporting and Power of Attorney (POA)

If an employer signs up with a Professional Employer Organization (PEO), the PEO is required to file the report under the employer's (client) UI account if already assigned. This is called "Client Level Reporting (CLR)" which went into effect on January 1, 2014. If there is no account in existence upon signing up with the PEO, then the employer must register to obtain an Employee Account Number to allow the PEO to comply with CLR.

## Multiple Establishments

UI considers an employing unit within this state maintaining 2 or more separate establishments under the provision of the Section 40 of MES Act as a single employing unit if commonly owned, managed, and/or controlled and are engaged in the same or similar business activity. A single employer account number is allowed.

## Reimbursing Employer

A reimbursing employer is a liable employer that pays UIA, dollar-for-dollar, the amount the UIA paid in benefits in that calendar quarter (including the state portion of Extended Benefits) to its former workers who receive unemployment benefits based on wages paid to the worker by the reimbursing employer.

**Report** – Required to file quarterly wage/tax reports.

**Payment** – Receive Form UIA 1763, *Reimbursing Employer Billing For Benefit Charges*, from UIA when unemployment benefits are paid to former employees.

### Billing cycles

- Annually – Governmental and Indian tribes/tribal units.
- Quarterly – Non-profit.

**Tax Rate** – Not assigned.

## Employing Units That Fall Under Reimbursing Employers

- Governmental entity (city, county township, school district) is a reimbursing employer by default.
- Indian tribes and tribal unit.
- Non-profit entity electing reimbursing status.

## 501(c)3 Requirement

Copy of IRS 501(c)3 letter is required if a non-profit is electing as reimbursing status.

## Out-of-State Governmental Entities

- Must provide UIA with documentation of affiliation to a Michigan-based governmental to be treated as a governmental reimbursing employer.
- If not, must provide a 501(c)3 to be treated as a non-profit reimbursing employer.
- Assigned contributing status, if unable to obtain affiliation with any governmental entity in Michigan or 501(c)3.

## Bond/Letter of Credit

The following reimbursing employers are subject to security requirements if their annual gross pay equals or exceeds \$100,000. The requirement is 4% of taxable payroll.

- Non-profit.
- Indian tribes/tribal units.
- Governmental (out-of-state).

## How to Calculate Required Security Amount

The annual gross payroll for the 12-month period ending on June 30 of the year before security is required (July 1 through June 30) which represents the Third and Fourth quarters of the prior year along with the First and Second quarters of the current year multiplied by 4%.

## Group Accounts

The law permits non-profit employers that elect to be reimbursing employers to form or be part of a group account for the purpose of sharing the cost of benefits paid to the former employees. The UIA must be notified that a reimbursing employer wishes to join a group.



## Employment Types

Workers are classified as either an employee or independent contractor.



### Covered Employment

Employer with workers classified as employees is termed Covered employment. Most employers consider their workers as employees but there are many cases where employing units and employers misclassify them as contractors. UIA relies on IRS 20 factors to determine the employment type when in dispute.

### Contract Employment

Employers with workers classified as independent contractors is termed Contract employment. Some services performed by a worker will fit into contract employment. The decision to determine who is a contractor rests with UIA by relying on IRS 20 factors whenever a worker is misclassified as a contractor.

### Corporate Officer Wages

For UIA purposes, services performed by a corporate officer are subject to UIA tax reporting and are not exempt. If the corporate officer is performing any services for his or her business entity, then the wages from the services are taxable for UIA purposes. If the employing unit does not have an Employer Account Number (EAN), then UIA registration is required.

### Seasonal Employment

Michigan law allows an employer to apply for seasonal designation if they operate during not more than 26 weeks (182 days) within any 52- week period but **UI Form 1155, Designation as Seasonal Employer**, must be received 20 days before the beginning of the seasonal period. Once the seasonal designation request is approved, it denies unemployment benefits to the seasonal workers if the employer has given those workers a reasonable assurance of returning to work the next season.

- Construction industry is exempt by law.
- Any seasonal business or employer must still file quarterly wage/tax report.

## Common Exempt Employing Units

The following employing units are not considered employers for UIA purposes if operating without employees:

- Limited Liability Company (LLC).
- Sole Proprietorship.
- Partnership.



## Employing Unit Registration

Employing units must properly notify the UIA of their existence in business so the UIA can make an official determination as to whether it is a liable employer.

It is recommended to use the online portal to register for an EAN.

## Online Registration

### Michigan Business Tax Registration & Form 518

UIA offers an online process to register for and receive your EAN. The online registration eliminates the need to complete and mail in Form 518, *Michigan Business Tax Registration* booklet.

- [Download the State of Michigan Form 518, \*Michigan Business Tax Registration\* booklet.](#)

## Information Needed to Begin Your Registration

**For step-by-step instructions** about how to register your business as well as information about performing other functions in MiUI, scan the QR Code.

**SCAN**





STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY  
UNEMPLOYMENT INSURANCE AGENCY

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UIA is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities. TTY services are available at 1-866-366-0004.