

DRAFT FOR
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**UNIFORM WAGE WITHHOLDING AND UNEMPLOYMENT
INSURANCE TAX ASSESSMENT ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

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STATUTORY TEXT ONLY

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UNIFORM WAGE WITHHOLDING AND UNEMPLOYMENT INSURANCE TAX ASSESSMENT ACT

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ASSESSMENT ACT**

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UNIFORM WAGE WITHHOLDING AND UNEMPLOYMENT INSURANCE TAX

SECTION 1. DEFINITIONS. In this [act]:

(1) “Disability” means

(2) “Employee” means

(A) a person currently employed by an employer any portion of whose remuneration paid by the employer is subject to withholding of income tax and/or for whom the employer makes contributions under [Title, etc..] of FICA, or

(B) any other person qualifying as a common-law employee of the laws of this State.

(3) “Employer” means the individual or entity at whose direction and for whom an employee performs his or her services and who is not deemed, by the Internal Revenue Service, to be an independent contractor.¹

(4) “Employment tax” means, at any given time, the total of income taxes withheld and unemployment insurance taxes withheld and incurred by an employer which are held by the employer and not yet paid to the appropriate government entity.

(5) “Internal Revenue Code” means Title 26 of the United States Code (??? as from time to time amended ???? as in effect on the adoption of this [Act] ????)

(6) “Non-discriminatory” plan means

(7) “Wages” means all forms of remuneration, whether in cash or in a medium other than cash, paid for services to an employee by an employer². Wages shall include, but shall not be

1 ¹ [Discuss Section 530 and independent contractor issue]

1 ² This provision anticipates the definition of employer and employee which will be the focus
2 of some of the Committee’s discussions.

limited to, the following payments made by an employer to an employee for services rendered to the employer:

- (A) Cash
- (B) Fair Market Value of property
- (C) Vacation Pay³

~~SECTION 2. SCOPE. This [Act] shall define wages for the purposes of [imposing withholding of an employee's income taxes and] assessing and paying of unemployment insurance premiums or taxes by an employer. [NOTE: THE STYLE COMMITTEE SUGGESTED THIS PROVISION BE REMOVED IN ITS ENTIRETY]~~

SECTION 3. REQUIREMENT FOR EMPLOYER TO [WITHHOLD INCOME TAXES AND] PAY UNEMPLOYMENT INSURANCE TAXES. Except as provided at Section 4., all wages are subject to [employer withholding of employee income taxes and] payment by the employer of unemployment insurance taxes.

SECTION 4. EXCLUSION OF CERTAIN PAYMENTS FROM DEFINITION OF WAGES.

(1) Effect of Exclusion. All items set forth in this Section 4. shall be excluded from wages

In kind payments of wages ("medium other than cash") will be included at its fair market value at the time of payment to the employee by the employer. Cash, of course, will be valued at its face value. It is assumed that cash payments of wages made in a denomination other than United States currency will be its official exchange rate value as of the date of payment.

³ Delaware is the only state in which vacation pay is not always an element of wages for purposes of both income tax withholding and assessment of unemployment insurance taxes. Delaware excludes as wages vacation pay paid during a period of unemployment.

for the purposes of

- (A) determining amounts subject to income tax withholding,
- (B) assessment of the unemployment insurance tax, and
- (C) determining those items of compensation paid to an individual that constitute the amounts used to calculate benefits payable by this State for an unemployed individual under this State's unemployment insurance law.

(2) Exclusions. The following items shall not be treated as wages:

(A) A payment made to, or on behalf of, an employee or the employee's beneficiary pursuant to an election by the employee or beneficiary under a plan meeting the requirements of Section 125 of the Internal Revenue Code, [or any successor thereto];

(B) The value of any meal or lodging furnished to an employee by or on behalf of an employer if, at the time of the furnishing, the value of the meal or lodging is excluded from the employee's income under Section 119 of the Internal Revenue Code, [or any successor thereto];

(C) A payment to, or on behalf of, an employee by the employee's employer to the extent the employer reasonably believes that the payment (or portion thereof) will qualify for deduction under Section 217 of the Internal Revenue Code, as determined without regard to Section 67 of the Internal Revenue Code, or exclusion under Section 132(a)(6) of the Internal Revenue Code [or any successor thereto].

(D) A premiums paid by an employer for group-term life insurance on the life of an employee to the extent the premium is excluded from the employee's federal taxable income under Section 79 of the Internal Revenue Code [or any successor thereto].

(E) An amount paid an employee by an employer as an employee achievement award as defined at Section 274(j) of the Internal Revenue Code [or the successor thereto];

(F) A payment (including any amount paid by an employer for insurance or annuities, or into a fund to provide for any payment) made to, or on behalf of an employee or any of the employee's dependents under a plan or system maintained by the employer which makes provision for all or specific classes of the employer's employees, and their dependents, generally or for a class or classes of the employer's employees, or for a class or classes of employees and their dependents, on account of

(i) sickness, if mandated under [this state's workers' compensation law], or

(ii) sickness, if not mandated under [this state's workers' compensation law], made after six consecutive months after the commencement of the non-mandated payments,

(iii) a disability resulting from an accident and received under [this state's workers' compensation law],

(iv) medical or hospitalization expenses in connection with sickness or a disability resulting from an accident, or

(v) death;

(G) A payment or series of payments made to an employee, or any of the employee's dependents, under a nondiscriminatory plan or system maintained by the employer, which

(i) is paid upon or after the termination of an employee's employment as an employee with the employer because of the employee's death or retirement on account of disability, and

(ii) would not have been paid if the employee's employment as an employee had not been so terminated;

(H) A payment made by an employer to a survivor or the estate of a former employee after the calendar year in which the employee died if the payment is not considered income in respect of a decedent in accordance with [cite state law provision].

(I) A payment made or incurred or benefit provided by the employer which affords an employee dependent care assistance pursuant to a qualifying dependent care program under [cite state law] if, at the time of the payment or provision of the benefit, it is reasonable to believe the payment or benefit is excludeable from the employee's federal [and state] taxable income;

(J) A fringe benefit provided to or for the benefit of an employee or any cash reimbursement for any fringe benefit paid to an employee if, at the time of provision or reimbursement, it is reasonable to assume that the benefit is excludeable from the employee's federal [and state] taxable income under [cite state code similar to Internal Revenue Code Section 132];

(K) A payment that is a reimbursement for expenses incurred on behalf of, or as an allowance provided by, an employer, for but not in excess of, those expenditures that meet the requirements of Section 62 of the Internal Revenue Code and that are not in excess of the lesser allowance or those expenses actually incurred by the employee for the expenditures;

(L) A payment made to, or on behalf of, an employee or the employee's beneficiary from or to a plan or plans described in Section 3306(b)(5)(A) through (F) of the Internal Revenue Code.⁴

(M) Gratuities that in the aggregate for an employee do not exceed \$20 during any given month, paid by third parties or by an employer on behalf of third parties, for services performed as part of the employment relationship;

(N) A payment received as the result of transitory passage through this state by an individual

1 ⁴ These are payments from deferred compensation plans that are defined at Section C. of
2 Article II. of the Act.

engaging in the interstate transportation of goods or people;

(O) Wages for services performed in a foreign country provided that

(i) the foreign country in which the services are performed withholds taxes on the wages paid; and

(ii) the wages are excluded from United States income pursuant to Section 911 of the Internal Revenue Code; and

(iii) the wages are excluded from income under [the statutes of this state.]

(P) A payment, whether periodic or not, from an employer tax deferred compensation plan, commercial annuity or an Individual Retirement Accounts if the payee elects not to have income taxes withheld on the payment;

(Q) sick pay, unless the payee elects in writing to have income tax withheld on the payment;

(R) an amount paid under a scholarship or fellowship to an individual who is a candidate for a degree at an educational organization described at Section 170(b)(1)(A)(ii) of the Internal Revenue Code [or the successor thereto] and used by that individual for qualified tuition and related expenses, as the term is defined at Section 117(b)) of the Internal Revenue Code;

(S) amounts paid to an individual by a court, or by a governmental entity on behalf of a court, for jury service.

SECTION 5. FILING AND PAYMENT DATES.

(1) All employment taxes must be reported quarterly unless the total amount of

employment taxes owed by the employer does not exceed \$2,500 for the calendar year, in which case the employment taxes are to be reported annually.

(2) All reports of employment taxes must be filed and submitted to [insert state rule] on forms prescribed by [the responsible state agency].

(3) All payments of employment taxes must be made by the employer to the [insert appropriate state agency] in accordance with the following schedule:

(A) If the total employment taxes then currently owed is \$2,500 or less, no later than January 31 of the year immediately following the end of the calendar year the taxes become due;

(B) If the total employment taxes then currently owed is greater than \$2,500 but no more than \$5,000, on July 30 and January 31 of each year;

(C) If the total owed by an employer is greater than \$5,000, but no more than \$50,000, no later than the 15th day of the calendar month immediately following the calendar month in which the amount owed exceeds \$5,000;

(D) If the total then currently owed is greater than \$50,000 but no more than \$100,000, no later than the 3rd business day immediately following the last Friday of the semi-weekly period in which the amount owed exceeds \$50,000;

(E) If the total then currently owed is greater than \$100,000, no later than three business days following the day the amount owed exceeds \$100,000.