

# Colorado Employer Education 2015



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Labor and Employment

# 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

# The Basics of Unemployment Insurance



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# 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.

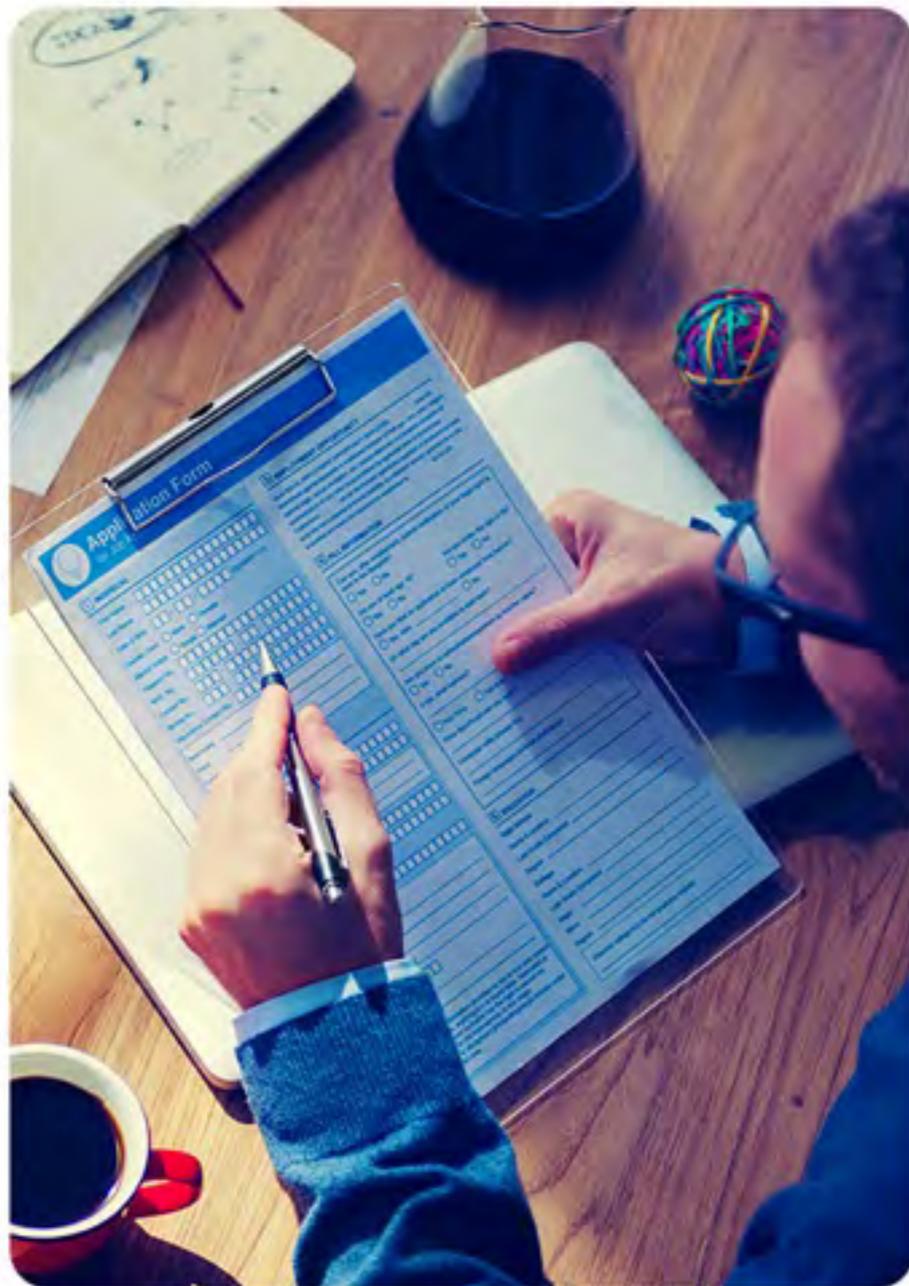


# Employer Account Registration & Requirements



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# How to Register



## Online

Start your filing online using Colorado Business Express. Complete an application online at [colorado.gov/cbe](https://colorado.gov/cbe).

## By Mail

Use our printable application, Application for Unemployment Insurance Account, UITL-100, available at [coloradoui.gov/employer](https://coloradoui.gov/employer).

# Account Requirements



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

**Premiums Report**  
(Quarterly Report of Wages Paid and Premiums Owed, UETR-1)

Total wages, excess wages, amount due

**Wage Report**  
(Report of Individual Employee's Wages, UETR-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).

# Calculating Premiums



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# 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 2015, the chargeable wage amount per employee is \$11,800.

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, UTR-1

# MyUI Employer

[coloradoui.gov/myuiemployer](http://coloradoui.gov/myuiemployer)



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 (and soon change your address)

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

# Rate Basics

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

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

**Combined rate** for 2015 is based on Base Rate and Bond Principal Rate.

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

# UI Premium Nonpayments



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# UI Premium Nonpayment



- \$50 penalty for each quarter a report is late
- 1.5% interest assessed monthly
- Delinquent Premium Penalties

Outstanding balances are reviewed annually on June 30<sup>th</sup>. 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 Benefits Claim



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# 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](http://newhire.state.co.us))
- Earnings request
- Separation details



# Separation Details

## Request for Facts about a Former Employee's Employment (Form UIB-290)

Colorado Department of Labor and Employment, Unemployment Insurance Operations, P.O. Box 400, Denver, CO 80201-0400  
303-318-9055 (Denver-metro area) or 1-866-265-6365, Ext. 89055 (outside Denver-metro area), Fax 303-318-9014

**REQUEST FOR FACTS ABOUT A FORMER EMPLOYEE'S EMPLOYMENT**

The person named in Item 5 has signed up for unemployment benefits. Give us the reason he or she does not work for you and tell us about any payments, other than wages, that you gave the person. We may charge your account if we pay benefits based on this employment. We must receive this completed form by **Failure to respond timely (see Item 2) may result in a decision based on available claimant information, and your right to protest the payment of UI benefits may be denied, unless good cause exists for the untimely response.** Mail or fax the completed form to the above address or fax number; do not do both. Attach any documentation you have to support your statements. Attachments must include the business name, claimant name, and social security number. We will mail you a Notice of Decision to tell you whether we will pay benefits. We usually do not mail a Notice of Decision if the employee was laid off or if a payment you made does not affect benefits. Contact your former employee if you have work for him or her. Call or write us if he or she refuses the work. Our telephone numbers and address are above.

1. Date Mailed	2. Due Date
3. First day of claim	4. Social Security Number
5. Person who signed up for Unemployment Benefits	
6. Employer Account Number	
7. Amount your Account May be Charged	
8. Check this box if this person did not work for you. <input type="checkbox"/>	

In a separate envelope, you will receive a Notice of Unemployment Insurance Claim, Wages Reported, and Possible Charges form. The form provides details about the amount you may be charged if we pay benefits based on this employment. Follow the instructions on that form if you need to request that wages for this person be corrected.

9. Why is this person no longer working for you? (Check one.) <input type="checkbox"/> No Work at this Time/Laid Off <input type="checkbox"/> Quit (complete Items 17 and 20) <input type="checkbox"/> Fired (complete Items 18 and 20) <input type="checkbox"/> Strike (complete Item 20) <input type="checkbox"/> Other Reasons (complete Item 20)	10. Please check if appropriate: This person was hired full-time (32 hours or more) and is now working reduced hours. <input type="checkbox"/> This person was hired part-time and continues to work part-time. <input type="checkbox"/>
11. First Day Worked (mm/dd/yyyy) <input type="text"/>	13. Rate of Pay \$ <input type="checkbox"/> Hour <input type="checkbox"/> Month <input type="checkbox"/> Week <input type="checkbox"/> Year
12. Last Day Worked (mm/dd/yyyy) <input type="text"/>	14. Number of Regularly Scheduled Hours per Week <input type="text"/>

15. Did you pay this person vacation pay, wages in lieu of notice, or any other payment because his or her employment ended? (Do not include information about this person's final wages.)  Yes  No

Type of Payment	Gross Amount (Before Taxes)	Date Paid	Weeks	Number of Days	Hours
\$					
\$					
\$					
\$					

16. Did this person receive a pension or retirement into which you paid? (Answer No if you did not pay into the pension or retirement.)  Yes  No

How is/was the pension paid?  
 Lump Sum Gross Amount \_\_\_\_\_ Date Paid \_\_\_\_\_  
 Monthly Monthly Amount \$ \_\_\_\_\_ First Date Paid \_\_\_\_\_

- This form may be received if you employed this person within the past 18 months.
- This is your chance to explain job separation details, report other types of pay, and indicate job-attached status.
- You can provide job separation information by enrolling online in the State Information Data Exchange System (SIDES)/E-response.
- If you do not provide information as requested, an entitlement decision is made using the available information.

# Appeals



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# 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



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# 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?

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



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# 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 (IC)

## 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.



# Control & Direction

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.

# Control & Direction (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: A W-9 and/or “Declaration of Independent Contractor Status” form from the insurance carrier is not a form of evidence.**

# 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.”

# Audit Close Out



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# Audit Close Out

- Unemployment Poster, Notice to Employees, 502
- Request to Employer for Earnings Data, UIB-144
- Separation Details, Request for Facts About a Former Employee's Employment, UIB-290
- 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.

# Questions?



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