

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 13

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2020

INTRODUCED BY

Clemente Sanchez

AN ACT

RELATING TO UNEMPLOYMENT; OMITTING DATA FROM JANUARY 1, 2020 THROUGH DECEMBER 31, 2021 FROM THE CALCULATIONS OF EMPLOYER CONTRIBUTIONS TO THE UNEMPLOYMENT COMPENSATION FUND, EXCESS CLAIMS PREMIUMS AND EXCESS CLAIMS RATES; USING THE 2019 COMPUTATION DATE RESERVE FACTOR FROM JANUARY 1, 2020 THROUGH DECEMBER 31, 2021; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 51-1-11 NMSA 1978 (being Laws 2013, Chapter 133, Section 3, as amended) is amended to read:

"51-1-11. EMPLOYER CONTRIBUTION RATES--BENEFITS CHARGEABLE--UNEMPLOYMENT COMPENSATION FUND ADEQUATE RESERVE--RESERVE FACTOR--EXCESS CLAIMS PREMIUM--DEFINITIONS.--

A. Benefits paid to an individual shall be charged to the individual's base-period employers on a pro rata basis

.217984.1

underscoring material = new
~~[bracketed material] = delete~~

1 according to the proportion of the individual's total base-
2 period wages received from each employer, except that no
3 benefits paid to a claimant as extended benefits under the
4 provisions of Section 51-1-48 NMSA 1978 shall be charged to any
5 base-period employer who is not on a reimbursable basis and who
6 is not a governmental entity and, except as the secretary shall
7 by rule prescribe otherwise, in the case of benefits paid to an
8 individual who:

9 (1) left the employ of a base-period employer
10 who is not on a reimbursable basis voluntarily without good
11 cause in connection with the individual's employment;

12 (2) was discharged from the employment of a
13 base-period employer who is not on a reimbursable basis for
14 misconduct connected with the individual's employment;

15 (3) is employed part time by a base-period
16 employer who is not on a reimbursable basis and who continues
17 to furnish the individual the same part-time work while the
18 individual is separated from full-time work for a
19 nondisqualifying reason; or

20 (4) received benefits based upon wages earned
21 from a base-period employer who is not on a reimbursable basis
22 while attending approved training under the provisions of
23 Subsection E of Section 51-1-5 NMSA 1978.

24 B. The division shall not charge a contributing or
25 reimbursing base-period employer with any portion of benefit

.217984.1

underscoring material = new
~~[bracketed material] = delete~~

1 amounts that the division can bill to or recover from the
2 federal government as either regular or extended benefits.

3 C. The division shall not charge a contributing
4 base-period employer with any portion of benefits paid to an
5 individual for dependent allowance or because the individual to
6 whom benefits are paid:

7 (1) separated from employment due to domestic
8 abuse, as "domestic abuse" is defined in Section 40-13-2 NMSA
9 1978; or

10 (2) voluntarily left work to relocate because
11 of a spouse, who is in the military service of the United
12 States or the New Mexico national guard, receiving permanent
13 change of station orders, activation orders or unit deployment
14 orders.

15 D. All contributions to the fund shall be pooled
16 and available to pay benefits to any individual entitled
17 thereto, irrespective of the source of the contributions.

18 E. In the case of a transfer of an employing
19 enterprise, notwithstanding any other provision of law, the
20 experience history of the transferred enterprise shall be
21 transferred from the predecessor employer to the successor
22 under the following conditions and in accordance with the
23 applicable rules of the secretary:

24 (1) except as otherwise provided in this
25 subsection, for the purpose of this subsection, two or more

.217984.1

underscoring material = new
~~[bracketed material] = delete~~

1 employers who are parties to or the subject of any transaction
2 involving the transfer of an employing enterprise shall be
3 deemed to be a single employer and the experience history of
4 the employing enterprise shall be transferred to the successor
5 employer if the successor employer has acquired by the
6 transaction all of the business enterprises of the predecessor;
7 provided that:

8 (a) all contributions, interest and
9 penalties due from the predecessor employer have been paid;

10 (b) notice of the transfer has been
11 given in accordance with the rules of the secretary during the
12 calendar year of the transaction transferring the employing
13 enterprise or the date of the actual transfer of control and
14 operation of the employing enterprise;

15 (c) the successor shall notify the
16 division of the acquisition on or before the due date of the
17 successor's first wage and contribution report. If the
18 successor employer fails to notify the division of the
19 acquisition within this time limit, the division, when it
20 receives actual notice, shall effect the transfer of the
21 experience history and applicable rate of contribution
22 retroactively to the date of the acquisition, and the successor
23 shall pay a penalty of fifty dollars (\$50.00); and

24 (d) where the transaction involves only
25 a merger, consolidation or other form of reorganization without

.217984.1

underscoring material = new
~~[bracketed material] = delete~~

1 a substantial change in the ownership and controlling interest
2 of the business entity, as determined by the secretary, the
3 limitations on transfers stated in Subparagraphs (a), (b) and
4 (c) of this paragraph shall not apply. A party to a merger,
5 consolidation or other form of reorganization described in this
6 subparagraph shall not be relieved of liability for any
7 contributions, interest or penalties due and owing from the
8 employing enterprise at the time of the merger, consolidation
9 or other form of reorganization;

10 (2) the applicable experience history may be
11 transferred to the successor in the case of a partial transfer
12 of an employing enterprise if the successor has acquired one or
13 more of the several employing enterprises of a predecessor but
14 not all of the employing enterprises of the predecessor and
15 each employing enterprise so acquired was operated by the
16 predecessor as a separate store, factory, shop or other
17 separate employing enterprise and the predecessor, throughout
18 the entire period of the contribution with liability applicable
19 to each enterprise transferred, has maintained and preserved
20 payroll records that, together with records of contribution
21 liability and benefit chargeability, can be separated by the
22 parties from the enterprises retained by the predecessor to the
23 satisfaction of the secretary or the secretary's delegate. A
24 partial experience history transfer will be made only if the
25 successor:

.217984.1

underscoring material = new
~~[bracketed material] = delete~~

1 (a) notifies the division of the
2 acquisition, in writing, not later than the due date of the
3 successor's first quarterly wage and contribution report after
4 the effective date of the acquisition;

5 (b) files an application provided by the
6 division that contains the endorsement of the predecessor
7 within thirty days from the delivery or mailing of such
8 application by the division to the successor's last known
9 address; and

10 (c) files with the application a form
11 with a schedule of the name and social security number of and
12 the wages paid to and the contributions paid for each employee
13 for the three and one-half-year period preceding the
14 computation date through the date of transfer or such lesser
15 period as the enterprises transferred may have been in
16 operation. The application and form shall be supported by the
17 predecessor's permanent employment records, which shall be
18 available for audit by the division. The application and form
19 shall be reviewed by the division and, upon approval, the
20 percentage of the predecessor's experience history attributable
21 to the enterprises transferred shall be transferred to the
22 successor. The percentage shall be obtained by dividing the
23 taxable payrolls of the transferred enterprises for such three
24 and one-half-year period preceding the date of computation or
25 such lesser period as the enterprises transferred may have been

.217984.1

underscoring material = new
~~[bracketed material] = delete~~

1 in operation by the predecessor's entire payroll;

2 (3) if, at the time of a transfer of an
3 employing enterprise in whole or in part, both the predecessor
4 and the successor are under common ownership, then the
5 experience history attributable to the transferred business
6 shall also be transferred to and combined with the experience
7 history attributable to the successor employer. The rates of
8 both employers shall be recalculated and made effective
9 immediately upon the date of the transfer;

10 (4) whenever a person, who is not currently an
11 employer, acquires the trade or business of an employing
12 enterprise, the experience history of the acquired business
13 shall not be transferred to the successor if the secretary or
14 the secretary's designee finds that the successor acquired the
15 business solely or primarily for the purpose of obtaining a
16 lower rate of contributions. Instead, the successor shall be
17 assigned the applicable new employer rate pursuant to this
18 section. In determining whether the business was acquired
19 solely or primarily for the purpose of obtaining a lower rate
20 of contribution, the secretary or the secretary's designee
21 shall consider:

- 22 (a) the cost of acquiring the business;
23 (b) whether the person continued the
24 business enterprise of the acquired business;
25 (c) how long such business enterprise

.217984.1

underscoring material = new
~~[bracketed material] = delete~~

1 was continued; and

2 (d) whether a substantial number of new
3 employees was hired for performance of duties unrelated to
4 those that the business activity conducted prior to
5 acquisition;

6 (5) if, following a transfer of experience
7 history pursuant to this subsection, the department determines
8 that a substantial purpose of the transfer of the employing
9 enterprise was to obtain a reduced liability for contributions,
10 then the experience rating accounts of the employers involved
11 shall be combined into a single account and a single rate
12 assigned to the combined account;

13 (6) the secretary shall adopt such rules as
14 are necessary to interpret and carry out the provisions of this
15 subsection, including rules that:

16 (a) describe how experience history is
17 to be transferred; and

18 (b) establish procedures to identify the
19 type of transfer or acquisition of an employing enterprise; and

20 (7) a person who knowingly violates or
21 attempts to violate a rule adopted pursuant to Paragraph (6) of
22 this subsection, who transfers or acquires, or attempts to
23 transfer or acquire, an employing enterprise for the sole or
24 primary purpose of obtaining a reduced liability for
25 contributions or who knowingly advises another person to

.217984.1

underscored material = new
[bracketed material] = delete

1 violate a rule adopted pursuant to Paragraph (6) of this
2 subsection or to transfer or acquire an employing enterprise
3 for the sole or primary purpose of obtaining a reduced
4 liability for contributions is guilty of a misdemeanor and
5 shall be punished by a fine of not less than one thousand five
6 hundred dollars (\$1,500) or more than three thousand dollars
7 (\$3,000) or, if an individual, by imprisonment for a definite
8 term not to exceed ninety days or both. In addition, such a
9 person shall be subject to the following civil penalty imposed
10 by the secretary:

11 (a) if the person is an employer, the
12 person shall be assigned the highest contribution rate
13 established by the provisions of this section for the calendar
14 year in which the violation occurs and the three subsequent
15 calendar years; provided that, if the difference between the
16 increased penalty rate and the rate otherwise applicable would
17 be less than two percent of the employer's payroll, the
18 contribution rate shall be increased by two percent of the
19 employer's payroll for the calendar year in which the violation
20 occurs and the three subsequent calendar years; or

21 (b) if the person is not an employer,
22 the secretary may impose a civil penalty not to exceed three
23 thousand dollars (\$3,000).

24 F. Except as provided in Subsection Q of this
25 section, for each calendar year, if, as of the computation date

.217984.1

underscored material = new
[bracketed material] = delete

1 for that year, an employer has been a contributing employer
2 throughout the preceding twenty-four months, the contribution
3 rate for that employer shall be determined by multiplying the
4 employer's benefit ratio by the reserve factor as determined
5 pursuant to Subsection H of this section and, for each calendar
6 year beginning in calendar year 2017, then multiplying that
7 product by the employer's experience history factor as
8 determined under Subsection I of this section; provided that an
9 employer's contribution rate shall not be less than thirty-
10 three hundredths percent or more than five and four-tenths
11 percent. An employer's benefit ratio is determined by dividing
12 the employer's benefit charges during the immediately preceding
13 fiscal years, up to a maximum of three fiscal years, by the
14 total of the annual payrolls of the same time period,
15 calculated to four decimal places, disregarding any remaining
16 fraction.

17 G. Except as provided in Subsection Q of this
18 section, for each calendar year, if, as of the computation date
19 of that year, an employer has been a contributing employer for
20 less than twenty-four months, the contribution rate for that
21 employer shall be the average of the contribution rates for all
22 contributing employers in the employer's industry, as
23 determined by administrative rule, but shall not be less than
24 one percent or more than five and four-tenths percent; provided
25 that an individual, type of organization or employing unit that

.217984.1

underscored material = new
[bracketed material] = delete

1 acquires all or part of the trade or business of another
2 employing unit, pursuant to Paragraphs (2) and (3) of
3 Subsection E of Section 51-1-42 NMSA 1978, that has a rate of
4 contribution less than average of the contribution rates for
5 all contributing employers in the employer's industry, shall be
6 entitled to the transfer of the contribution rate of the other
7 employing unit to the extent permitted under Subsection E of
8 this section.

9 H. The division shall ensure that the fund sustains
10 an adequate reserve. An adequate reserve shall be determined
11 to mean that the funds in the fund available for benefits equal
12 the total amount of funds needed to pay between eighteen and
13 twenty-four months of benefits at the average of the five
14 highest years of benefits paid in the last twenty-five years.
15 Except as provided in Subsection Q of this section, for the
16 purpose of sustaining an adequate reserve, the division shall
17 determine a reserve factor to be used when calculating an
18 employer's contribution rate pursuant to Subsection F of this
19 section by rule promulgated by the secretary. Except as
20 provided in Subsection Q of this section, the rules shall set
21 forth a formula that will set the reserve factor in proportion
22 to the difference between the amount of funds available for
23 benefits in the fund, as of the computation date, and the
24 adequate reserve, within the following guidelines:

25 (1) 1.0000 if, as of the computation date,
.217984.1

underscored material = new
[bracketed material] = delete

1 there is an adequate reserve;

2 (2) between 0.5000 and 0.9999 if, as of the
3 computation date, there is greater than an adequate reserve;
4 and

5 (3) between 1.0001 and 4.0000 if, as of the
6 computation date, there is less than an adequate reserve.

7 I. Except as provided in Subsection Q of this
8 section, for each calendar year beginning in calendar year
9 2017, if, as of the computation date for that calendar year, an
10 employer has been a contributing employer throughout the
11 preceding twenty-four months, the employer's experience history
12 factor shall be determined as of the computation date and shall
13 be based on the employer's reserve. The employer's reserve
14 shall be calculated as the difference between all of the
15 employer's previous years' contribution payments and all of the
16 employer's previous years' benefit charges, divided by the
17 average of the employer's annual payrolls for the immediately
18 preceding fiscal years, up to a maximum of three fiscal years.

19 If an employer's reserve is:	The employer's experience 20 history factor is:
21 6.0% and over	0.4000
22 5.0%-5.9%	0.5000
23 4.0%-4.9%	0.6000
24 3.0%-3.9%	0.7000
25 2.0%-2.9%	0.8000

.217984.1

underscoring material = new
[bracketed material] = delete

1 1.0%-1.9% 0.9000
2 0.0%-0.9% 0.9500
3 Under 0.0% 1.0000.

4 J. Except as provided in Subsection Q of this
5 section, if an employer's contribution rate pursuant to
6 Subsection F of this section is calculated to be greater than
7 five and four-tenths percent, notwithstanding the limitation
8 pursuant to Subsection F of this section, the employer shall be
9 charged an excess claims premium in addition to the
10 contribution rate applicable to the employer; provided that an
11 employer's excess claims premium shall not exceed one percent
12 of the employer's annual payroll. The excess claims premium
13 shall be determined by multiplying the employer's excess claims
14 rate by the employer's annual payroll. An employer's excess
15 claims rate shall be determined by multiplying the difference
16 of the employer's contribution rate, notwithstanding the
17 limitation pursuant to Subsection F of this section, less five
18 and four-tenths percent by ten percent.

19 K. Effective calendar year 2017, any other
20 provision of law notwithstanding, an employer's contribution
21 rate plus the employer's excess claims rate, if any, shall
22 increase by no more than two percentage points from one
23 calendar year to the next.

24 L. Except as provided in Subsection Q of this
25 section, the division shall promptly notify each employer of

.217984.1

underscoring material = new
~~[bracketed material] = delete~~

1 the employer's rate of contributions and excess claims premium
2 as determined for any calendar year pursuant to this section.
3 Such notification shall include the amount determined as the
4 employer's annual payroll, the total of all of the employer's
5 contributions paid on the employer's behalf for all past years
6 and total benefits charged to the employer for all such years.
7 Such determination shall become conclusive and binding upon the
8 employer unless, within thirty days after the mailing of notice
9 thereof to the employer's last known address or in the absence
10 of mailing, within thirty days after the delivery of such
11 notice, the employer files an application for review and
12 redetermination, setting forth the employer's reason therefor.
13 The employer shall be granted an opportunity for a fair hearing
14 in accordance with rules prescribed by the secretary, but an
15 employer shall not have standing, in any proceeding involving
16 the employer's rate of contributions or contribution liability,
17 to contest the chargeability to the employer of any benefits
18 paid in accordance with a determination, redetermination or
19 decision pursuant to Section 51-1-8 NMSA 1978, except upon the
20 ground that the services on the basis of which such benefits
21 were found to be chargeable did not constitute services
22 performed in employment for the employer and only in the event
23 that the employer was not a party to such determination,
24 redetermination or decision, or to any other proceedings under
25 the Unemployment Compensation Law in which the character of

.217984.1

underscoring material = new
~~[bracketed material] = delete~~

1 such services was determined. The employer shall be promptly
2 notified of the decision on the employer's application for
3 redetermination, which shall become final unless, within
4 fifteen days after the mailing of notice thereof to the
5 employer's last known address or in the absence of mailing,
6 within fifteen days after the delivery of such notice, further
7 appeal is initiated pursuant to Subsection D of Section 51-1-8
8 NMSA 1978.

9 M. The division shall provide each contributing
10 employer, within ninety days of the end of each calendar
11 quarter, a written determination of benefits chargeable to the
12 employer. Such determination shall become conclusive and
13 binding upon the employer for all purposes unless, within
14 thirty days after the mailing of the determination to the
15 employer's last known address or in the absence of mailing,
16 within thirty days after the delivery of such determination,
17 the employer files an application for review and
18 redetermination, setting forth the employer's reason therefor.
19 The employer shall be granted an opportunity for a fair hearing
20 in accordance with rules prescribed by the secretary, but an
21 employer shall not have standing in any proceeding involving
22 the employer's contribution liability to contest the
23 chargeability to the employer of any benefits paid in
24 accordance with a determination, redetermination or decision
25 pursuant to Section 51-1-8 NMSA 1978, except upon the ground

.217984.1

underscoring material = new
~~[bracketed material] = delete~~

1 that the services on the basis of which such benefits were
2 found to be chargeable did not constitute services performed in
3 employment for the employer and only in the event that the
4 employer was not a party to such determination, redetermination
5 or decision, or to any other proceedings under the Unemployment
6 Compensation Law in which the character of such services was
7 determined. The employer shall be promptly notified of the
8 decision on the employer's application for redetermination,
9 which shall become final unless, within fifteen days after the
10 mailing of notice thereof to the employer's last known address
11 or in the absence of mailing, within fifteen days after the
12 delivery of such notice, further appeal is initiated pursuant
13 to Subsection D of Section 51-1-8 NMSA 1978.

14 N. The contributions and excess claims premiums,
15 together with interest and penalties thereon imposed by the
16 Unemployment Compensation Law, shall not be assessed nor shall
17 action to collect the same be commenced more than four years
18 after a report showing the amount of the contributions was due.
19 In the case of a false or fraudulent contribution report with
20 intent to evade contributions or a willful failure to file a
21 report of all contributions due, the contributions and excess
22 claims premiums, together with interest and penalties thereon,
23 may be assessed or an action to collect such contributions may
24 be begun at any time. Before the expiration of such period of
25 limitation, the employer and the secretary may agree in writing

.217984.1

underscored material = new
[bracketed material] = delete

1 to an extension thereof and the period so agreed on may be
2 extended by subsequent agreements in writing. In any case
3 where the assessment has been made and action to collect has
4 been commenced within four years of the due date of any
5 contribution, excess claims premium, interest or penalty,
6 including the filing of a warrant of lien by the secretary
7 pursuant to Section 51-1-36 NMSA 1978, such action shall not be
8 subject to any period of limitation.

9 O. The secretary shall correct any error in the
10 determination of an employer's rate of contribution during the
11 calendar year to which the erroneous rate applies,
12 notwithstanding that notification of the employer's rate of
13 contribution may have been issued and contributions paid
14 pursuant to the notification. Upon issuance by the division of
15 a corrected rate of contribution, the employer shall have the
16 same rights to review and redetermination as provided in
17 Subsection L of this section.

18 P. Any interest required to be paid on advances to
19 this state's unemployment compensation fund under Title 12 of
20 the Social Security Act shall be paid in a timely manner as
21 required under Section 1202 of Title 12 of the Social Security
22 Act and shall not be paid, directly or indirectly, by the state
23 from amounts in the state's unemployment compensation fund.

24 Q. The secretary shall omit data for January 1,
25 2020 through December 31, 2021 from calculations of an

.217984.1

1 employing enterprise's experience history, excess claims
2 premiums and excess claims rates. The secretary shall use the
3 2019 computation date reserve factor from January 1, 2020
4 through December 31, 2021.

5 [Q-] R. As used in this section:

6 (1) "annual payroll" means the total taxable
7 amount of remuneration from an employer for employment during a
8 twelve-month period ending on a computation date;

9 (2) "base-period employers" means the
10 employers of an individual during the individual's base period;

11 (3) "base-period wages" means the wages of an
12 individual for insured work during the individual's base period
13 on the basis of which the individual's benefit rights were
14 determined;

15 (4) "common ownership" means that two or more
16 businesses are substantially owned, managed or controlled by
17 the same person or persons;

18 (5) "computation date" for each calendar year
19 means the close of business on June 30 of the preceding
20 calendar year;

21 (6) "employing enterprise" means a business
22 activity engaged in by a contributing employing unit in which
23 one or more persons have been employed within the current or
24 the three preceding calendar quarters. An "employing
25 enterprise" includes the employer's [~~work force~~] workforce;

.217984.1

underscoring material = new
~~[bracketed material] = delete~~

1 (7) "experience history" means the benefit
2 charges and payroll experience of the employing enterprise;

3 (8) "knowingly" means having actual knowledge
4 of or acting with deliberate ignorance of or reckless disregard
5 for the prohibition involved;

6 (9) "predecessor" means the owner and operator
7 of an employing enterprise immediately prior to the transfer of
8 such enterprise;

9 (10) "successor" means any person that
10 acquires an employing enterprise and continues to operate such
11 business entity; and

12 (11) "violates or attempts to violate"
13 includes an intent to evade, a misrepresentation or a willful
14 nondisclosure."

15 SECTION 2. EMERGENCY.--It is necessary for the public
16 peace, health and safety that this act take effect immediately.