



NEW YORK ASSESSMENT COMPLIANCE FALLING SHORT

This past July, the State of New York created and issued the IAS, known as the Interest Assessment Surcharge to all UI tax paying employers. The rationale for doing so was to generate monies to pay the existing outstanding federal interest payment due at the end of September 2022.

The State recently announced less than two-thirds (62%) of employers required to pay this assessment have complied with this legal obligation.

The original loan was taken out by New York to pay regular unemployment compensation benefits. This added assessment is only to pay the interest on that loan. It was initially thought, the projected amount of monies collected would be sufficient to cover these interest payments required by federal law. However, with not all employers complying with their obligations, this no longer appears to be the case according to the New York Department of Labor (NYDOL).

During the recession 14 years ago, the NYDOL implemented a similar assessment. At the time, employers across the state had an 80% compliance rate. This past July, the state assumed, based upon the historical data, compliance would be similar to 2008 and set their rates accordingly. That assumption turned out to be inaccurate.

The statutory requirement is clear. Failure to pay the interest would violate 26 USC 3304 (a) (17) and Section 303 (c) (3) of the Social Security Act and prompt the United States Department of Labor to raise a “conformity issue” that jeopardizes the full offset credit for state UI contributions against the FUTA tax. The FUTA tax rate could be pushed up in such a case to the full FUTA tax of approximately \$420 per employee. In addition, the failure of the state to pay the interest due on September 30th would endanger federal authority to provide funding to New York for the administration of the UI law.

While it is unfortunate and frustrating for our NY clients to be hit with another assessment, we would encourage any organization who has yet to comply to do so in the immediate future as the financial risks, as mentioned above, are real.

UTCA will continue to keep you informed as these issues evolve and more information becomes available.

We hope this information is helpful. If you have any questions about this topic, please do not hesitate to contact UTCA at 413-732-8084 or 1-800-480-7725. You may also email any of our Key Staff Contacts: Suzanne Murphy — CEO (s.murphy@utcainc.com), Colin Smith, Senior Tax & Audit Analyst (csmith@utcainc.com) or Evan Murphy, Principal (emurphy@utcainc.com).

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