

Labor & Workforce Development

A quarterly publication for employers from the Tennessee Department of Labor & Workforce Development

June 2005

Legislation provides penalties for SUTA dumping violators, ensures fairer rates for all employers

SUTA (State Unemployment Tax Act) dumping is a scheme perpetrated by some companies and accounting firms to avoid an employer's fair share of unemployment insurance taxes by moving employees from company to company to avoid paying unemployment insurance premiums at their true rate and to fraudulently acquire a lower rate.

Law-abiding employers get hurt by SUTA dumping because when every employer does not pay his fair share of premiums, all other employers have to cover their unemployment insurance costs in the form of higher rates. Honest employers can be put at a competitive disadvantage in marketing their products and services and also find themselves with fewer funds available to expand their businesses.

The department is currently investigating cases and to date has collected \$1.4 million from offending employers. We expect to find millions of dollars more in underpaid premiums once advanced detection and prevention programs are put in place. The US Department of Labor estimates that SUTA dumping costs states' trust funds more than \$1 billion a year in lost revenue!

SUTA dumping has always been contrary to the law, but the 2005 Tennessee legislation, mandated by the Federal SUTA Dumping Prevention Act of 2004, strengthens our existing law and provides for increased efforts for the prevention and detection of SUTA dumping. It also provides penalties sufficiently severe to discourage employers who

might be tempted to manipulate their premium rates.

The new law's provisions will become effective January 1, 2006, and will be enforced against all employers and individuals who are found to be involved in the practice of SUTA dumping.

When the Department discovers an employer has engaged in a form of SUTA dumping, the following will occur:

- **Both the predecessor and successor employers** will be assigned the actual applicable premium rate, effective back to the first quarter of violation, and will immediately owe the difference between the premiums determined to be due at the applicable premium rate and the premiums previously paid plus all interest owed on the difference.
- **Both the predecessor and the successor** will be subject to a 2% penalty rate, as explained below, and
- **Persons involved will be subject to a Class A misdemeanor** with a maximum sentence of 11 months, 29 days imprisonment and a maximum fine of \$2,500.
- **In addition, any person who advises others to violate the law**, or who violates the law but is not an employer against whom the 2% penalty rate can be levied, is subject to Class A misdemeanor charge plus a civil monetary penalty of up to \$50,000.

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Useful tax tips

- **Some employers choose to continue to make payments to an employee who has been called to active military service.** For example, "military differential pay" can boost the soldier-employee's total income up to his pre-active duty level by supplementing the earnings he receives from the military. Such payments to an employee called to active duty do not constitute reportable wages for unemployment insurance purposes. The employment relationship between the employee and the company was terminated when the worker was called for active military service; therefore, any payments made by the employer to the former employee while he or she is in military service are not "wages" for services performed in "employment" and are not reportable for unemployment insurance purposes.
- **When preparing your quarterly premium report, remember that premiums are paid on only the first \$7,000 paid to each employee each calendar year.** Wages in excess of the \$7,000 taxable wage base (Excess Wages) are entered on line 2 of your report and deducted from line 1 (Total Wages) to arrive at Net Taxable Wages on line 3.
- **Annual Premium Rate Notices will be sent out at the end of August.** The notice will provide you with your premium rate effective July 1, 2005, along with a record of your employer account's experience record (premiums paid, benefits charged, average taxable

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Tax tips (Cont.)

wages, reserve ratio) through December 31, 2004. You will also be informed which Premium Rate Table will be in effect. While it is still too early to accurately predict which table we will be on, we remain optimistic we will be moving to a lower rate table come July 1.

SUTA dumping (Cont.)

The 2% penalty rate for a SUTA dumping violation is levied on the first \$7,000 paid to each employee during a calendar year. Both the successor employer and the predecessor employer will be subject to this penalty. The 2% penalty rate will apply to each quarter starting with the quarter in which the SUTA dumping infraction first took place and continue through the three premium rate years following the first July 1 after the date on which the Department made the determination of the infraction.

Example: If the infraction began January 1, 2004, but was not discovered until January 1, 2006, the 2% penalty rate would take effect beginning January 1, 2004, and apply to all four quarters of 2004 and 2005 and the first two quarters of 2006. Then, beginning July 1, 2006, it would continue to apply to the four quarters of the rate year ending June 30, 2007, the four quarters of the rate year ending June 30, 2008, and the four quarters of the rate year ending June 30, 2009, for a total of twenty-two quarters.

The 2% penalty will be in addition to the employer's premium rate, and the penalty payments will not be included as credit for premiums paid when calculating the employer's rate. Employers who suspect that they have been involved in a SUTA dumping scheme can avoid the 2% penalty - and the possibility of criminal punishment -

by voluntarily coming forward before the January 1, 2006, effective date of the law. To make arrangements to bring your account into compliance or to inquire about possible SUTA dumping activity, call (615) 741-2346.

Update of Online Services

TNPAWS sets new record of use

Thousands of employers are enjoying the convenience of filing their quarterly wage and premium reports via our Internet-based TNPAWS system. In fact, a record number of Tennessee employers used TNPAWS to file their reports for the first quarter 2005. One of the reasons for the record usage is the fact that reimbursing employers can now use TNPAWS to file their quarterly reports. If you are not already doing so, go to <http://tnpaws.tnui.net> and see for yourself how easy it is to file on-line.

Separation Notice can now be completed online

You can also now complete a Separation Notice (LB-0489) online by going to our website at www.tn.gov/labor-wfd. Just click FORMS on the blue bar across the top of the page, select UNEMPLOYMENT INSURANCE FORMS – Employers, and choose Separation Notice. You can then enter the separation information on-screen and print the form. As an employer, you are required to give every employee a Separation Notice within 24 hours of his employment being terminated or whenever an employee is separated from your employment for seven days or more. The employee will be asked to submit his copy to the Department of Labor & Workforce Development when filing a claim for benefits. There is no need to

send a copy of the notice to the department, but we encourage you to keep a copy for your files.

Employment poster alert

As an employer, you may have received misleading notices in the mail advising you to update the employment posters that you are required by law to post. These notices frequently have “regulatory posting alert” or “final notice for compliance” or a similar heading, and then offer to sell you the required set of posters. We want you to know that **all required posters** are available in PDF format for downloading from the Tennessee Department of Labor & Workforce Development Web site at www.tn.gov/labor-wfd. **The department charges no fee for providing these required posters.** The date each poster has been revised is found on the site, right after the poster title. Directly below the state poster listing is a link to the required federal (U.S. Department of Labor) posters, which can also be downloaded free.

Note about USERRA poster: The Uniformed Services Employment and Reemployment Rights Act (USERRA) poster is among the required posters available at the U.S. Department of Labor poster link mentioned above. The USERRA protects the civilian job rights of individuals who voluntarily or involuntarily leave employment positions for military service. The law also prohibits employers from discriminating against past and present members of the uniformed services and applicants to the uniformed services.

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www.tennessee.gov/labor-wfd

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