

UNEMPLOYMENT INSURANCE

*An Employer's Guide to Unemployment
Insurance Compensation, Employer UI
Taxes, Benefit Wage Charges, New Hire
Reporting and more*



a publication from the
**OKLAHOMA EMPLOYMENT
SECURITY COMMISSION**

Mary Fallin, Governor



Oklahoma Employment Security Commission

Affiliated with the Employment and Training Administration,
United States Department of Labor

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***An Employer's Guide to Unemployment Insurance
Compensation, Employer UI Taxes, Benefit Wage
Charges, New Hire Reporting and more***

***Oklahoma Employment
Security Commission***

Unemployment Insurance Division

P.O. Box 52003

Oklahoma City, OK 73152

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Oklahoma Employment Security Commission

Providing Oklahoma with economic stability and employment security

The Oklahoma Employment Security Commission (OESC) is a United States Department of Labor (USDOL) funded agency dedicated to providing quality service and assistance to Oklahoma businesses and job seekers. Our mission is to enhance Oklahoma's economy by:

- providing Unemployment Compensation to support unemployed workers and their communities
- matching jobs and workers to increase the efficiency of local labor markets
- preparing a skilled workforce to enhance and align their skills to meet local labor market needs
- gathering, analyzing and disseminating information about the labor force to improve local economic decisions

OESC has a vast amount of experience working with and supporting the business community. Whether assisting with the recruitment and attraction of new employers or sustaining existing employers, OESC is a vital partner of business. An example of our commitment to the business community is our nationally recognized recruitment model that assists new or expanding businesses in meeting their workforce needs. OESC's Talent Acquisition Team (TAT) is a unit of recruiters assigned to assist employers with a customized strategy of recruitment services. Our highly trained staff works diligently to connect individuals with employment opportunities through tailored services that allow every job seeker to know and improve their skills as well as get the best job possible with those skills.

OESC has always been at the forefront of cultivating emerging industries, supporting existing businesses, and developing and enhancing the skills of the Oklahoma workforce. The challenge of facing the demands of the labor market and economic uncertainties requires foresight and planning to provide a skilled workforce for today and the future. As we look forward, OESC is dedicated to leading a market-driven workforce system to meet those demands and help all Oklahomans achieve economic prosperity.

OESC Vision: Oklahoma's prosperity is enhanced by OESC's efforts to provide economic stability and employment security.

The Unemployment Insurance System

Economic security through preparedness, response, relief and recovery

The Unemployment Insurance system was created in 1935 in response to the economic threat to the United States posed by the Great Depression. To ensure economic security, this joint state and federal system used the same strategy that the United States now employs to meet the challenges of the 21st century: *preparedness, response, relief and recovery*.

Preparedness: The Unemployment Insurance system meets economic fluctuations and confronts crisis in the economy by maintaining a coherent set of policies and services, comprehensive program planning, forward funding, technological advances, legislative changes, labor market analysis, and well-trained system workers. Preparedness permits quick response.

Response: The Unemployment Insurance system is one of the first responders to an economic crisis. This is most evident in situations that affect large numbers of people, such as mass layoffs, seasonal layoffs, business closings, natural disasters and terrorist attacks. However, the process is just as effective when responding at the individual level to the subtle effects of buy-outs, globalization, outsourcing, immigration, changes in labor demographics and trends in trade. A rapid response accelerates relief.

Relief: The Unemployment Insurance system provides direct access to temporarily sustained relief. The employer and the worker both benefit from the temporary partial replacement of wages to qualified unemployed workers. Unemployment compensation provides necessities for the unemployed worker, while also providing a consistent flow of funds into the economy that supports the demand for consumer goods and services and improves the worker's probability of being re-employed. Relief sustains the economy as it shifts to recovery.

Recovery: The Unemployment Insurance system provides for a multi-faceted economic recovery through tax incentive programs, job training, education, job placement, dissemination of economic trends and indicators, and the preservation of an available and skilled workforce. Employment security encourages consumer confidence and spending to rebound, which contributes to economic stability, recovery and long-term, sustainable economic growth.

Ez Tax Express

OESC's new online quarterly report filing option for employers

To better serve Oklahoma, OESC has developed an internet portal, called Ez Tax Express (<https://eztaxexpress.oesc.state.ok.us>), to enable employers to perform many of the functions via the internet that were previously completed on paper.

Effective January 1, 2011, employers and third party administrators (TPAs) that file on behalf of the employer are required to file electronically via Ez Tax Express.

OESC Rules, Section 240:10-5-91. Reports

- (1) This subsection shall apply to all Employer's Quarterly Contribution and Wage Reports that are due for filing after January 1, 2011.
- (2) All employers with an assigned Oklahoma State Unemployment Tax Act (SUTA) account number shall be required to file the Employer's Quarterly Contribution and Wage Report through the employer portal on the Commission Internet website.
- (3) All third party administrators shall be required to file the Employer's Quarterly Contribution and Wage Report through the employer portal on the Commission Internet website for clients with an assigned Oklahoma SUTA account number.

Features available through Ez Tax Express

When using the OESC Ez Tax Express, employers will be able to:

- apply online as a new employer to obtain an Oklahoma Employer Account Number
- file their Oklahoma Employer's Quarterly Contribution Report (OES-3)
- file their Adjusted Oklahoma Employer's Quarterly Contribution Report (OES-3)
- pay their Oklahoma Unemployment Tax online
- view their Oklahoma Employer's Quarterly Contribution Reports (OES-3)
- view their tax rate information
- view their tax account information
- view the status of appeals
- view UI tax publications, tax laws and rules
- submit a request to place their Oklahoma Employer Account Number in inactive status
- perform a limited update of employer contact information

Third party and bulk filers

Bulk filers and third party administrators (TPAs) can use the OESC Ez Tax Express to perform all of the functions available to the individual employer.

- TPAs or bulk filers can register client accounts and add them to their client base in their TPA account. Once the TPA logs into their account, their client base can be accessed without logging onto each individual account.
- Quarterly tax reports can be filed by multi-account file upload.
- Payment can be made by electronic funds transfer (EFT) or check for all accounts filed in the upload process.

Filing an OES-3 online

When filing an OES-3, Employers Quarterly Contribution Report online using OESC Ez Tax Express, an employer will be able to:

- display employee's masked SSNs and names from previous online filing
- enter and edit each employee's wage information
- automatically calculate the tax due and the summary of total and taxable wages
- receive a confirmation number upon successful submission of their report
- print a copy of their quarterly report for their records or save to a pdf file
- select an online option to pay an employer's quarterly contribution (EFT)
- print a remittance voucher to be submitted with the employer's payment check
- import information directly from their payroll system via a text file—file upload option

Online methods to file an OES-3

Employers may use one of two methods to file an OES-3.

The first method is to enter employee wage information manually.

- Tax, interest and penalties will be calculated for the employer.
- If an employer has previously filed via Ez Tax Express, the employee's SSN and name will be displayed, and the employer can quickly and easily update each employee's new quarterly wage information and add or delete information.

The second method is to upload a wages report.

- Using an ASCII text file, an employer can upload the quarterly contribution report information directly from their existing payroll program. This method is strongly recommended to employers who have more than 30 employees.

Employers eligible to file an OES-3 via Ez Tax Express

Oklahoma employers may file their OES-3, Oklahoma Employers Quarterly Contribution Report through Ez Tax Express if both of the following are true.

- The employer's account is active for the quarter of filing.
- A report has not already been filed.

To reinstate an employer account or determine liability, contact the Status Unit at (405) 557-7226.

Filing deadlines when using Ez Tax Express

Using Ez Tax Express, an employer may file any quarterly report for the current quarter or any past due quarter. The due dates for OES-3 submission are as follows.

Quarter	Months covered	Due date
First	January, February, March	April 30
Second	April, May, June	July 31
Third	July, August, September	October 31
Fourth	October, November, December	January 31

Using the Ez Tax Express online payment option

When using the Ez Tax Express online payment option, employers will be able to:

- enter a specific amount to be paid
- select the specific quarter and year to which to apply the payment
- make a payment to be processed the same day or schedule a payment for a later pay date
- receive a confirmation number upon successful submission of their payment
- print a copy of their online payment confirmation for their records

In addition, third party filers and bulk filers will be able to:

- display individual employer amounts to be paid
- edit each individual employer payment amount

Electronic funds transfer (EFT) is a vital part of daily business activity. EFT allows employers to maximize their monetary resources by providing more control of their money flow. It is designed to be secure and cost-effective and to move funds in a fast and timely manner. In addition, it can be implemented without any significant up-front investment.

Benefits that EFT offers to employers include:

- control of bank account activity
- timely payment of contributions
- avoidance of postal delays and restrictive postal time schedules
- secured method of payment

EFT is available to all employers for payment of unemployment contributions and reimbursable charges.

Viewing unemployment tax account information

When using the View Tax Account History option in Ez Tax Express, employers will be able to:

- view OES-3, Oklahoma Employers Quarterly Contribution Reports that were filed through the portal
- view unemployment tax payments
- view unemployment tax account history
- view unemployment tax refunds
- view unemployment tax warrants (tax liens)
- view IRS Federal Unemployment Tax Act (FUTA) certification
- view rate history and benefit wage charge history
- view tax appeal information

Registering for an Oklahoma State Unemployment Tax Act (SUTA) account number using Ez Tax Express

Via Ez Tax Express, employers can complete the OES-1, Application for Oklahoma UI Tax Account Number online and submit it to obtain an Oklahoma SUTA account number. The completed report is submitted to the Status Unit for review. The employer will be notified by mail once the account is established.

Updating account information using Ez Tax Express

When using the Update Account Information option, employers will be able to:

- complete the OES-24 Termination report online (employers are notified by mail when the account is terminated)
- update mailing address, phone number and contact information

Changes to international addresses can not be updated in Ez Tax Express at this time. Please send requests for international address corrections to

Oklahoma Employment Security Commission
Attn: Status Department
P.O. Box 52003
Oklahoma City, OK 73152-2003

Employers & Unemployment Insurance

Benefits to employers

The Oklahoma Employment Security Commission (OESC) provides a variety of services from which employers can benefit. Employers have access to job candidates, recruiting services, skilled labor pools, labor market information, assistance with job fairs, onsite recruitment, and assistance with major workforce shifts and/or reductions in their workforce. Employers can also obtain assistance through the Incumbent Worker Training program, Rapid Response program and Alien Labor Certification as well as the Partial Claims program that helps sustain their workforce through a temporary layoff. OESC also participates in the Quality Jobs program and other tax incentive programs.

The business community also profits through the payment of regular unemployment benefits to qualified workers and the payment of benefits and training through trade assistance programs, disaster assistance programs, youth training programs and dislocated workers programs.

Oklahoma's unemployment insurance (UI) law

The Oklahoma unemployment insurance program is established and governed by the Employment Security Act of 1980, Oklahoma Statutes, Title 40, Sections 1-101 through 9-104. This law establishes:

- definitions
- contributions (tax)
- benefits and eligibility
- the unemployment compensation fund
- program administration

Federal unemployment insurance (UI) law

Federal legislation authorizing and governing state unemployment programs is found in both the Social Security Act and the Federal Unemployment Tax Act.

The Social Security Act establishes:

- funding for state UI program administration
- state law requirements
- federal unemployment compensation accounts

The Federal Unemployment Tax Act establishes:

- federal unemployment tax rates
- credits against the tax
- state law approval provisions
- definitions

Unemployment insurance (UI) rules

The UI rules are written statements providing the administrative guidelines for OESC to follow in delivering unemployment insurance services. These administrative rules are written under the authority of state and federal law and have the effect of law.

The administrative rules governing the Oklahoma unemployment insurance program are found in the Oklahoma Administrative Code at 240:1-1-1 through 240: 25-3-1.

Unemployment insurance (UI) fraud

It is a crime to commit unemployment insurance fraud. Section 5-103 of the Oklahoma Employment Security Act states that an employer who makes a false statement or representation knowing it to be false or fails to disclose a material fact is guilty of a misdemeanor. Individuals who commit fraud are subject to fines, penalties and/or criminal prosecution.

Acts that constitute employer fraud include:

- misclassifying workers
- incorrectly reporting wages
- providing false information to prevent an otherwise eligible claimant from obtaining unemployment insurance benefits
- failing to pay unemployment insurance (UI) taxes
- failing to report necessary information
- prohibiting inspection
- engaging in SUTA dumping, or the manipulation of tax rates to pay a lower rate than the earned experience rate

Employer audits

The U.S. Department of Labor, Employment and Training Administration sets mandatory performance goals to ensure states are correctly and efficiently administering the Unemployment Insurance program. One of the required measures is the employer audit program. Each state is required to audit selected employers for compliance with the Oklahoma Employment Security Act.

Employers are required by the Oklahoma Employment Security Act to maintain work records for a period of four years. These records are to be open to inspection by the Oklahoma Employment Security Commission and subject to being copied by OESC. These provisions are found in Section 4-502 of the Oklahoma Employment Security Act.

Records that are needed to complete an audit, according to U.S. Department of Labor guidelines, include:

- Federal and/or State Income tax returns
- franchise tax return (if employer is incorporated)
- business licenses
- federal and state payroll reports
- W-2 and W-3 forms
- individual earnings records, payroll register, and time cards
- disbursement records (cancelled checks, check stubs, cash disbursements journals, check registers, ACH transactions)
- 1099 and 1096 forms
- master vendor files
- contracts with individuals being treated as contractors as well as invoices, billing statements or other records from same
- petty cash journal
- detailed general ledger
- chart of accounts and/or trial balance
- financial statements
- corporate or LLC minutes
- financial statements
- any other work records that may be required

If an employer is selected for audit, they will be notified by the Compliance Enforcement Officer and advised of the time and date of the audit.

Oklahoma JobLink

Oklahoma JobLink (<http://www.oklahomajoblink.com>) is your best online source for posting jobs and finding employees in the state of Oklahoma. Unlike most other online job posting sites, creating an Oklahoma JobLink employer account is absolutely FREE. Plus, it's fast and easy!

To list and manage your own positions, go to <http://www.oklahomajoblink.com> and click on the “Find Employees” link to create an account where you can:

- search our database of thousands of resumes
- post your job openings
- receive email updates on new job seeker resumes
- manage your company profile

To have our staff list and manage your positions, call 1-888-980-WORK (9675) toll-free to be connected to the workforce center nearest you. Our staff can:

- post and manage your job openings for you
- search our database for applicants and resumes
- screen applicants according to your job requirements
- create customized job events for special hiring projects

Through strategically-placed workforce centers across the state or through the Oklahoma JobLink system, customers can access a wide array of workforce services designed to specifically address their needs.

Employer Responsibilities

Registering as a new employer in Oklahoma

The eligibility requirements are explained in the Status Determination section below. To obtain the required forms, contact the Status Department or visit our website at <http://oesc.ok.gov>. The OES-1, Employer Status report can now be completed online at <https://eztaxexpress.oesc.state.ok.us>.

Reports and forms needed to register

The OES-1, Application for Oklahoma UI Tax Account Number is the application to determine UI tax liability. All new or reinstated businesses are required to submit an OES-1 report. Once an employer becomes subject, an Oklahoma account number is assigned, and reports are mailed to the employer every calendar quarter. The quarterly wage report is due by the last day of the month following the end of the calendar quarter.

Status determination

An employer is subject to report and pay the unemployment insurance (UI) tax if that employer meets any one of the following criteria.

The employer is:

- an employing unit that pays \$1,500 in wages in a calendar quarter or employs one or more employees for any portion of a week for any 20 weeks in a calendar year
- an employing unit that acquires substantially all the organization, trade, business, assets or employees of a subject employer, or an employing unit that acquires a portion of the organization, trade, business, assets or employees of a subject employer
- an employing unit that has previously ceased to be an employer but subsequently has employment (except those that cease under Termination of Coverage Provisions)
- an employing unit that voluntarily elects to become subject
- any department of Oklahoma or any state, all instrumentalities and any political subdivision
- an employing unit that is a non-profit organization as described in Section 1-210 (4) of the Oklahoma Employment Security Act or that has a 501(c)(3) exemption issued by the Internal Revenue Service, provided they employ four or more employees for some portion of a week during any 20 weeks in a calendar year
- an employing unit engaged in agricultural employment that pays \$20,000 in wages in a calendar quarter or employs 10 or more employees for any portion of a week for any 20 weeks in a calendar year

- an employing unit that pays \$1,000 in wages in a calendar quarter for domestic services

If an employing unit is not an employer by reason of any other provision of the Oklahoma Employment Security Act, they would be a subject employer and required to report and pay tax on all Oklahoma wages if they were subject to the Federal Unemployment Tax Act (FUTA).

The term “employer” shall include any Indian tribe for which service in employment is performed.

Employment

“Employment” means work done for an employer by individuals whom the employer pays, whether permanently or temporarily employed, unless the work is specifically exempt from coverage by the provisions of the Oklahoma Employment Security Act. Employment includes services performed by officers of corporations, including S corporations.

Interstate employment

Wages are reported to the Oklahoma Employment Security Commission if:

- the service is localized in Oklahoma. Service is considered to be Oklahoma employment if it is performed entirely within Oklahoma. The service is also considered Oklahoma employment if performed both inside and outside of Oklahoma, but the service outside of Oklahoma is incidental to the service in Oklahoma.
- the service is not localized in any state. If the service is not localized in any state but some of the service is performed in Oklahoma, and
 - the individual’s “base of operations” is in Oklahoma, or if there is no base of operations, then the place from which the individual’s employment is directed or controlled is in Oklahoma, or
 - the individual’s base of operations or place from which the service is directed or controlled is not in any state where service is performed, but the individual’s residence is in Oklahoma.

Employment exempt from coverage

Payments made for services that are exempt should not be included on the quarterly wage report. The following services do not constitute employment and are exempt from UI taxes.

- Services of an ordained minister in the exercise of his/her ministry
- Services performed by the spouse of an individual owner (sole proprietor)

- Services of a minor child (under 21) in the employ of the parents
- Services of parents in the employ of their sons or daughters
- Services performed by an insurance agent or as a licensed real estate agent, if all service is performed for remuneration solely by commissions or fees

Lessor employers

Lessor employers are employing units that contract with other employers, individuals, organizations or legal entities to provide “leased” employees. The lessor employer is liable for contributions on wages paid to individuals performing services for the client lessees. The lessee will be held jointly and severally liable with the lessor employing unit unless the lessor employer posts and maintains a surety bond.

Independent contractors and contract labor

Services performed by an individual for wages or under any contract of hire shall be considered employment unless it is shown that:

- the individual is free from direction and control over his performance of service, and
- one of the following
 - the individual has his own independently established business, or
 - the individual is performing services outside the usual course of the business and outside all places of business

Individuals not meeting the above criteria are considered employees and should be reported by the employing unit. If you have individuals performing services that you have classified or contemplated classifying as “self employed” or “independent contractors,” please contact OESC so a determination can be made. By doing this, unexpected taxes, interest and penalties may be avoided.

Successor employers

A successor employer is an employing unit that has acquired substantially all of the trade, employees, organization, business or assets of the predecessor employer and continued the operation. The successor employer also acquires the predecessor’s UI tax rate and history, including their actual contribution, benefit experience and annual payrolls. The successor is jointly and severally liable with the predecessor for all contributions, interest, penalties and fees owed by the predecessor employer.

A partial successor employer is an employing unit that has acquired substantially all of the trade, employees, organization, business or assets of an employer at one or more separate and distinct establishments and continued the operation. To acquire the portion of the experience rating account that was purchased, the successor must send a written application and the portion of history to be transferred within 120 days of the acquisition.

Successor and predecessor employers, special rules on transfer of rates and experience

If an employer transfers all or a portion of its business to another employer and, at the time of transfer, there is substantially common ownership, management or control of the two employers, the histories of the employers will be combined.

Employers that are no longer required to file quarterly wage reports

You may stop filing reports if you have:

- closed your business and will have no further payroll
- sold your business and will have no further payroll

This information needs to be submitted in writing and should include the date the business closed or was sold and the name and address of the new owner. The OES-24, Termination of Business in Whole or Part can be completed to close the account with or without a new owner.

Wages

Definition of “wages” (Section 1-218, Oklahoma Employment Security Act)

"Wages" means all remuneration for services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, and includes dismissal payments which the employer is required by law or contract to make. Gratuities customarily received by an individual in the course of work from persons other than the employing unit shall be treated as “wages” received from the employing unit. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the Oklahoma Employment Security Commission.

Total wages are equal to gross wages minus any exemptions listed below.

Wages do not include:

- the amount of any payment, with respect to services performed to or on behalf of an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund to provide for any such payment, on account of
 - retirement, other than employee contributions or deferrals after December 31, 2002, under a qualified plan as described in 26 U.S.C., Section 401(k) and, after December 31, 2005, under a qualified plan as described in 26 U.S.C., Sections 403b, 408(k), 457 and 7701(j)
 - sickness or accident disability
 - medical and hospitalization expenses in connection with sickness or accident disability
 - death, provided the individual in its employ
 - a. has not the option to receive, instead of provision for such death benefit, any part of such payment, or if such death benefit is insured, any part of the premium or contributions to premiums paid by the employing unit, and
 - b. has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive cash consideration in lieu of such benefit either upon withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of the individual's services with such employing unit
 - bona fide thrift or savings fund, providing
 - a. such payment is conditioned upon a payment of a substantial sum by such individuals in its employ, and

- b. that such sum paid by the employing unit cannot under the provisions of such plan be withdrawn by an individual more frequently than once in any 12-month period, except upon an individual's separation from that employment
- any payment made to, or on behalf of, an employee or his or her beneficiary under a cafeteria plan of the type described in 26 U.S.C., Section 125 and referred to in 26 U.S.C., Section 3306(b)(5)(G)
 - any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under an educational assistance program as described in 26 U.S.C., Section 127 or a dependent care assistance program as described in 26 U.S.C., Section 129 and as referred to in 26 U.S.C., Section 3306(b)(13)
 - the payment by an employing unit, without deduction from the remuneration of the individual in its employ of the tax imposed upon such individual in its employ under 26 U.S.C., Section 3101 with respect to domestic services in a private home of the employer or for agricultural labor
 - dismissal payments which the employer is not required by law or contract to make
 - the value of any meals and lodging furnished by or on behalf of an employer to an individual in its employ, provided the meals and lodging are furnished on the business premises of the employer for the convenience of the employer
 - payments made under an approved supplemental unemployment benefit plan

Definition of “wages paid” (Section 1-219, Oklahoma Employment Security Act)

"Wages paid" means wages actually paid to the worker, provided that in the event of any distribution of an employer's assets through insolvency, receivership, composition, assignment for the benefit of creditors or termination of business, wages earned but not actually paid shall be considered as paid.

Wages must be reported for the calendar quarter in which they are paid.

Definition of “taxable wages” (Section 1-223, Oklahoma Employment Security Act), including the formula used to compute the yearly taxable limitation

- Prior to January 1, 2000, "taxable wages" means the wages paid to an individual with respect to employment during a calendar year for services covered by the Employment Security Act of 1980 or other state unemployment compensation acts which shall equal

50 percent of the state's average annual wage for the second preceding calendar year as determined by the Oklahoma Employment Security Commission, rounded to the nearest multiple of \$100.

- Beginning January 1, 2000, "taxable wages" means the wages paid to an individual with respect to employment during a calendar year for services covered by the Employment Security Act of 1980 or other state unemployment compensation which shall equal the applicable percentage of the state's average annual wage for the second preceding calendar year as determined by the Oklahoma Employment Security Commission, rounded to the nearest multiple of \$100. The application percentage is determined by the conditional factor in place during the calendar year for which the taxable wage is being calculated. The conditional factor is determined pursuant to the provisions of Section 3-113 of the Oklahoma Employment Security Act. The applicable percentages are as follows.
 - 40 percent during any calendar year in which the balance in the Unemployment Insurance trust fund is in excess of the amount required to initiate conditional contribution rates, pursuant to the provisions of Section 3-113 of the Oklahoma Employment Security Act
 - 42.5 percent during calendar years in which condition "a" exists
 - 45 percent during calendar years in which condition "b" exists
 - 47.5 percent during calendar years in which condition "c" exists
 - 50 percent during calendar years in which condition "d" exists

Computing an employer's yearly taxable limitation using taxable wages

Once an employer has determined their total wages as defined by Section 1-218 of the Oklahoma Employment Security Act, the employer can determine how much of its total wages are taxable up to the Taxable Limitation for each employee. This amount is computed per employee per year.

The following scenarios are for example purposes only. The 2009 taxable limitation was \$14,200.

Scenario 1	Total wages	Taxable wages
First quarter 2009	\$15,000.00	\$14,200.00
Second quarter 2009	\$13,000.00	\$0.00
Third quarter 2009	\$5,000.00	\$0.00
Fourth quarter 2009	\$15,000.00	\$0.00
2009 total	\$48,000.00	\$14,200.00

Scenario 2	Total wages	Taxable wages
First quarter 2009	\$5,000.00	\$5,000.00
Second quarter 2009	\$3,200.00	\$3,200.00
Third quarter 2009	\$8,350.48	\$6,000.00
Fourth quarter 2009	\$5,500.00	\$0.00
2009 total	\$22,050.48	\$14,200.00

Scenario 3	Total wages	Taxable wages
First quarter 2009	\$2,348.00	\$2,348.00
Second quarter 2009	\$3,200.00	\$3,200.00
Third quarter 2009	\$2,500.00	\$2,500.00
Fourth quarter 2009	\$5,500.00	\$5,500.00
2009 total	\$13,548.00	\$13,548.00

Definition of “file” (Section 1-224, Oklahoma Employment Security Act)

When any document is required to be filed by the provisions of the Oklahoma Employment Security Act or the rules promulgated under the authority of the Act with the Oklahoma Employment Security Commission, any of its representatives or the Board of Review for the Oklahoma Employment Security Commission, the term "file," "files" or "filed" shall be defined as follows.

- Hand-delivered to the central administrative office of the Oklahoma Employment Security Commission by the close of business on or before the date due
- Telefaxed to the telefax number indicated on the determination letter, order or other document issued by of the Oklahoma Employment Security Commission by midnight on or before the date due. Timely telefaxing shall be determined by the date and time recorded by the OESC telefax equipment

Penalties for not filing required reports or not paying contributions by the due date

To assure compliance with the Oklahoma Employment Security Act and avoid the extra expense connected with obtaining and processing delinquent reports, the Act provides for the following penalties which attach to reports and payments not submitted when due.

- A penalty is assessed for failure to file Form OES-3, Employer's Contribution Report in the amount of \$100 plus 10 percent of the contribution due if the report is not filed within 15 days of Notice of Non-Receipt. Interest accrues at 1 percent per month on past due contributions.

Employer contributions

Information in this section not applicable to reimbursing or 1 percent government employers

Experience rating

Experience rating is the system by which tax rates vary in relation to an employer's experience with unemployment. Experience rating has three major objectives.

- Serve as an incentive to stabilize employment
- Produce proper allocation of the cost of unemployment benefits
- Encourage employer participation in the program

Eligibility for an experience-rating contribution rate

The statutory (new) employer contribution rate is the greater of the following two options.

- The average contribution rate paid by all employers during the second year preceding the current calendar year
- 1 percent of taxable wages

The 1 percent rate is applied to all newly subject employers for approximately two calendar years. An employer with more than 15 months coverage prior to January 1 of the immediate previous year for which rates are computed is eligible for an experience-rating contribution rate.

Definition of “experience period” (Section 1-227, Oklahoma Employment Security Act)

According to Section 1-227 of the Oklahoma Employment Security Act, “experience period” means:

- for any tax year occurring before January 1, 2007, the most recent three (3) consecutive completed calendar years occurring before the calendar year for which a tax rate is being calculated
- for any tax year occurring after December 31, 2006, the most recent twelve (12) consecutive completed calendar quarters occurring before July 1 of the year immediately preceding the year for which the employer's contribution rate is being calculated.

An employer's benefit wage ratio is the percentage of taxable payroll used to compute eligibility of claimants during the same three-year experience period immediately prior to

July 1 of the year for which the rates are being computed (a period less than three years for newly subject employers).

Computing an employer's contribution rate

Experience-rating contribution rates are computed for all eligible employers effective January 1 of each calendar year. The factors in the computation of an employer's contribution rate are:

- an employer's benefit wage ratio
- state experience factor
- conditional factor (if applicable)

Benefit wage ratio

An employer's benefit wage ratio is the percentage of taxable payroll used to compute eligibility of claimants during the three-year experience period as defined in Section 1-227 of the Oklahoma Employment Security Act prior to July 1 of the year immediately preceding the year for which the rates are being computed (a period less than three years for newly subject employers).

The following is an illustration of an employer's benefit wage ratio computation.

Experience rate period	Benefit wage charges	Taxable payroll on which taxes have been paid timely
2006-2007	\$10,000.00	\$80,000.00
2007-2008	\$6,000.00	\$100,000.00
2008-2009	\$7,000.00	\$115,000.00
	\$23,000.00	\$295,000.00

Employers benefit wage ratio = \$ 23,000.00 divided by \$295,000.00 = 0.07797 = 7.8%

The state experience factor is 42%.

Therefore, the employer's contribution rate is 3.3%.

State experience factor

The state experience factor is calculated by dividing total benefits paid from the Unemployment Insurance trust fund for the most recent 12 quarters by the total benefit wages of all employers for the same 12-quarter period. The following illustration shows how the state experience factor was determined for 2010. The illustration uses the new 12-quarter experience period for calculations.

State experience factor = \$668,850,462.88 divided by \$1,611,552,272.07 = 41.5%.
Rounded to the next whole percent, the state experience factor for 2010 was 42%.

Conditional factor

Based on the solvency of the UI trust fund, the conditional factor is computed annually in accordance with the Oklahoma Employment Security Act, Section 3-113.

The method for determining an employer's earned experience rate involves comparing the employer's own benefit wage ratio to the state experience factor by the use of a table provided by law (http://www.ok.gov/oesc_web/documents/rates.pdf).

An employer will receive the maximum contribution rate of 5.5 percent (assuming there is no conditional factor in effect) if the employer's benefit wage ratio exceeds the maximum amount on the line for the current year's state experience factor.

Notifying employers of their tax rates

Legislative changes effective July 1, 2006, will alter the time frame to compute employer rates from the most recent three calendar years to the most recent twelve (12) consecutive completed quarters occurring before July 1 of the year immediately preceding the year for which the employer's contribution rate is being calculated.

All employers who are eligible for an experience-rating are notified of their contribution rate by September 30 of the year previous to the effective rate year with Form OES-48, Notice of Employer's Contribution Rate. This rate is conclusive and binding upon the employer unless the employer files a written request for a review and redetermination within 20 days of the date that the OES-48, Notice of Employer's Contribution Rate was mailed, including the reasons for requesting the redetermination. The Oklahoma Employment Security Commission will provide for such review and issue a determination. The employer may appeal the determination within 14 days of its postmark.

Benefit wage charges

Benefit wage charges are the claimant's taxable base period wages reported by the employer to the OESC for use in determining the claimant's eligibility to receive benefits as a result of either total or partial unemployment. Benefit wage charges to an employer's account are used in computing the employer's contribution rate.

There may be instances where benefits are allowed, but the employer is not be assessed a benefit wage charge. More information on this can be found in Sections 3-105 and 3-106 of the Oklahoma Employment Security Act.

Notification of benefit wage charges

If a claimant is allowed benefits based on the reason for separation at the time an initial claim was filed, and a valid benefit year has been established, an OES-502, Notice of Benefit Wages is mailed to all base period employers showing the amount of base period wages being charged to them. The OES-502, Notice of Benefit Wages is issued when benefits are paid to a claimant for the fifth week of unemployment in the benefit year. A copy of this notice should be retained for an employer's permanent record, as no additional transcript will be furnished.

Benefit wages and year charged (Section 3-105, Oklahoma Employment Security Act)

When in any benefit year a claimant is paid benefits for his or her fifth compensable week of unemployment or is paid benefits as defined in paragraph (3) of Section 4-702 of the Oklahoma Employment Security Act, his or her taxable wages during his or her base period shall be treated, for the purpose of this part, as though they had been paid in the calendar year in which such benefits are paid.

Relief from benefit wages charged (Section 3-106, Oklahoma Employment Security Act)

- A. The Oklahoma Employment Security Commission shall give notice to each base period employer of a claimant promptly after the claimant is issued his or her fifth week of benefits by the Commission or promptly after the Commission receives notice of the amounts paid as benefits by another state under a reciprocal arrangement. Notice shall be deemed given under this subsection when the Commission deposits the same with the United States Postal Service addressed to the employer at an address designated by the employer to receive the notice or at the employer's last known address. Notice shall be presumed prima facie to have been given to the employer to whom addressed on the date stated in the written notice. This notice shall give the name and Social Security Number of the claimant, the date the claim was filed and the amount of benefit wages charged to the employer in each quarter of the base period.
- B. Within 20 days from the date stated upon the notice provided for in subsection A of this section, the employer may file with OESC written objections to being charged with the benefit wages upon one or more of the grounds for objection set forth in subsection G of this section. The employer's written objection must set forth specifically all of the following.
 - The date on which the employment was terminated
 - Full particulars as to the circumstances of the termination including the reason given by the individual for voluntarily leaving the employment or the nature of the misconduct for which discharged, as the case may be

- Full particulars as to the regular scheduled part-time or full-time employment of the employee, including the starting date and ending date, if any, of the continuous period of such part-time or full-time employment
 - Such other information as called for by the notice
- C. Upon receipt of the employer's written objections, OESC shall make a determination as to whether or not the employer is entitled to be relieved from the charging of benefit wages. OESC shall promptly notify the employer of that determination. Provided further, the 20-day time period for filing written objections with OESC as provided for in subsection B of this section may be waived for good cause shown.
- D. Within 14 days after the mailing of the determination provided for in subsection C of this section, the employer may file with OESC or its representative a written protest to the determination and request an oral hearing de novo to present evidence in support of its protest. OESC or its representative shall, by written notice, advise the employer of the date of the hearing, which shall not be less than 10 days from the date of mailing of the written notice. At the discretion of OESC, this hearing shall be conducted by OESC or its representative appointed by OESC for this purpose. Pursuant to the hearing, OESC or its representative shall, as soon as practicable, make a written order setting forth its findings of fact and conclusions of law and shall send it to the employer.
- E. If any employer fails to file a written protest within the period of 14 days as provided by subsection D of this section, then the determination shall be final, and no appeal shall thereafter be allowed.
- F. The employer or OESC may appeal the order of OESC or its representative to the district court by filing a petition for review with the clerk of that court within 30 days after the date the order was mailed to all parties. The mailing date shall be specifically stated in the order.
- G. The benefit wages charged to an employer for a given calendar year shall be the total of the benefit wages stated in the notices given to the employer by the Commission. Provided, that an employer shall be relieved of a benefit wage charge if the employer proves to the satisfaction of the Commission that the benefit wage charge includes wages paid by the employer to any employee or former employee, who meets one of the following conditions.
- The employee left employment with that employer, or with his or her last employer, voluntarily without good cause connected to the work.
 - The employee was discharged from such employment for misconduct connected with his or her work.
 - The employee was a regular scheduled employee of that employer prior to the week the employee separated from other employment and continued to work for the employer through the fifth compensable week of unemployment in his or her established benefit year.
 - The employee was separated from his or her employment as a direct result of a major natural disaster, declared as such by the President pursuant to the Disaster Relief Act of 1974, P.L. 93-288, and such employee would have been entitled to disaster unemployment assistance if he or she had not received unemployment insurance benefits.

- The employee was discharged by an employer for unsatisfactory performance during an initial employment probationary period. As used in this paragraph, "probationary period" means a period of time set forth in an established probationary plan which applies to all employees or a specific group of employees and does not exceed ninety (90) calendar days from the first day a new employee begins work. The employee must be informed of the probationary period within the first seven (7) work days. There must be conclusive evidence to establish that the individual was separated due to unsatisfactory work performance and not separated because of lack of work due to temporary, seasonal, casual or other similar employment not of regular, permanent and year-round nature.
 - The employee left employment to attend training approved under the Trade Act of 1974 and is allowed unemployment benefits pursuant to Section 2-416 of the Oklahoma Employment Security Act.
 - The employee was separated from employment for compelling family circumstances as defined in Section 2-210 of the Oklahoma Employment Security Act.
- H. If an employer recalls an employee deemed unemployed as defined by the Oklahoma Employment Security Act, and the employee continues to be employed or the employee voluntarily terminates employment or is discharged for misconduct within the benefit year, the employer shall be entitled to have the benefit wage charged against the employer's experience rating for the employee reduced by the ratio of the number of weeks of remaining eligibility of the employee to the total number of weeks of entitlement.
- I. An employer shall not be charged with benefit wages of a laid-off employee if the employer lists as an objection in a statement filed in accordance with subsection B of this section that said employee collecting benefits was hired to replace a United States serviceman or servicewoman called into active duty and laid off upon the return to work by that serviceman or servicewoman. The Unemployment Insurance trust fund shall be charged with the benefit wages of the laid-off employee.
- J. If the Commission receives a notice of amounts paid as benefits by another state under a reciprocal agreement, and the notice is received after three (3) years from the effective date of the underlying benefit claim, no benefit wage charge will be made against the employer identified in the notice, or if a benefit wage charge is made based on such a notice, the employer will be relieved of the charge when the facts are brought to the attention of the Commission (amended by SB 1175, effective November 1, 2009).

Relief from benefit wages charged - addendum (Section 3-106.1, Oklahoma Employment Security Act)

The benefit wages charged to an employer for a given calendar year shall be the total of the benefit wages stated in the notices given to the employer by the Commission. Provided that on and after April 19, 1995, an employer's benefit wages shall not include wages paid by the

employer to any employee who was separated from his or her employment as a direct result of a natural disaster, fire, flood or explosion that causes employees to be separated from one employer's employment.

Separating employers and relief from benefit wages charged (Section 3-106.2, Oklahoma Employment Security Act)

A separating employer will not be charged with benefit wages, or will be relieved of the charge upon notification of the Oklahoma Employment Security Commission, if the former employee who is the subject of the charge was separated from employment under one of the circumstances listed in subsection G of Section 3-106 of the Oklahoma Employment Security Act.

Employer notification of action taken on a protested benefit wage charge

The employer is notified with a Notice of Cancellation of Benefit Wages if it is determined that the base period charge has been cancelled and will not be used in computing the employer's tax rate. However, if it is determined that the base period wage charge will be used, the employer will receive an OES-503, Notice of Determination to Base Period Employer. The employer can appeal this determination. The appeal must be in writing and postmarked within 14 days after the OES-503, Notice of Determination to Base Period Employer was mailed.

Reimbursement option (Section 3-803, Oklahoma Employment Security Act)

The option to reimburse the state Unemployment Insurance trust fund for regular unemployment and extended benefits is available to nonprofit organizations that have an exemption under Section 501(c)(3) of the IRS Code. This option is also available to governmental employers and Indian Tribes. Section 3-803 of the Oklahoma Employment Security Act provides that once an employer elects to reimburse, the employer must reimburse regardless of the reason for separation. Section 3-806 of the Oklahoma Employment Security Act provides that the amounts of reimbursement of benefits paid shall include amounts paid in error. An election to reimburse benefits paid shall be for a minimum of two (2) calendar years and thereafter until terminated.

New hire reporting

Purpose of new hire reporting and reporting requirements

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) requires employers to report certain information on their newly hired employees to a designated state agency.

On December 8, 2010, President Obama signed the Claims Resolution Act (Public Law 111-291) into law, which resolves several claims against the government and extends the Temporary Assistance for Needy Families and related programs. The law also makes reforms to the Unemployment Insurance (UI) program, including the requirement that employers report to the State Directory of New Hires (SDNH) the date that an employee first performs services for pay. This is an anti-fraud measure aimed at reducing the number of overpayments to individuals receiving UI benefits. The law amends section 453 A of the Social Security Act effective June 8, 2011, and the new SDNH reporting requirement go into effect on that day.

The Oklahoma Employment Security Commission (OESC) is the designated state agency in Oklahoma that receives these new hire reports. The Child Support Enforcement Division (CSED) of the Oklahoma Department of Human Services is the repository for Oklahoma's directory of new hires. Many states have selected their child support program as the designated state agency to receive the new hire reports. The Oklahoma Legislature determined that since employers are accustomed to reporting quarterly wage data to OESC, it would be less burdensome for employers to report their new hire reports to OESC as well. OESC and CSED have partnered together to develop the OES-112, New Hire Reporting Form, data file layout and a pamphlet.

New hire reporting

New hire reporting is a process by which employers report information on newly hired employees to OESC shortly after the date of hire. New hires must be reported within 20 days of the employee's start date of performing services. The Date of Hire is being redefined to mean the date that an employee actually started performing services instead of the date they are hired.

Employers play a key role in this important program by reporting all newly hired employees to OESC which then forwards all new hire reporting information to the Oklahoma CSED.

Uses of new hire information

CSED will match new hire reports against their child support records to locate parents, establish a child support order or enforce an existing order. Once these matches are done, Oklahoma will transmit the new hire reports to the National Directory of New Hires (NDNH). OESC may also use the state new hire information to detect and prevent erroneous benefit payments. In addition, the Department of Human Services (DHS) can conduct matches between the new hire database and other state programs to prevent unlawful or erroneous receipt of public assistance payments. The information provided will be used to match new hires against unemployment benefit claims to help detect and prevent fraudulent unemployment payments.

Benefits of new hire reporting for employers

A direct benefit to employers is the reduction and prevention of fraudulent unemployment and workers' compensation payments. Timely receipt of new hire data allows OESC to cross-match this data against its active unemployment claimant (UIC) files and either stop payments or recover erroneous payments. For example, although only 20 percent of the State of Tennessee's employers are currently required to report, Tennessee has saved over \$11.4 million in UIC benefits since 1981. With 100 percent of employers reporting, as required by PRWORA, Tennessee and Oklahoma should save significantly more in the future. To ensure a correct match, it is important to provide both a name and Social Security Number.

Deadline to report new hires

All newly hired employees must be reported to OESC within 20 days of being hired if an employer is reporting by mail or fax. Employers who report electronically must report at least twice monthly, within at least 20 days of an employee being hired. "Date started to work" is defined as the first day services are performed by the employee for a wage.

Forms used to report new hires

Employers are encouraged to report new hires by either submitting reports by electronic media or by mailing or faxing a copy of the OES-112, New Hire Reporting Form (<https://www.ok.gov/oesc/index.php?c=19>). OESC and CSED request that all reports be sent electronically if possible. The easiest method for reporting is the direct online data entry available for use by employers who have internet access. Employers who have no internet access may use their own computer payroll or accounting system to capture the required data needed for new hire reporting. The requirements for reporting electronically are specified in the Electronic Reporting Specification Document (<https://www.ok.gov/oesc/specs.html>).

If an employer has no way to report electronically, they may complete the OES-112, New Hire Reporting Form and fax or mail it to the New Hire Unit. If faxing or mailing the form, it is suggested that an employer complete one form with their Federal Employer Identification Number (FEIN), Oklahoma Employer Account Number, company name, payroll address and telephone number and then make several photocopies of this form. This way, an employer only needs to add employee specific information. Because not all legally required data is included on W-4 forms, it is not recommended that employers use W-4s for new hire reporting purposes.

Security of new hire data

Security and privacy of new hire data are important issues for all those involved in the implementation of this nationwide program. Oklahoma law requires safeguarding confidential information. All data will be sent from Oklahoma to the National New Hire Directory over secure and dedicated lines. Federal law requires that the Secretary of the Department of Health and Human Services establish and implement safeguards to protect the integrity and security of information in the National Directory of New Hires and to restrict access to and use of the information to authorized persons and purposes.

Submitting new hire data

New hire data may be submitted in a variety of ways.

- OESC recommends that businesses which have internet access use the convenient online new hire reporting system (<http://www.ok.gov/oesc>). Data is entered directly into the system for each employee and may be entered at the employer's convenience by entering as many or as few records at a time as desired.
- Businesses who currently have their own computerized personnel or accounting system in place and who gather all of the required data for their employees may wish to submit electronically. A file layout is provided at <http://www.ok.gov/oesc/specs.html>. Employers may create their file using the provided layout and submit the file through our online process or copy to magnetic tape or diskette according to the instructions and mail to the address below.
- Finally, businesses that have no internet access may wish to download our printed form to be filled in by hand and mailed or faxed to OESC. The blank form is available for printing in two formats. Information should be hand printed clearly and completely in pen on each form. Fax or mail to

Oklahoma New Hire Reporting Center
P.O. Box 52004
Oklahoma City, Oklahoma 73152-2004
Toll free fax: (800) 317-3786
Local fax: (405) 557-5350

New hire reporting for multi-state employers

Multi-state employers have two reporting options.

- Report newly hired employees to the state in which they are working, following the new hire regulations and requirements of each state to which the employer will report.
- Select one state where the employer has employees working and report all new hires to that state electronically or magnetically.

Multi-state employers that choose to report to one state

Employers may not report new hires using both multi-state and single-state methods. They must choose one or the other.

If an employer chooses to report new hire data on all employees to only one of the states in which they have a presence, they must comply with the following requirements.

- Notify the Secretary of Health and Human Services in writing, specifying which state the employer has designated as recipient of all their new hire information for their entire business.

The notification should be mailed to
Department of Health and Human Services
Multistate Employer Registration
Office of Child Support Enforcement
P.O. Box 509
Randallstown, MD 21133
(202) 401-9267

At a minimum, the employer should include the employer's name and address. The following optional information is also recommended.

- Federal Employer Identification Number (FEIN)
 - Employer phone number
 - States in which the company does business
 - Estimated number of new hires per year
 - Corporate point of contact for clarification of data
- Transmit all new hire information either magnetically or electronically in accordance with the designated state's requirements. An employer does not need to report the required elements from each state in which they have employees. Employers are only asked to report what is required by the state they have selected for reporting purposes.

Please note, however, that if an employer chooses to report to one state, the information may not be available to the employee's work state for purposes of detecting fraud in the unemployment insurance or workers' compensation programs.

Notification to states other than the one to which a multi-state employer chooses to report

The National Directory of New Hires (NDNH) will maintain a list of those multi-state employers that have elected to use single-state notification. The designated reporting locations of those employers will be made available to all states so they can be aware of where their state's new hires are being reported.

Additional information on new hire reporting

- If you have questions about new hire reporting, contact the New Hire Unit at (405) 557-7133, toll free at (800) 317-3785 or via e-mail at webmaster@oesc.state.ok.us.
- Questions regarding income assignments or other matters relating to Child Support should be directed to (405) 522-5871 or
Department of Human Services
Child Support Enforcement Division
P.O. Box 53552
Oklahoma City, OK 73152

Unemployment insurance and employers

Keeping unemployment insurance costs down

There are a number of strategies that employers can use to minimize costs associated with unemployment insurance.

- Protest all claims where the separation was due to a reason other than lack of work. Also protest a claim any time the claimant is given severance pay in accordance with company policy. There is no guarantee that a timely response will result in disqualification. However, since the employer must prove misconduct in a discharge case, failing to protest or provide information could easily result in the allowance of benefits. This is because the employer must prove misconduct connected with the work on discharge cases. If there is no employer information then misconduct will only be proven if the claimant gives self-disqualifying information.
- Have written policies and procedures. A claimant cannot be denied for failing to follow policy or procedure if they do not know what that policy or procedure is.
- Document everything. If a new policy is created, have all employees sign a receipt acknowledging they have been advised of the policy. If a verbal warning is given to an employee, document the fact that the warning was given. If the employee is given one final chance after an incident takes place, document the fact that if it occurs again the employee will be discharged.
- Keep all account information up to date. OESC sends notices to the addresses listed on an employer's Oklahoma account number. If the address information is not updated, and the notice goes to an incorrect address, the notice will not be re-mailed, and the employer will lose their right to be an interested party to any subsequent determinations. Questions regarding employer account information can be directed to (405) 557-7226. Please note that all change requests must be submitted in writing.
- Pay employer taxes on time. If taxes are not paid on time, the employer will only receive 90 percent of the FUTA credit.

The unemployment process

When an individual files a new claim for unemployment benefits, OESC notifies the last covered employer of 15 or more working days. When a claimant returns to work during their benefit year and is laid off or discharged from the new job, the claimant can re-open their current claim, even if the claimant wasn't employed for 15 working days. In this case, the employer is sent an OES-617, Notice of Application for Unemployment Benefits and is given 10 days from the mail date of the form to protest benefits. If the claimant is separated from employment for any reason other than lack of work, an investigation will be conducted, and a determination will be issued allowing or denying unemployment benefits in accordance with state law. The employer will only be an interested party to the determination if a timely, adequate response is received in accordance with Section 2-503 of the Oklahoma Employment Security Act. Employers who are not interested parties will not receive a copy of the determination and will not have appeal rights to any subsequent determinations.

Agency rules require that if OESC has not received a protest by the tenth day after the claim is filed, the agency must attempt to obtain separation information on all claims where the reason for separation was other than "lack of work." This is so OESC can give due process to all parties involved in the claim. If no response is received to the 10-day call, a determination will be issued based on the available information. Please note that responding to a 10-day call does not make an employer an interested party to any subsequent determinations. This means that if the claimant is allowed benefits, the employer will not receive the notice of determination or have appeal rights.

Upon payment of the fifth week of benefits, an OES-502, Notice of Benefit Wage Charge will be mailed to all base period employers. This gives the employers an opportunity to challenge the benefit wage charge (see Section 3-106, Oklahoma Employment Security Act). Response to an OES-502 will not make the employer an interested party to any previously adjudicated issues or re-open the separation issue for re-determination.

In addition, OESC also addresses such things as deductible pay (severance, retirement, pay in lieu of notice, holiday or vacation pay), ability to work, availability for work, failure to respond to requests or provide information, and untimely filing of benefits.

Protesting benefits

When an employer receives a notice of application, they will have 10 days from the postmark date of the notice to protest the claim. If the tenth day falls on a Saturday, Sunday or holiday, the employer will have until the next working day. If an employer does not protest by the tenth day, they will not be considered an interested party to any subsequent determinations.

When protesting claims, employers should provide specific facts regarding the separation. Protests that only say, "Discharged due to misconduct" fall short of providing useful information. OESC needs to know what caused the separation on that particular day, whether the claimant had received any warnings, and what the claimant should have done that could have prevented the separation. Failing to give specific information could cause an employer to lose their right to be an interested party to any subsequent determination.

Claims, notices and objections (Section 2-503, Oklahoma Employment Security Act)

- Claims for benefits shall be made in accordance with such rule as the Oklahoma Employment Security Commission may prescribe.
- Promptly after an initial claim or an additional initial claim is filed, OESC shall give written notice of the claim to the last employer of the claimant for whom he or she

worked at least 15 working days. Promptly after OESC is notified of the claimant's separation from an employment obtained by a claimant during a continued claim series, OESC shall give written notice of the claim to the last separating employer. Notices to separating employers during a continued claim series will be given to the last employer in the claim week without regard to the length of employment.

- Promptly after the claim is paid for the fifth week of benefits, OESC shall give written notice of the claim to all other employers of the claimant during the claimant's base period. The notice will be given pursuant to Section 3-106 of the Oklahoma Employment Security Act.
- Notices shall be deemed given when OESC deposits the same in the United States mail addressed to the employer's last known address. Notice shall be presumed prima facie to have been given to the employer to whom addressed on the date stated in the written notice.
- Within 10 days after the date on the notice or the date of the postmark on the envelope in which the notice was sent, whichever is later, an employer may file with OESC at the address prescribed in the notice written objections to the claim setting forth specifically the facts which
 - make the claimant ineligible for benefits under Sections 2-201 through 2-209 of the Oklahoma Employment Security Act
 - disqualify the claimant from benefits under Sections 2-401 through 2-418 of the Oklahoma Employment Security Act
 - relieve such employer from being charged for the benefits wages of such claimant.

Mailing protests

Protests should be mailed to
Oklahoma Employment Security Commission
P.O. Box 52006
Oklahoma City, OK 73152-2006

Faxing protests

Faxing protests is the quickest way to submit the protest. Protests to the initial claim filing can be faxed to (405) 962-7524. Please remember, once the protest is faxed, there is no need to mail it.

Appealing determinations

Employers can appeal any determination that they do not agree with. Appeals normally take three to four weeks, but due to the volume of claims that are being filed, some take

longer. Most appeals will be heard over the telephone. Employers are given a date and time to call a toll free number and are then connected to the hearing officer and the claimant, if the claimant is in attendance.

If an employer has witnesses that they want to attend the hearing, the employer must notify the Appeals Tribunal before the date of the hearing. It is best to do this prior to five days before the hearing. The same is true if an employer has additional information that they want to present at the appeal. Employers will only be allowed to introduce new evidence if the other party has an opportunity to see that evidence prior to the appeal or if the claimant agrees to let the employer present the evidence. Witnesses should have first-hand knowledge of the incident(s) in question. A home office manager that was not directly involved in a situation will not be allowed to present first-hand testimony on a particular situation. The same holds true for third-party representatives.

Appeals can be mailed, faxed or emailed.

Mail

OESC Mail Support
P.O. Box 52006
Oklahoma City, OK 73152-2006

Fax

(405) 962-7524

E-mail

Support@oesc.state.ok.us

When an employer files an appeal, they are mailed a booklet regarding appeal procedures and copies of all documents relating to the determination.

Burden of proof

When an individual is discharged, the burden of proof lies with the employer to show the discharge was for misconduct connected with the work. When an individual quits, the burden of proof lies with that individual to show good cause for quitting.

Non-separation issues

In addition to separation (quit and discharge) issues, there are also a variety of non-separation issues that may result in disqualification. The majority of these do not affect the employer because they are issues raised during the claims process. The employer will only be included as an interested party on issues pertaining to employment if a timely adequate response was received to the OES-617, Notice of Application for Unemployment Compensation.

Voluntary quit

Sections 2-404, 2-404.1 and 2-404.2 of the Oklahoma Employment Security Act deal with quitting. Sections 2-210 and 2-405 of the Act establish good cause for quitting.

Determining good cause (Section 2-405, Oklahoma Employment Security Act)

“Good cause” for voluntarily leaving work may include, among other factors, the following.

- A job working condition that had changed to such a degree it was so harmful, detrimental or adverse to the individual's health, safety or morals that leaving such work was justified.
- If the claimant, pursuant to an option provided under a collective bargaining agreement or written employer plan which permits waiver of his or her right to retain the employment when there is a layoff, has elected to be separated, and the employer has consented thereto.

Eligible separations, compelling family circumstances (Section 2-210, Oklahoma Employment Security Act)

In addition to the eligibility provisions provided by the Oklahoma Employment Security Act, an individual shall be eligible to receive unemployment benefits, if monetarily and otherwise eligible, if the claimant was separated from work due to compelling family circumstance. For purposes of this section, the following definitions apply.

- “Immediate family member” means the claimant’s spouse, parents and minor children.
- “Illness” means a verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant paid or unpaid leave.
- “Disability” means a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant paid or unpaid leave. Disability encompasses all types of disability, including
 - mental and physical disabilities
 - permanent and temporary disabilities
 - partial and total disabilities.
- "Compelling family circumstance" means
 - the claimant was separated from employment with the employer because the illness or disability of the claimant, and, based on available information, the Oklahoma Employment Security Commission finds that it was medically necessary for the claimant to stop working or change occupations

- the claimant was separated from work due to the illness or disability of an immediate family member
- the spouse of the claimant was transferred or obtained employment in another city or state, and the family is required to move to the location of that job that is outside of commuting distance from the prior employment of the claimant, and the claimant separates from employment in order to move to the new employment location of the spouse
- the claimant separated from employment due to domestic violence or abuse, verified by any reasonable and confidential documentation, which causes the individual to reasonably believe that the individual's continued employment would jeopardize the safety of the individual or of any member of the individual's immediate family
- the claimant separated from employment to move with the claimant's spouse to a new location, and the spouse of the claimant meets all of the following requirements:
 - a. was a member of the U.S. Military, the U.S. Military Reserve, or the National Guard
 - b. was on active duty within 90 days of the date of discharge
 - c. has a service-connected disability
 - d. was discharged under honorable conditions from the military service
 - e. takes up residence at a location more than 50 miles away from the claimant's former employer for the purpose of reentering civilian life.

The Oklahoma Employment Security Act also contains sections of law that deal with the specific issues of individuals working for temporary agencies (Section 2-404.1) and individuals who are hired for a specific duration of time (Section 2-404.2).

Employees working for temporary agencies (Section 2-404.1, Oklahoma Employment Security Act)

For the purposes of this section, the following definitions apply.

- "Temporary help firm" means a firm that hires its own employees and assigns them to clients to support or supplement the client's work force in work situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects.
- "Temporary employee" means an employee assigned to work for the clients of a temporary help firm.

A temporary employee of a temporary help firm will be deemed to have left his or her last work voluntarily without good cause connected with the work if the temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. A temporary employee will not be deemed to have left work voluntarily

without good cause connected with the work unless the temporary employee has been advised of the obligation to contact the temporary help firm on completion of assignments, and unemployment benefits may be denied for failure to do so.

For the purposes of the Oklahoma Employment Security Act, the temporary help firm is deemed to be the employer of the temporary employee. This means that regardless of the particular business requirement of the temporary agency, if the claimant contacts the temporary service upon the completion of an assignment, and no work is available, the claimant will be considered to be laid off due to a lack of work. OESC does not require that the claimant continue to contact the temporary service for a certain number of days.

In addition, the claimant must be made aware of the requirement to check in upon the completion of an assignment. The objective of the claimant is also considered.

Employees hired for a specific, limited duration of time (Section 2-404.2, Oklahoma Employment Security Act)

- When an employer employs a worker for a limited duration of time *specified by the employer*, the worker is considered to have been laid off due to lack of work at the end of the time period set by the employer, provided that the worker's separation was due only to the completion of the work or the expiration of the time period.
- When an employer employs a worker for a limited duration of time *specified by the worker*, the worker is considered to have voluntarily quit work at the end of the time period set by the worker, provided that the worker's separation was due only to the expiration of the time period.

This means that if the employee sets the dates of employment then, upon completion of the length of time specified by the employee, the employee is considered to have quit the job. If the employer sets the dates of employment then, upon completion of the length of time specified by the employer, the employee is considered to have been laid off due to a lack of work.

If the individual separates before the agreed upon last day of employment, then OESC looks at why the individual separated and makes a ruling upon the reason for separation.

Discharges (Section 2-406, Oklahoma Employment Security Act)

An individual shall be disqualified for benefits if he has been discharged for misconduct connected with his last work, if so found by OESC. Disqualification under this section of the Oklahoma Employment Security Act shall continue for the full period of unemployment next

ensuing after the individual has been discharged for misconduct connected with his work and until such individual has become re-employed and has earned wages equal to or in excess of 10 times his weekly benefit amount.

Discharge for refusal to undergo drug and alcohol testing (Section 2-406.1, Oklahoma Employment Security Act)

An employee discharged on the basis of a refusal to undergo drug or alcohol testing or a confirmed positive drug or alcohol test conducted in accordance with the provisions of the Standards for Workplace Drug and Alcohol Testing Act shall be considered to have been discharged for misconduct and shall be disqualified for benefits pursuant to provisions of Section 2-406 of the Oklahoma Employment Security Act. In any claim brought by the discharged employee for compensation, a copy of the drug or alcohol test shall be accepted as prima facie evidence of the administration and results of the drug or alcohol test.

Cases involving positive drug or alcohol tests (Section 2-406.1, Oklahoma Employment Security Act)

In order to establish that the drug or alcohol test of an unemployment insurance claimant was conducted in accordance with the Standards for Workplace Drug and Alcohol Testing Act, 40 O.S. §551 through 565, the employer must produce the following documentation.

- Documentation of a positive test result issued by the testing facility that performed the test
- Documentation of the chain of custody of the testing sample from the point of collection to the testing facility
- The medical review officer's certification of proper testing standards and procedures
- A statement concerning the circumstances, as set out in 40 O.S. §554, under which the testing was requested or required
- A copy of the employer's drug testing policy, as required by 40 O.S. §555
- Documentation showing that the employer provides an employee assistance program, as required by 40 O.S. §561
- Any evidence relevant to the adjudication of questions of fact or law regarding drug or alcohol testing that may be an issue in the claim for unemployment benefits

The claimant must be tested for a valid reason. Valid reasons include but are not limited to:

- testing of a new applicant.
- testing under reasonable suspicion
- post-accident testing
- random testing
- scheduled periodic testing

If an employer does not have an established drug testing policy that conforms to the Standards for Workplace Drug and Alcohol Testing Act, and that employer discharges someone for testing positive for drugs, the discharged individual cannot be disqualified from receiving unemployment insurance because of the positive drug test.

Deductible pay (Section 1-217, Oklahoma Employment Security Act)

Certain earnings, such as payments for severance and holidays, can be deducted from a claimant's unemployment benefit payments. Earnings are deductible the week in which they are received. OESC requires that all earnings be reported, but only earnings over \$100 are deducted. For example, if the claimant had \$115 in earnings, OESC would deduct only \$15 from the claimant's weekly benefit check.

Severance pay is only deductible if it was paid in accordance with company policy or regulation. If there is no policy or regulation, then it will not be deducted. Severance pay is only deductible during the week of receipt. For example, if a claimant receives a lump sum severance payment of \$10,000 on September 23, 2009, the payment is deductible only for week ending September 26, 2009. If the claimant receives payments on a continuing basis, such as every other week for eight weeks, the payment is deductible only during the weeks of receipt. In this situation, the claimant will have deductible severance the first week, none the second, deductible severance the third, none the fourth, and so on. Severance pay is also subject to the \$100 rule.

Vacation pay is only deductible if the claimant has a definite return to work date. Holiday pay is only deductible the week in which the holiday falls.

Able and available to work (Section 2-205, Oklahoma Employment Security Act)

The claimant must be able and available for work each week. Any individual who is able or available for work the majority of the week (three out of the five normal workdays) is considered able and available.

Retirement pay (Section 2-411, Oklahoma Employment Security Act)

Retirement pay is deductible only if the employer contributed 100 percent to the retirement account. Retirement pay is not subject to the \$100 rule. If paid in one lump

sum, retirement pay is deductible on the date of receipt. If paid on a continuing basis, the payments will be converted to a weekly amount by using 7/30 of the monthly award, and that amount will be deducted weekly. If the payment is rolled over in accordance with IRS regulations, no deduction will be made.

Unemployment benefits

Unemployment benefit compensation

Under the Oklahoma Employment Security Act, payments of money may be made under certain conditions to unemployed individuals from an unemployment compensation fund contributed by employers subject to the Act. These payments are known as unemployment benefit compensation.

Qualifying for unemployment benefits

In Oklahoma, a claimant can qualify for unemployment benefits if, during the claimant's base period, the claimant received wages from employers subject to the Oklahoma Employment Security Act amounting to:

- not less than \$1,500, and
- one and one-half times the amount of wages earned during the quarter of the base period in which such wages were highest.

However, any claimant with the maximum or more of taxable base period wages is eligible even if these wages were all in one quarter. After the beginning of a previous benefit year in which benefits were paid, a claimant's earnings must equal 10 times the weekly benefit amount in the new benefit year.

Base period

The base period is the first four of the last five completed calendar quarters immediately preceding the first day of a claimant's benefit year.

Benefit year

A benefit year is a period of one year that begins on Sunday of the week the claimant first files a valid claim.

Valid claim

A valid claim is a claim filed in accordance with the rules of the Oklahoma Employment Security Commission by a claimant who has the necessary qualifying wages.

Applying for unemployment benefits

An application for benefits can be made by telephone or over the internet. Once an initial claim is filed, an OES-617, Notice of Application for Unemployment is mailed to the last covered employer for whom the claimant worked at least 15 working days. The claimant must continue to file claims each week as directed by the Oklahoma Employment Security Commission. On each continued claim filed, the claimant must certify as to his/her eligibility to receive unemployment compensation.

Requirements for receiving unemployment benefits

In order to be eligible for unemployment benefits, a claimant must be all of the following.

- Separated from work or working less than full time
- Registered and diligently seeking work during each week in which he/she applies for benefits
- Able to work and available to perform work duties in keeping with education, training and experience

A claimant's self-employment cannot interfere with their availability for employment or the type of work they are seeking. In addition, all self-employment wages must be reported. The claimant cannot be working on a commission or receiving or seeking unemployment benefits from another state or the United States.

Maximum unemployment benefit amounts

The unemployment benefit amount is determined by the qualifying wages paid to a claimant during the claimant's base period. The benefit amounts are calculated each year. In Oklahoma, weekly payments range from a minimum of \$16 to the current year's maximum. Computation of the maximum benefit amount changes each year based on the conditional factor associated with the state's Unemployment Insurance trust fund. The number of weeks a claimant can receive unemployment benefits during his/her benefit year is limited to a maximum of 26 weeks.

Voluntary quits and unemployment benefits

A claimant who voluntarily leaves their last job without good cause connected to the work is subject to disqualification from benefits. The burden of proof for good cause connected to the work in a voluntary quit is on the claimant. For a claimant to establish benefits after a disqualification, they must be re-employed and earn wages equal to or in excess of 10 times their weekly benefit amount. However, there exist certain circumstances that are not work related that will result in allowance of benefits.

Discharge for misconduct and unemployment benefits

A claimant discharged from their last work for misconduct connected to the work is subject to disqualification for benefits. In cases of discharge for misconduct, the burden of proof to establish misconduct is on the employer. To lift the disqualification, the claimant must be re-employed and earn wages equal to or in excess of 10 times their weekly benefit amount.

Misconduct

Misconduct is defined as "an act or course of conduct evidencing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of the standard of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such a degree or recurrence to manifest equal culpability, wrongful intent or evil design, or to show an intentional or substantial disregard of the employer's interest or of the employee's duties and obligations to his employer." (*Vester v. Board of Review of the Oklahoma Employment Security Commission*)

Offers of suitable work

An individual is disqualified from receiving benefits if he/she fails to:

- diligently search for suitable employment at a pay rate generally available in that area and keeping with his/her prior experience, education and training
- apply for work with employers who could reasonably be expected to have work available within the claimant's general geographic area
- present himself/herself as an applicant in a manner designed to encourage consideration for employment
- accept an offer of work from an employer, including any former employer
- apply for or accept an offer of work when so directed by the Commission/Employment Service
- accept employment pursuant to a hiring hall agreement when so offered

Any individual violation of the first three stipulations is disqualified for the week in which the violation occurred. An individual in violation of the last three stipulations is disqualified for the week in which the violation occurred, and disqualification will continue until the individual becomes re-employed and has earned wages equal to or in excess of 10 times his/her weekly benefit amount. Any individual violating the last three requirements due to illness, death of a family member or other circumstances beyond his/her control will be disqualified for regular benefits under this section only for the week of the violation. Further, any individual disqualified for the week of the occurrence of such circumstances beyond his/her control is not eligible for extended benefits for the purposes of sections 2-701 through 2-724 of the Oklahoma Employment Security Act until

such individual has become re-employed and has earned wages equal to at least 10 times his/her weekly benefit amount.

Other conditions that can prevent a claimant from receiving unemployment benefits

An individual who ceases work due to a labor dispute or strike against their employer is ineligible for benefits if they participate in the dispute and voluntarily remain out of employment for purposes of the dispute. This applies to all circumstances except where the employer has locked out the employees. Labor dispute issues are sent to the Appeal Tribunal for decisions.

A claimant can also be denied benefits:

- in cases involving fraud or misrepresentation
- if the claimant is not able and/or available for work in keeping with their prior work experience, training and education
- between two successive seasons, if benefits are based on services performed as a professional athlete, and services were performed in the first season, and there is reasonable assurance the claimant will perform services in the second season
- if the claimant is an alien not lawfully permitted to work in the United States
- between two academic years or terms, if benefits are based on services performed as a school employee, and there is reasonable assurance that the claimant will perform such services in the second academic year or term. School employees are ineligible during customary vacation periods or holiday recesses if they have reasonable assurance of returning to work
- if the claimant is enrolled in scheduled school activities and is not willing to quit school, adjust their schedule or change shifts to secure employment.

Benefit payments will also be denied or reduced if the claimant receives any of the following payments or compensation.

- Dismissal and/or severance payments required by law or contract
- Unemployment benefits under an unemployment compensation law of another state or the U.S.
- Pension or retirement pay based on previous work, if such payment is under a plan maintained or contributed to by a base period employer
- Wages from partial employment
- Vacation and/or sick leave payments in a circumstance when required to return to work on a specific date or at the end of a specific vacation

Employer notification

In accordance with Section 2-503 of the Oklahoma Employment Security Act, the last employer for whom the claimant worked at least 15 working days is notified when the claimant begins receiving unemployment benefits. An OES-617, Notice of Application for Unemployment Compensation is mailed to the separation employer. One important factor to protect an employer is for the employer to respond to all notices in a timely manner with complete information. Appeal rights are based on written responses.

Protesting the payment of an unemployment claim

Many employers may not be aware of the requirements of responding to notices of unemployment claims. This section addresses specifically Section 2-503(E) of the Oklahoma Employment Security Act, which states as follows:

- E. Within ten (10) days after the date on the notice or the date of the postmark on the envelope in which the notice was sent, whichever is later, an employer may file with the Commission at the address prescribed in the notice written objections to the claim setting forth specific facts which
1. make the claimant ineligible for benefits under Section 2-201 through 2-209 of this title;
 2. disqualify the claimant from benefits under Section 2-401 through 2-418 of this title; or
 3. relieve such employer from being charged for the benefits wages of such claimant.

If an employer protests with inadequate information, they will receive a decision in the mail stating that their protest has been received, but there is inadequate information surrounding the separation to make the employer an interested party. As a result, the employer will not receive a copy of the separation determination and will not have appeal rights if they believe the claim is allowed in error.

After receiving an OES-617, Notice of Application for Unemployment Compensation, an employer can file a protest if any reason exists showing the claimant should be denied benefits. A written reply must be postmarked within 10 days of the date the OES-617, Notice of Application for Unemployment Compensation was mailed. If an employer does not reply within 10 days, they may be contacted for information on job separation and other subjects. Being contacted does not mean an employer is considered an interested party.

If the claimant voluntarily left work or was discharged by the employer, the employer's protest should include full and complete facts. In case of a voluntary quit, the reason the individual gave for leaving should be included as well as an explanation as to why the employer does not think the reason was justified. In case of a discharge for misconduct, an employer should explain the nature of the misconduct in detail.

Reply to an employer's protest

When an employer's timely protest is received that complies with Section 2-503 of the Oklahoma Employment Security Act, the employer becomes an interested party to the claim and will be mailed a Notice of Determination in regard to the claim. This determination is furnished on the Notice of Determination. If the claimant does not have sufficient wages within their base period to qualify for unemployment compensation, the employer will be notified by letter.

Appealing a determination

The employer or the claimant may file an appeal if either party disagrees with the determination. The appeal must be in writing and postmarked or faxed within 10 days from the date the determination was mailed. If no appeal is filed within the 10-day period, the determination becomes final, and benefit payments will be made or denied based on the determination.

Once an appeal is filed

When an appeal is received from either the claimant or the employer, the Appeal Tribunal schedules a hearing and notifies all interested parties of the time and place of the hearing. Testimony in these hearings is under oath and recorded. An Administrative Hearing Officer considers the record and renders a decision. Copies of the decision are mailed to all interested parties. Further appeal of this decision may be made to the Board of Review within 10 days from the date of the decision was mailed. After the opinion of the Board of Review is issued, further appeal may be made within 10 days to the district court having jurisdiction.

Contact information

OKLAHOMA EMPLOYMENT SECURITY COMMISSION

P.O. Box 52003
Oklahoma City OK 73152
Phone: (405) 557-7200
Web: <http://oesc.ok.gov>

UNEMPLOYMENT INSURANCE

Employer Contribution Unit

EZ TAX EXPRESS Help desk	(405) 557-5452
EMPLOYER ASSISTED CLAIMS Partials and mass layoff	(405) 962-7584
CONTRIBUTIONS Employer appeals of tax issues	(405) 557-7131
STATUS New employers, address changes	(405) 557-7226
RATES Employer contribution rates	(405) 557-7222
TAX COMPLIANCE Quarterly reports, payments, amended reports, Notice of Non-receipt, FUTA certifications	(405) 557-5331
COLLECTIONS Tax warrant releases, payment plans, interest/penalty waivers	(405) 557-7253
WAGE CHARGE Notice of Benefit Wages, wage objections, recall credit	(405) 557-7140
TAX ENFORCEMENT	(405) 557-5477
OKLAHOMA JOBLINK Post jobs, find qualified workers, research career info, get help with job openings and much more!	www.oklahomajoblink.com