

Federal SUTA Dumping Prevention Act of 2004

States where required legislation has been recently passed:

Arkansas, Arizona, Colorado, Florida, Georgia, Idaho, Louisiana, Maine, Maryland, Mississippi, New Hampshire, Nevada, Ohio, Oregon, Rhode Island, Texas, Virginia, Washington

Prohibits employers from manipulating state experience rating systems so that they pay lower state unemployment compensation (UC) taxes than their unemployment experience would otherwise allow. Specifically:

- Unemployment experience must be transferred whenever there is substantially common ownership, management or control of two employers, and one of these employers transfers its trade or business (including its workforce), or a portion thereof, to the other employer. This requirement applies to both total and partial transfers of business.
- Unemployment experience may not be transferred when a person who is not an employer acquires the trade or business of an existing employer. This prohibition applies only if the UC agency finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.
- "Meaningful" civil and criminal penalties must be imposed on persons "knowingly" violating or *attempting to violate* the two requirements.
- States must establish procedures for identifying SUTA dumping.
- Effective date: Rate years beginning after the end of the 26-week period beginning on the first day of the first regularly scheduled session of the state's legislature beginning on or after August 9, 2004. (January 1, 2006 – July 1, 2007)

Permits the use of certain information in the National Directory of New Hires by state UC agencies in the administration of Federal and state UC laws.

What is SUTA Dumping

SUTA (State Unemployment Tax Act) Dumping describes efforts by employers to evade their fair share of Unemployment Compensation (UC) taxes. SUTA Dumping schemes involve evading unfavorable experience ratings by transferring employee payroll to a new or different business entity with a lower UC tax rate. Most SUTA dumping schemes are unlawful.

How are UC tax rates set?

Most states use an Experience Rating system to compute yearly UC tax rates assigned to covered employers. An employer's UC tax rate is based on history of taxable wages, contributions paid, and benefit payments to former employees -- in other words, the employer's UC experience.

Who Pays?

When employers engage in SUTA Dumping and receive artificially low UC tax rates, all employers pay the price in the form of tax rate increases, required to keep the UC Tax in balance.

It's a national problem

- California has identified 29 cases of SUTA Dumping that resulted in tax underpayments in excess of \$100 million.
- Pennsylvania has identified \$6.5 million in additional contributions that are due as a result of its SUTA Dumping investigations.
- The state of Michigan recently recovered \$2.4 million in additional contributions from a single case of attempted SUTA Dumping.
- According to a study by the U.S. General Accounting Office, SUTA Dumping cost 14 states a total of \$120 million in lost tax revenue last year.
- U.S. Labor Secretary Elaine Chao estimated that states could collect "tax payments of over \$200 million annually from employers who are not now playing by the rules".

What are states doing to deter SUTA dumping?

Efforts to pursue employers who engage in SUTA Dumping will be intensified in 2005, using methods of detection being made available by the U.S. Department of Labor. States are also drafting amendments to current UC law to adhere to new federal laws, and detect and deter SUTA Dumping employers.

