Unemployment Insurance Employer Education 2022

Presentation Overview

- Unemployment Insurance (UI) Basics
- UI Account Registration and Requirements
- Premiums Explained
- Calculating Premiums
- UI Premium Nonpayment
- Effects of Missing or Incorrect Information
- UI Benefits Claim
- UI Appeals
- Employee Misclassification
- Employees vs. Independent Contractors
- Audit Close Out
- SUTA Dumping

The Basics of Unemployment Insurance

Unemployment Insurance Summarized

What is Unemployment Insurance?

Unemployment Insurance (UI) was implemented to stabilize the economy by providing temporary income to eligible and entitled workers.

This is accomplished by placing the UI premiums paid by Colorado employers into a UI trust fund to pay weekly benefits to employees who have lost their job through no fault of their own.

Unemployment Insurance Liability

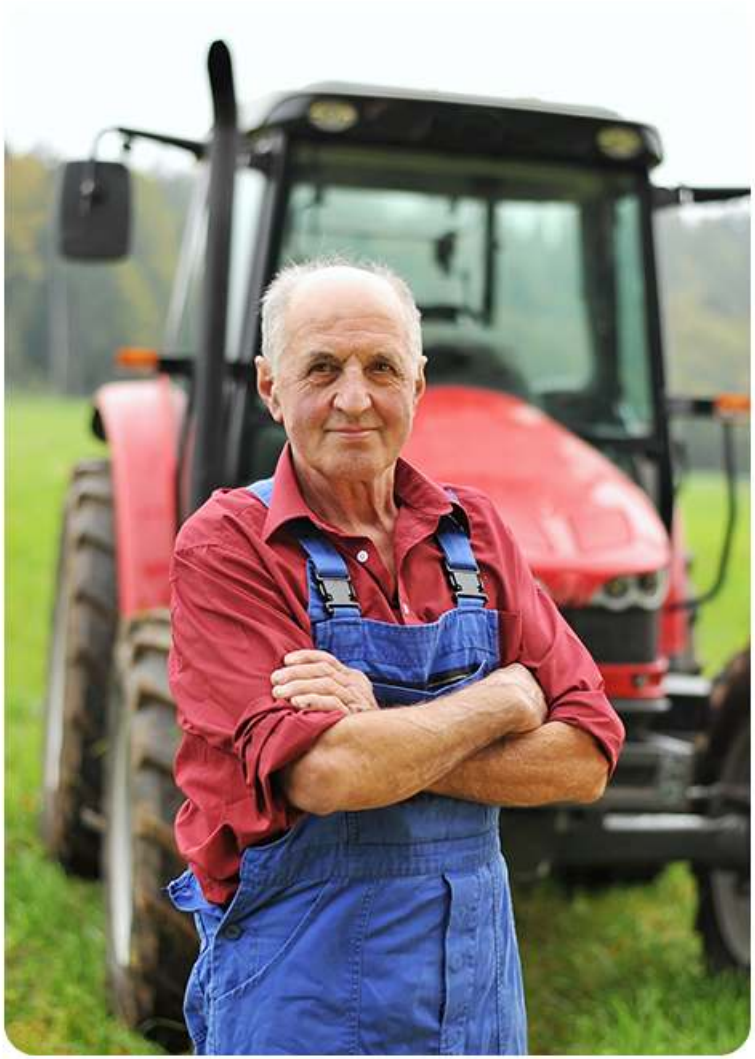
You are required to register with the UI Program when you have:

Paid gross employee wages of $1,500 in a calendar quarter

- OR -

Employed at least one person for some portion of a day in each of twenty different weeks in a calendar year.

Unemployment Insurance Liability



Agricultural Labor
Liable after $20,000 wages paid in a calendar quarter
- OR -
Wages paid to 10+ individuals.

Domestic Labor
Liable after $1,000 wages paid in a calendar quarter.

Nonprofit - 501(c)(3)
Liable if employed 4 or more employees for some portion of a day in each of 20 different weeks during a calendar year.

Corporate Officers

The definition of employee includes corporate officers for purposes of:

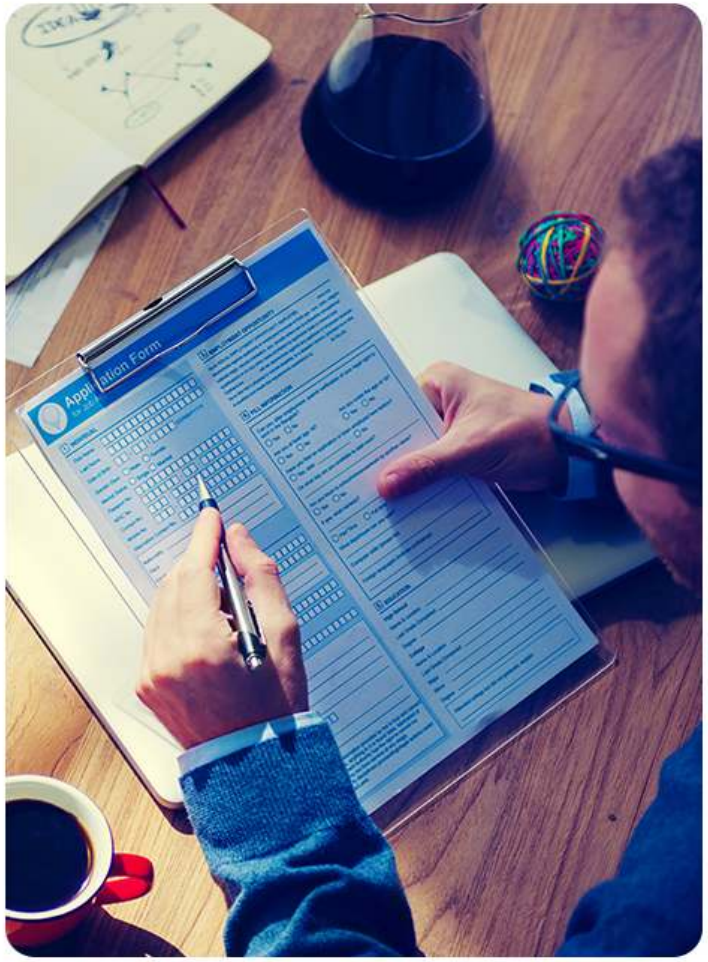
- Federal Insurance Contributions Act (FICA)
- Federal Unemployment Tax Act (FUTA)
- Federal Income Tax Withholding (Internal Revenue Code)

When corporate officers perform a service for the corporation and receive or are entitled to receive payments, those payments are considered wages.

Courts have found shareholder-employees are subject to employment taxes even when shareholders take distributions, dividends or other forms of compensation instead of wages.

Employer Account Registration & Requirements

How to Register



Online
Start your filing online using the MyBizColorado website. Complete an application online at mybiz.Colorado.gov.

By Mail
Use our printable application, Application for Unemployment Insurance Account, UITL-100, available at:
cdle.colorado.gov/businesses-employers

Account Requirements

Filing of quarterly reports: online via MyUI Employer, or by mail:

Premiums Report – Online or by mail
(Quarterly Report of Wages Paid and Premiums Owed, UITR-1)
Total wages, excess wages, amount due

Wage Report – Online only!
(Report of Individual Employee's Wages, UITR-1A)
List of employees and total wages.

Reports are Due
The last day of the month following the quarter's end (i.e., January 31, April 30, July 31, October 31).

Filing Requirements

In September 2018, the regulation requiring all employers to file wage reports electronically went into effect.

Quarterly forms will be emailed to employers when it is time to file and mailed to employers that opted for that preference via MyUI Employer.

For employers with 20 or fewer employees, file online with the MyUI Employer reporting tools.

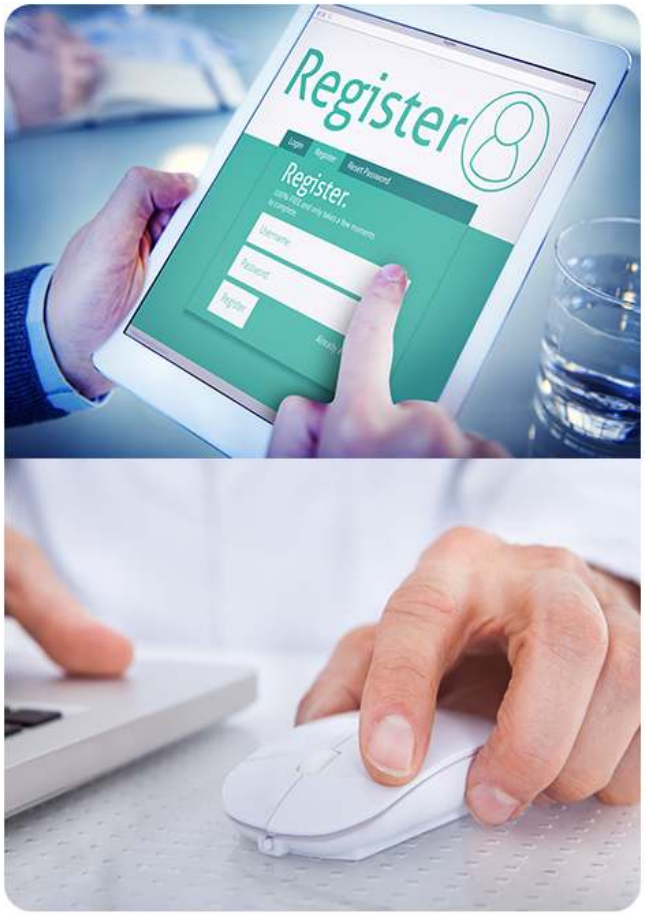
For employers with more than 20 employees, you may use the File Transfer Protocol (FTP) method. A link is available in your MyUI Employer account.
Visit cdle.colorado.gov/ftp for more information.

Filing online is secure and eliminates time and costs of printing and mailing!

Please contact 303-318-9100 or 1-800-480-8299 for assistance.

MyUI Employer

myuiemployer.coworkforce.com



MyUI Employer offers 24/7 online access to employer premium accounts, including:

- Rate information
- Forms
- Account balance
- Payment history

You may also:

- Submit wage data
- File premium reports
- Make payments
- Change your address

For general assistance through employer services and to reset your password, call **303.318.9100**. (Your User ID never changes.)

Calculating Premiums

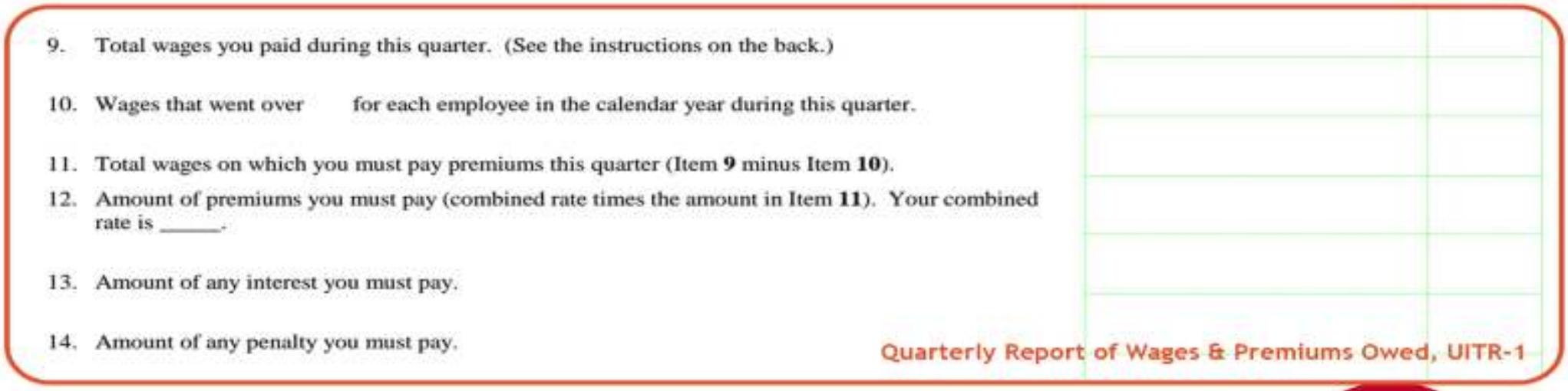
Wages Explained

Total wages are gross wages less exempt wages.

Exempt wages include cafeteria 125 plans, group term life insurance, health savings accounts, Medicare approved pre-tax deductions.

Chargeable wages are wages paid to each employee that are subject to annual UI premiums.

For 2022, the chargeable wage amount per employee is **$17,000**.



9. Total wages you paid during this quarter. (See the instructions on the back.)

10. Wages that went over for each employee in the calendar year during this quarter.

11. Total wages on which you must pay premiums this quarter (Item **9** minus Item **10**).

12. Amount of premiums you must pay (combined rate times the amount in Item **11**). Your combined rate is _____.

13. Amount of any interest you must pay.

14. Amount of any penalty you must pay.

Quarterly Report of Wages & Premiums Owed, UITR-1

UI Rate Basics

New employers are assigned a **standard rate** as designated by the **Colorado Employment Security Act (CESA).**

All other employers receive an **experience rate** that takes into account their premiums paid, benefits charged and payroll information.

Combined rate for 2022 is based on the Base Rate.

Employers may request a redetermination of the premium rate for the current year within 20 calendar days of date on notice.

Chargeable Wage Base

Senate Bill 20-207 was signed by Governor Polis on July 14, 2020. The Bill determined the unemployment insurance chargeable wage base per individual.

January 1, 2023, the wage base will be the first $20,400 paid per individual

January 1, 2024, the wage base will be the first $23,800 paid per individual

January 1, 2025, the wage base will be the first $27,200 paid per individual

January 1, 2026 and each calendar year thereafter, the wage base will be the first $30,600 paid per individual, adjusted by the change in the average weekly earnings as prescribed in Section 8-73-102 of the Colorado Employment Security Act.

Additionally, for Calendar Year 2022, the Division **SHALL NOT** assess a solvency surcharge on any employer.

UI Premium Nonpayment

UI Premium Nonpayment

- $50 penalty for a delinquent report
- 1.5% interest assessed monthly
- Delinquent Premium Penalties

Outstanding balances are reviewed annually on June 30th. Employers with delinquent premiums have a penalty computed equal to the premiums owed or 1% of the chargeable wages in the previous calendar year, whichever is less.

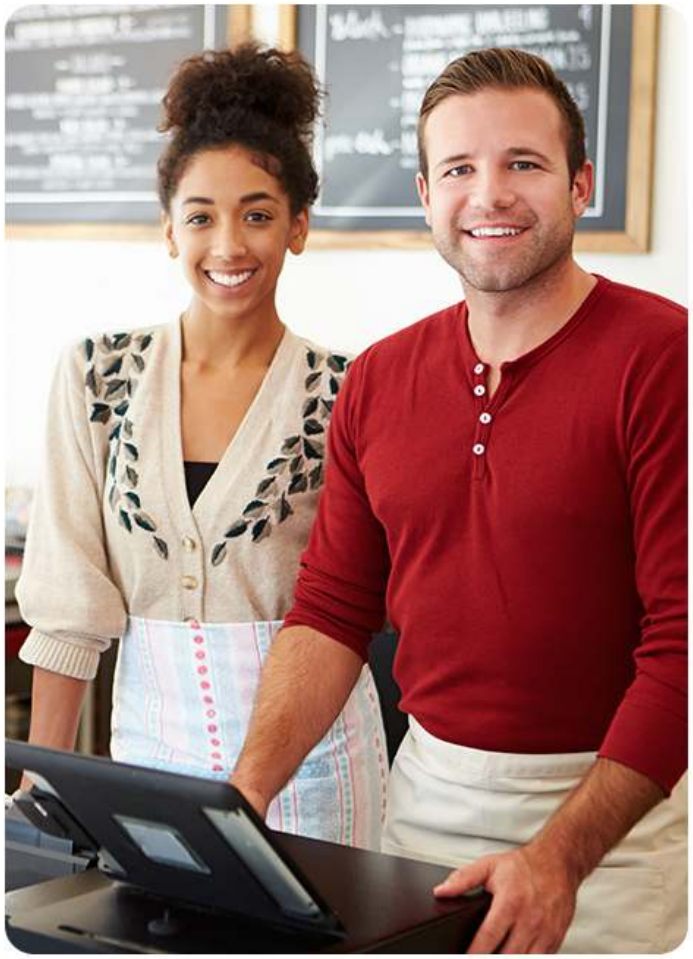
Interest will accrue until paid in full.

Lien and levy may result.

Payment plans are available.

UI Benefit Claims

Effects of Missing or Incorrect Information



Possible effects on the employer
- Higher UI premiums (higher rate)
- Improper charges to the account
- Fines and penalties

Missing information *or* incorrect information
- May cause improper payments to claimants
- Largest cause of improper payments

Information requested includes:
- New hires (newhire.state.co.us)
- Earnings request
- Separation details

Separation Details

Request for Facts about a Former Employee's Employment

- Starting in 2021, if you employed a person within the past 18 months you could receive an Employer Questionnaire by mail or by email. If you have set up a MyUI Employer account and your email preferences are established, you will receive the questionnaire by email.

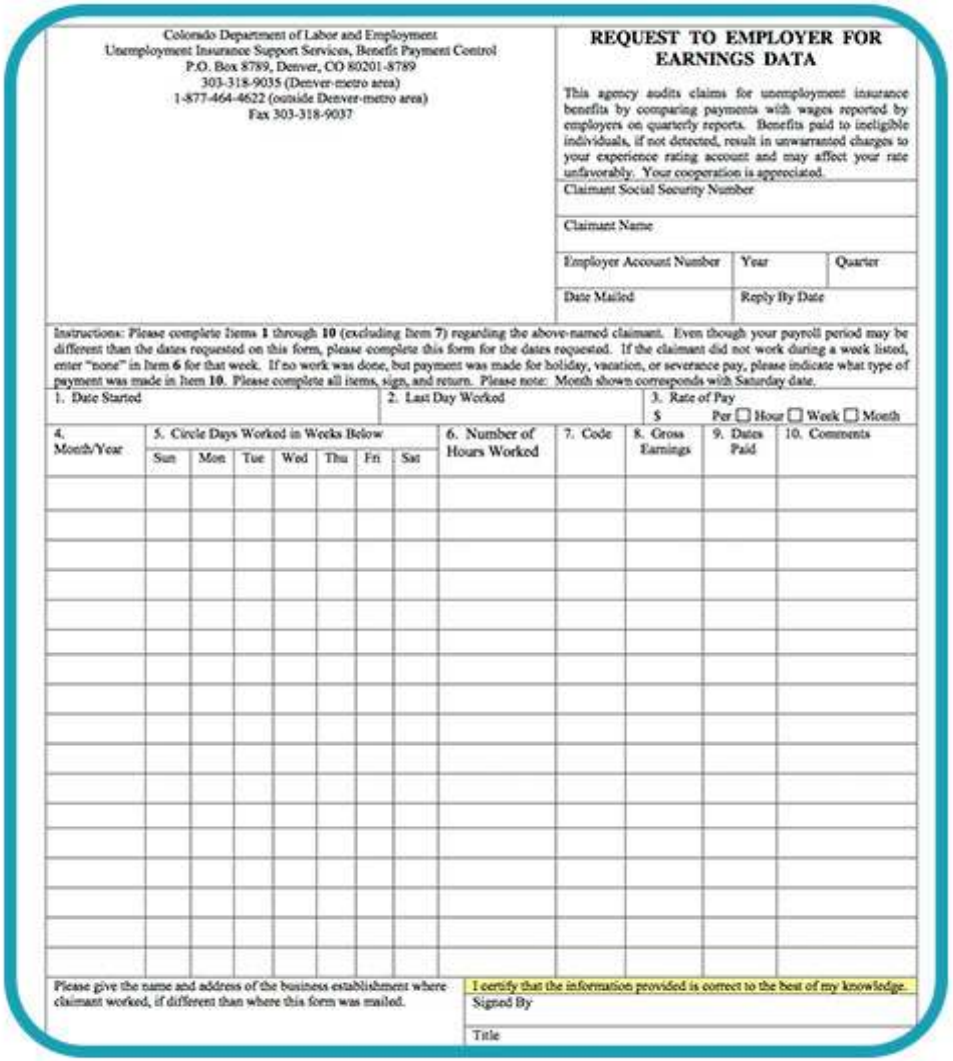
- This is your chance to explain job separation details, report other types of pay, and indicate job-attached status. The questionnaire will differ depending on the type of separation listed by the worker: lack of work, quit, or discharged.

- You can provide job separation information by enrolling online in the State Information Data Exchange System (SIDES)/E-response. This can be accessed via a link on your MyUI Employer account. Email preferences for SIDES can also be set up on-line.

- If you do not provide information as requested, an entitlement decision is made using the available information.

Request to Employer for Earnings Data

Form UIB-144



Colorado Department of Labor and Employment
Unemployment Insurance Support Services, Benefit Payment Control
P.O. Box 8789, Denver, CO 80201-8789
303-318-9035 (Denver-metro area)
1-877-464-4622 (outside Denver-metro area)
Fax 303-318-9037

REQUEST TO EMPLOYER FOR EARNINGS DATA

This agency audits claims for unemployment insurance benefits by comparing payments with wages reported by employers on quarterly reports. Benefits paid to ineligible individuals, if not detected, result in unwarranted charges to your experience rating account and may affect your rate unfavorably. Your cooperation is appreciated.

Claimant Social Security Number

Claimant Name

Employer Account Number | Year | Quarter

Date Mailed | Reply By Date

Instructions: Please complete Items **1** through **10** (excluding Item 7) regarding the above-named claimant. Even though your payroll period may be different than the dates requested on this form, please complete this form for the dates requested. If the claimant did not work during a week listed, enter "none" in Item **6** for that week. If no work was done, but payment was made for holiday, vacation, or severance pay, please indicate what type of payment was made in Item **10**. Please complete all items, sign, and return. Please note: Month shown corresponds with Saturday date.

1. Date Started | 2. Last Day Worked | 3. Rate of Pay $ Per ☐ Hour ☐ Week ☐ Month

4. Month/Year	5. Circle Days Worked in Weeks Below: Sun	Mon	Tue	Wed	Thu	Fri	Sat	6. Number of Hours Worked	7. Code	8. Gross Earnings	9. Dates Paid	10. Comments

Please give the name and address of the business establishment where claimant worked, if different than where this form was mailed.

I certify that the information provided is correct to the best of my knowledge.
Signed By
Title

- This form may be received via mail or email.
- Verifies earnings for full time or part time workers. Benefit earnings are based on Sunday through Saturday work weeks.
- You can respond online via the SIDES link on MyUI Employer, or by mail.
- Top 3 industries in Colorado where claimants were improperly paid through UI: Construction, Hotel/Restaurants, and Temporary agencies.

Fraud Prevention

Investigating and prosecuting fraud is a high priority for the Division of Unemployment Insurance. Unfortunately, with the rise in unemployment insurance claims associated with COVID-19, we have seen a rise in fraudulent claims and other instances of fraud. If you think an employer or unemployed worker is committing unemployment insurance fraud, complete and submit a fraud report via the unemployment insurance website.

Types of fraud that may be reported are:

- My identity was used to file an unemployment claim
- I received a Reliacard with someone else's name
- I know of someone collecting unemployment benefits while working
- I am an employer reporting fraud for one of my employees
  (Also applies when employee is unknown / never worked for employer)

https://cdle.colorado.gov/fraud-prevention

Fraud Reporting

When a claim is filed using the stolen identity of one of your employees, you receive a questionnaire by email or U.S. mail requesting information about the job separation. If your employee is still employed, and they state they did not file a claim, **please complete the questionnaire as soon as possible, indicating that it may be fraud.**

The employee in question should complete the following steps immediately:

- Submit a Fraud Report – https://cdle.colorado.gov/fraud-prevention
- Contact U.S. Bank Immediately at 1-855-282-6161 to deactivate the Reliacard
- Contact the three consumer credit bureaus and put a fraud alert on their name and Social Security number (SSN)

  Credit Bureau Contact Info: Equifax: 1-800-525-6285

  Experian: 1-888-397-3742

  Transunion: 1-800-680-7289

- Create a file where you can keep records of fraud

Layoff Alternatives

If you are reducing hours, you may be eligible for our **Work-Share** program. The Work-Share Program provides an alternative to laying off employees by allowing them to keep working, but with fewer hours. While an employee is working fewer hours, they may be eligible to collect part of their regular unemployment benefits.

Requirements and qualifications for employers:

- You must have reduced the normal weekly work hours by at least 10%, but by no more than 40%.
- The reduction must affect at least two out of all employees in the business, or a minimum of two employees in a certain unit.
- You must have paid as much in premiums as we paid your former employees in unemployment insurance benefits. See the rate notice we mailed you in November.
- For more details, download the Employer Fact Sheet or visit the Work Share page.

https://cdle.colorado.gov/layoff-alternatives

Appeals

Appeals

If you do not agree with a **benefits** decision, it may be appealed. This may be done by mail, fax, or via MyUI Employer.

If the claimant disagrees and appeals, the employer should attend the hearing in person or by phone.

De Novo (New) Hearing – Hearing Officer will look at facts presented only in the hearing.

Audits

Unemployment Insurance Audits

How is your business selected for an audit?

Random
USDOL requires Colorado to audit 1% of employers operating within the state.

Focused
- Federal 1099 Database
- Secretary of State business registration records
- Tips and leads from other agencies (USDOL/IRS)
- Worker/employer classification complaint (HB1310)
- Noncompliant account
- Employers without a UI account

Unemployment Insurance Audits (continued)

Who must be present?
Owner, officer, or employee of the company and/or designated representative (Power of Attorney)

Which documents should you provide?

Completed Pre-Audit Employer Questionnaire. This will accompany the notification of audit received by mail.

All documents listed on the notification are needed to verify that wages reported for the workers are accurate, all appropriate reports are filed, and the UI account information is correct.

If an electronic copy of the record is available, it may be supplied to the auditor in advance.

Employee Misclassification

Employee Misclassification

Defined as erroneously classifying a person as an independent contractor when the employer cannot show an exception to the general rule that service being performed for the employer is presumed to be employment.

Regulated by the Colorado Employer Security Act (CESA)

8-70-115: Employee vs. Independent Contractor, two-part test and contracts

8-70-116 through 142: Other exceptions and definitions

8-72-114: Misclassification defined, filing complaints, and process for handling complaints

Employee vs. Independent Contractor

Two-Part Test

Worker must be free from control and direction in the performance of the service, both under contract and in fact.

-AND-

Worker must be customarily engaged in an independent trade, occupation, profession, or business related to the service performed.

Direction & Control

To be an independent contractor, the employer does not…

- Require the individual to work exclusively for the person for whom services are performed.
- Set quality standards. Employer may provide plans and specifications but cannot oversee the actual work or provide specific instruction.
- Pay a salary or hourly rate, but rather a fixed or contract rate.
- Terminate the work unless the individual violates the terms of the contract.

Direction & Control (continued)

To be an independent contractor, the employer does not…

- Provide more than minimal training.
- Provide tools or benefits to the individual.
- Dictate the time of performance except for a completion schedule or mutually agreeable work hours.
- Pay the individual personally but rather makes checks payable to a trade or business name.
- Combine his business operations in any way with the individual's business but instead maintains operations as separate and distinct.

Independent Engagement

Employer must show by/through a preponderance of evidence that an individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed (i.e., providing the same service to the general public).

Evidence may include but is not limited to:

- SOS registration, Certificate of Liability Insurance, Licensure (not provided by employer), various forms of public advertisement, letterhead invoices, physical business location

- **NOTE: The IRS form W-9 and the "Declaration of Independent Contractor Status" form from the Work Comp insurance carrier are not forms of evidence.**

- The statutes vary between UI and Workers' Compensation and it is important to understand that compliance to both are necessary.

Independent Engagement (continued)

Other Considerations:

- Continuing services
- Who hires/supervises assistants used by IC
- Worker's financial investment in a separate business
- Ongoing business expenses
- If the worker does not have other clients/work, why not?
- Is the worker actively looking for work?
- All other relevant factors

Division may supply questionnaires to worker to assist in fact finding to obtain business and financial information as it relates to the services performed.

Contracts

To create the rebuttable presumption of an IC relationship, the written document must contain the following:

- Explanation of nine factors

- A disclosure, in type which is larger than the other provisions in the document or in bold-faced type or underlined type, that the independent contractor is not entitled to unemployment insurance benefits.

- Signature of both parties to show mutual agreement.

- Must be “in fact.”

Advisory Opinion

An Advisory Opinion is available to employers seeking advice on proper classification of workers.

If you would like to request an advisory opinion on whether you should classify individuals as employees or independent contractors, a request form can be completed online at: https://cdle.colorado.gov/independent-contractors

This requires a nonrefundable payment of $100 payable to the Colorado Department of Labor and Employment.

Audit Close Out

Audit Close Out

- Unemployment Poster, Notice to Employees, 502
- Request to Employer for **Earnings** Data, UIB-144
- **Separation Details**, Employer Questionnaires that request facts about a former employee's employment.
- **House Bill 1310** – The statute allows for the levy of a fine up to $5,000 per misclassified worker for the first offense of willful disregard for the law, and up to $25,000 per misclassified worker for any subsequent event.

Liability Determinations – Official notification from the Division as it relates to any changes or corrections as a result from an audit.

Appeals – If you do not agree with audit findings, you may appeal within 20 days of the date mailed of the Liability Determination. Follow instructions under "Appeal Rights" on the Liability Determination to file a written appeal.

SUTA Dumping

What is SUTA Dumping?

- SUTA (State Unemployment Tax Act) Dumping refers to tax evasion schemes where an employer paying high unemployment insurance (UI) premiums attempts to shift their payroll and employees to a company with a lower tax rate; thereby paying less unemployment insurance premiums.

- **Sections 8-76-102.5 and 8-76-104** of the Colorado Revised Statute, details the civil and criminal penalties that could be imposed for SUTA Dumping violations.

Common Tax Manipulation Schemes

Mandatory Transfers – A new corporation is registered, in which a small amount of payroll is reported each year until a lower UI rate is attained. Once the lower rate is attained, a large amount of payroll/employees from a related company, that has a higher rate, is transferred.

Prohibited Transfers – A business with a large payroll and a high UI tax rate purchases a company with a lower UI rate and transfers its payroll/employees to the purchased entity.

SUTA Dumping Penalties

- The Division may assign the employer the highest contribution rate assignable for the year in which the violation was attempted or occurred, as well as the next three years.
- If a person knowingly advises a business, in a way that results in a violation of SUTA Dumping laws, the individual may be subject to a civil fine of not more than $5,000.
- In addition to any penalty imposed, any violation may be prosecuted as a Class 1 misdemeanor.

Contact Us

For Employer and Employee Related Questions

Denver-metro area (303) 318-9100 or
Outside Denver-metro area (800) 480-8299

Option 1 - Employer Liability
Option 2 - Employer Collections
Option 4 - Audits
Option 5 - Employee Benefits

Or email Employer Services at
cdle_employer_services@state.co.us

Thanks!

Any questions?