

# **UNIFORM WAGE WITHHOLDING AND UNEMPLOYMENT INSURANCE PROCEDURE ACT\***

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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**DRAFTING COMMITTEE ON UNIFORM WAGE WITHHOLDING AND  
UNEMPLOYMENT INSURANCE PROCEDURE ACT**

CHARLES A. TROST, Nashville City Center, 511 Union St., Ste. 2100, Nashville, TN 37219,

*Chair*

JOHN A. CHANIN, 5901 Mount Eagle Dr., Apt. 1115, Alexandria, VA 22303

ROSS B. CLARK, II, Brinkley Plaza, 80 Monroe Ave., Suite 700, Memphis, TN 38103-2467

JOSEPH M. DONEGAN, 1100 Valley Brook Ave., P.O. Box 790, Lyndhurst, NJ 07071

FRANCIS J. PAVETTI, 18 The Strand, Goshen Point, Waterford, CT 06385, *Enactment Plan*

*Coordinator*

ELWAINE F. POMEROY, 1415 SW Topeka Blvd., Topeka, KS 66612-1818

KAREN ROBERTS WASHINGTON, 2929 Carlisle, Suite 250, Dallas, TX 75204

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45469-2772, *Reporter*

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**SPECIAL CONSULTING ADVISOR**

PHILIP M. CORN, 1111 Constitution Ave. NW, Room 5201, Washington, DC 20224

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35487-0382, *Executive Director*

WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director Emeritus*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS  
211 E. Ontario Street, Suite 1300  
Chicago, Illinois 60611  
312/915-0195  
[www.nccusl.org](http://www.nccusl.org)

## **UNIFORM WAGE WITHHOLDING AND UNEMPLOYMENT INSURANCE PROCEDURE ACT**

**SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Wage Withholding and Unemployment Insurance Procedure Act.

**SECTION 2. DEFINITIONS.** In this [act]:

(1) “Employee” means an individual [who is subject to, or would be subject to if not excluded by Sections 4 through 8, withholding of income tax under the laws of this state or] for whom an employer is required to make, or would be required to make if not excluded by Sections 4 through 8, at any time during the calendar year contributions under the unemployment insurance laws of this state. The term does not include an independent contractor.

(2) “Employer” means a person that pays remuneration to an individual who is the person’s employee.

(3) “Internal Revenue Code” means Title 26 of the United States Code [, as amended].

(4) “Payment” means a transfer from one person to another of money or property in satisfaction of a legal obligation.

(5) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(6) “Remuneration” means all payments of compensation for services, reimbursements, and advances made by an employer to, or on behalf of, an employee of the employer, and all tips received by an employee from persons other than the employer arising in the course and scope of the employer-employee relationship.

**SECTION 3. WAGES SUBJECT TO INCOME TAX WITHHOLDING AND UNEMPLOYMENT INSURANCE.** Except as otherwise provided in Sections 4 through 8, all remuneration is wages subject to [withholding of income taxes under [cite to the income tax laws of enacting state and]] the unemployment insurance [tax][contribution] under [cite to the

unemployment insurance laws of the enacting state]. A payment of remuneration that is not in the form of money is valued at its fair market value on the date of payment.

**SECTION 4. REMUNERATION EXCLUDED FROM WAGES; GENERAL.** The following are excluded from wages:

(1) a payment made to, or on behalf of, an employee or the employee's beneficiary under a cafeteria plan under Section 125 of the Internal Revenue Code, if the payment would not be treated as wages without regard to the plan and at the time of payment it is reasonable to believe that Section 125 of the Internal Revenue Code would not treat the payment as included as taxable wages because of the constructive receipt of the payment;

(2) a payment made by an employer to, or on behalf of, an employee for moving expenses if, at the time of the payment, it is reasonable to believe that the payment is allowable as a deduction by the employee for tax purposes under Section 217 of the Internal Revenue Code, as determined without regard to Section 67 of the Internal Revenue Code, or that the payment is excludable from the employee's federal gross income under Section 132(a)(6) of the Internal Revenue Code;

(3) a payment made to an employee by an employer as an employee achievement award as defined in Section 274(j) of the Internal Revenue Code [and];

(4) a fringe benefit provided by the employer to or for the benefit of an employee if, at the time provided, it is reasonable to believe that the benefit is excludable from the employee's federal gross income under Section 132 of the Internal Revenue Code[;] [and]

[(5) the fair market value of any meals or lodging furnished by or on behalf of an employer if, at the time furnished, it is reasonable to believe that the employee will be able to exclude the value from income under Section 119 of the Internal Revenue Code].

**SECTION 5. LIFE, DISABILITY, SICKNESS, AND MEDICAL INSURANCE BENEFITS EXCLUDED FROM WAGES.**

[(a)] The following are excluded from wages:

(1) all premiums paid by an employer for group-term life insurance on the life of an employee;

(2) a payment, including any amount paid by an employer for insurance or an annuity or into a fund to provide for any insurance or annuity payment, made to, or on behalf of, an employee or any of the employee's dependents under a plan or system established by an employer which makes provision for the employer's employees generally, the employer's employees generally and their dependents, a class or classes of the employer's employees, or a class or classes of the employer's employees and their dependents because of:

(A) sickness or accident disability, but in the case of payments made to an employee or any of the employee's dependents, this subparagraph excludes from the term "wages" only payments received under a workers' compensation law;

(B) medical or hospitalization expenses in connection with sickness or accident disability; or

(C) death;

(3) a payment for sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for the employer;

(4) a payment made to, or on behalf of, an employee, or any of the employee's dependents under a plan or system established by an employer which makes provision for the employer's employees generally, the employer's employees generally and their dependents, a class or classes of the employer's employees, or a class or classes of the employer's employees and their dependents which is paid upon or after the termination of an employee's employment relationship because of death or retirement for disability, which would not have been paid if the employee's employment relationship had not been terminated because of death or retirement for disability.

(5) a payment made by an employer to a survivor or the estate of the former employee after the calendar year in which the employee died.

[(b) An employee may make an election to have income tax withheld on any payment of sick pay pursuant to subsection (a)(2)(B).]

**SECTION 6. DEPENDENT CARE AND RETIREMENT PAYMENTS EXCLUDED FROM WAGES.** The following are excluded from wages:

(1) a payment made for, or the value of benefits that provide, employee dependent care assistance pursuant to a qualifying dependent care program if, at the time of the payment for or provision of the benefit, it is reasonable to believe the payment or benefit is excludable from the employee's federal gross income under Section 129 of the Internal Revenue Code; and

(2) a payment made to, or on behalf of, an employee or the employee's beneficiary from or to a pension, profit sharing or similar retirement plan described in Section 3306(b)(5)(A) through (F) of the Internal Revenue Code.

**SECTION 7. SCHOLARSHIPS AND EDUCATIONAL EXPENDITURES EXCLUDED FROM WAGES.** The following are excluded from wages:

(1) a payment made for a scholarship or fellowship to an employee or a dependent of the employee who is a candidate for a degree at an educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code and used by the individual for qualified tuition and related expenses, as the terms are defined in Section 117(b) of the Internal Revenue Code; and

(2) tuition reduction for education, below the graduate level, at the employer or at any other organization described at Section 170(b)(1)(A)(ii) of the Internal Revenue Code, provided by an employer that is an organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code to an employee of the employer, or an individual who is a retired or a disabled employee of the employer, the surviving spouse of a deceased employee of the employer, or the spouse of or a dependent of the employee.

**SECTION 8. NON-FRINGE BENEFIT PAYMENTS EXCLUDED FROM WAGES.** The following are excluded from wages:

(1) a payment made to an employee for expenses incurred or anticipated to be incurred by the employee on behalf of the employee's employer or as an allowance provided by the employer for, but not in excess of, those expenditures that meet the requirements of Section 62(a)(2)(A) of the Internal Revenue Code and that are not in excess of the lesser of the employer

established expense allowance or the substantiated expenses incurred by the employee for the expenditures;

(2) a payment made to an individual by a court, or by a governmental entity on behalf of a court, for jury service;

(3) a payment made to an employee for services performed outside of this state if, at the time of the payment, it is reasonable to believe that the payment is excludable from the employee's gross income under [cite statutes of this state] for income tax or unemployment insurance purposes;

(4) a payment made to an employee as the result of the employee's transitory passage through this state while engaged in the interstate transportation of property or people; and

(5) tips aggregating less than \$20 in any calendar month paid to an employee by persons other than the employer for services arising in the course and scope of the employment relationship between the employer and the employee.

## **SECTION 9. PLACES AND DATES FOR FILING AND PAYMENT.**

(a) All reports of unemployment [taxes][contributions] must be filed on the dates and submitted to [insert the appropriate state agency] as prescribed by [the responsible state agency].

(b) All payments of unemployment [taxes][contributions] must be made by the employer to and in the form required by [insert appropriate state agency] on the last day of the month immediately following the close of each calendar quarter.

(c) All reports of income taxes withheld in accordance with [insert state statute imposing the requirement that employers withhold income taxes] must be filed with [insert the appropriate state agency] in the form prescribed by [the responsible state agency] on the last day of the month following the end of each calendar quarter.

(d) All payments of income taxes withheld in accordance with [insert state statute imposing the requirement that employers withhold income taxes] must be deposited with and in the form required by [insert appropriate state agency] on the following dates:

(1) if the total amount of undeposited withheld income taxes does not exceed \$2,500 at any time during the calendar year, no later than January 31 of the immediately following calendar year;

(2) if the total amount of undeposited withheld income taxes on either a June 30 or a December 31 is greater than \$2,500, but no more than \$5,000, no later than the 15th day of the calendar month immediately following the June 30 or December 31 on which the undeposited withheld income taxes exceed \$2,500;

(3) if the total amount of undeposited income taxes withheld is greater than \$5,000, but no more than \$50,000, no later than the 15th day of the calendar month immediately following the month in which the undeposited withheld income taxes exceed \$5,000; and

(4) if the total amount of undeposited withheld income taxes is greater than \$50,000, no later than the first business day immediately following the day on which the undeposited income taxes withheld exceed \$50,000.

(e) If an employer's obligation to deposit undeposited withheld income taxes under subsection (d) is less during any period than it was for the immediately preceding period, the employer shall make a deposit on the date that would be the required date by subsection (d) if the amount of the obligation were the same as for the immediately preceding period unless the employer files on that date a notice with, and in the manner prescribed by, [the appropriate state agency] that the employer's deposit requirements have changed.

**SECTION 10. EFFECTIVE DATE.** The [act] takes effect on January 1 [insert appropriate year].

**SECTION 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**SECTION 12. REPEALS.** The following acts and parts of acts are repealed:

- (1)
- (2)
- (3)