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Tax Researcher

Volume XXX Issue 6 June 2013

STATE UNEMPLOYMENT INSURANCE COVERAGE FOR MULTI-STATE EMPLOYEES

For multi-state employees, only one state should provide unemployment compensation insurance coverage to any particular employee. Thus, while an employer may be paying contributions to more than one state on behalf of various employees, employer contributions should be paid only to one state for each of those employees. While the choice of state depends on the facts of each situation, there are generally only four possible scenarios.

First, the employee may live and work entirely within the same state. This scenario is both the most common and the easiest to resolve. The rule is that the worked-in state provides the unemployment compensation insurance coverage.

In the second scenario, the employee lives in State "A", but works entirely within State "B". Again, the rule is that the worked-in state provides the unemployment compensation insurance coverage. Therefore, the employer's quarterly wage reports and contributions go to State "B".

In the third scenario, the employer transfers the employee's work from State "B" to State "C". When the work is temporarily transferred from one state to another, the employer should continue to report on behalf of the employee to the state in which the employee normally works and is covered. However, a permanent transfer requires that reports and contributions, beginning from the date of transfer, be made to the new state—State "C" in our example. For taxable wage base purposes, all states, with the exception of Louisiana and Minnesota, will allow the employer to count (or "carry forward") the wages previously paid to the employee during the same calendar year and apply them against their taxable wage base. This assumes that the employer's Federal EIN is unchanged. Thus, the employer does not have to make a duplicate contribution to the second state, repeating the contributions already made.

General Rules for What Happens When the Employee Works In the Same Pay Period in Two or More States?

In the fourth scenario, the employee lives in State "A", but works some of the time in State "C" and the remaining time in State "D" (and perhaps in additional states). In this scenario, there are two or more worked-in states, but the employer is required to pay contributions to only one state. The question is which state should be paid.

To aid employers with a worker in this situation, the states have agreed on a five-step analysis. The five steps are questions to be answered in a particular order. If the answer to any question is "YES", the coverage state has been determined at that step, and no more of the questions need to be considered.

STEP 1: Is the employee's work "localized" to one state?
Is the work performed primarily in one state, with only incidental work performed in other states—in other words, is the work that is performed in the other states of mere temporary or transitory nature, and consist only of isolated transactions? So, if State "C" is the primary work state and if only isolated transactions or incidental work is performed in State "D," then State "C" is the coverage state. But, if STEP 1 is not a good description of the employee's situation, go to the next step.

STEP 2: Is the employee's "base of operations" in one state?
If the employee's work is not "localized", is there a state in which they perform some services and in which they either report to, start work in, or to which they customarily return at the end of the day? The "base of operations" may be a worker's office (which may even be maintained in their home), a place specified in the employment contract where the employee receives instructions, a place to which they have mail and supplies sent, or where the worker maintains business records. So, if State "D" is the worker's "base of operations" and some work is performed in that state, but more work is performed in State "C," then nevertheless State "D" is the coverage state.

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However, if neither STEPS 1 nor 2 are a good description of the employee's situation, go to the next step.

STEP 3: Does the employee work at least part of the time in the State where the employer's office is located?
Such a state would be called the "place of control." Is it possible to fix a place of control in a particular state in which some of the work is performed? While the "base of operations" refers to an employee's base, the place of direction and control is usually the location from which the employer (or its representative) controls or has the right to control the individual's work. It is the place of immediate control rather than the place of ultimate control that is significant. Thus, if State "C" is the location of the employer's national headquarters, State "D" is where the worker's supervisor is located and State "E" is merely another worked-in state, State "D" is the coverage state, even though the worker performs at least some work in each of the three states. If STEPS 1, 2 or 3 have not yet described the worker's factual situation, go to STEP 4.

STEP 4: Does the employee work at least part of the time in the state of the employee's residence?
If the services are not "localized," and neither the "base of operations" nor the "place of control" is in any state in which some of the worker's services are performed, the proper choice is the state of the employee's residence, provided some of the work is performed in that state.

STEP 5: If STEPS 1 to 4 do not describe the worker's factual situation, there may be a provision in the laws of the states where work is performed, in the state where the employee resides, or where the employer has their place of business, that will permit allocation of the worker to a particular state. However, normally the employer finds the solution before reaching STEP 5.

Reciprocal Coverage Arrangements

It should be noted that a reciprocal arrangement between states may permit an employer to ignore the steps above. Currently forty-five states have reciprocal arrangements with other states. Alaska, Kentucky, Mississippi, New Jersey, and New York do not; neither does Puerto Rico. Under such an arrangement, an employer may elect to make payments to one specific state. An employer is permitted to elect to cover all services of an employee in any state in which: (1) any part of the worker's services are performed; or (2) the worker has their residence; or (3) the employer maintains a place of business. There are a number of steps that must be taken by an employer and the impacted states in order to obtain approval for the employer to use this option.

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12-MONTH INDEX

(July 2012 through June 2013)