

RCW 50.29.062 Contribution rates for predecessor and successor employers. (1) If the department finds that a significant purpose of the transfer of the business is to obtain a reduced array calculation factor rate, contribution rates shall be computed and penalties and other sanctions shall apply as specified in RCW 50.29.063.

(2) If subsection (1) of this section and RCW 50.29.063 do not apply and if the department finds that an employer is a successor, or partial successor, to a predecessor business, predecessor and successor employer contribution rates shall be computed in the following manner:

(a) If the successor is an employer, as defined in RCW 50.04.080, at the time of the transfer of a business, the following applies:

(i) The successor's contribution rate shall remain unchanged for the remainder of the rate year in which the transfer occurs.

(ii) Beginning January 1st following the transfer, the successor's contribution rate for each rate year shall be based on a combination of the following:

(A) The successor's experience with payrolls and benefits; and

(B) Any experience assigned to the predecessor involved in the transfer. If only a portion of the business was transferred, then the experience attributable to the acquired portion is assigned to the successor.

(b) If the successor is not an employer at the time of the transfer, the following applies:

(i) Except as provided in (b)(ii) and (iii) of this subsection (2), the successor shall pay contributions:

(A) At the contribution rate assigned to the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience attributable to the predecessor relating to the assignment of the predecessor's rate class is transferred to the successor.

(B) Beginning January 1st following the transfer, the successor's contribution rate for each rate year shall be based on an array calculation factor rate that is a combination of the following: The successor's experience with payrolls and benefits; and any experience assigned to the predecessor involved in the transfer. If only a portion of the business was transferred, then the experience attributable to the acquired portion is assigned to the successor if qualified under RCW 50.29.010 by including the transferred experience. If not qualified under RCW 50.29.010, the contribution rate shall equal the sum of the rates determined by the commissioner under RCW 50.29.025(1)(d) and 50.29.041, if applicable, and continuing until the successor qualifies for a different rate, including the transferred experience.

(ii) If there is a substantial continuity of ownership, control, or management by the successor of the business of the predecessor, the successor shall pay contributions at the contribution rate determined for the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience attributable to the predecessor relating to the assignment of the predecessor's rate class is transferred to the successor. Beginning January 1st following the transfer, the successor's array calculation factor rate shall be based on a combination of the transferred experience of the acquired business and the successor's experience after the transfer.

(iii) If the successor simultaneously acquires the business or a portion of the business of two or more employers with different contribution rates, the successor's rate, from the date the transfer occurred until the end of that rate year and until it qualifies in its

own right for a new rate, shall be the sum of the rates determined by the commissioner under RCW 50.29.025(1) (a) and (b) and 50.29.041, applicable at the time of the acquisition, to the predecessor employer who, among the parties to the acquisition, had the largest total payroll in the completed calendar quarter immediately preceding the date of transfer, but not less than the sum of the rates determined by the commissioner under RCW 50.29.025(1)(d) and 50.29.041, if applicable.

(c) With respect to predecessor employers:

(i) The contribution rate on any payroll retained by a predecessor employer shall remain unchanged for the remainder of the rate year in which the transfer occurs.

(ii) In all cases, beginning January 1st following the transfer, the predecessor's contribution rate or the predecessor's array calculation factor for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year excluding the experience of the transferred business or transferred portion of business as that experience has transferred to the successor: PROVIDED, That if all of the predecessor's business is transferred to a successor or successors, the predecessor shall not be a qualified employer until it satisfies the requirements of a "qualified employer" as set forth in RCW 50.29.010.

(3) A predecessor-successor relationship does not exist for purposes of subsection (2) of this section when a significant purpose of the transfer of a business or its operating assets is for the employer to move or expand an existing business, or for an employer to establish a substantially similar business under common ownership, management, and control. However, if an employer transfers its business to another employer, and both employers are at the time of transfer under substantially common ownership, management, or control, then the unemployment experience attributable to the transferred business shall also be transferred to, and combined with the unemployment experience attributable to, the employer to whom such business is so transferred as specified in subsection (2)(a) of this section.

(4) For purposes of this section, "transfer of a business" means the same as RCW 50.29.063(4)(c). [2021 c 2 § 20; 2012 1st sp.s. c 2 § 1; 2010 c 25 § 2; 2009 c 225 § 1; 2006 c 47 § 2; 2003 2nd sp.s. c 4 § 18; 1996 c 238 § 1; 1995 c 56 § 1; 1989 c 380 § 81; 1984 c 205 § 6.]

Intent—Conflict with federal requirements—Effective date—2021 c 2: See notes following RCW 50.04.323.

Conflict with federal requirements—2012 1st sp.s. c 2: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2012 1st sp.s. c 2 § 2.]

Conflict with federal requirements—2010 c 25: See note following RCW 50.29.021.

Conflict with federal requirements—2009 c 225: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2009 c 225 § 3.]

Conflict with federal requirements—2006 c 47: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2006 c 47 § 5.]

Severability—2006 c 47: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 47 § 6.]

Effective date—2006 c 47: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2006]." [2006 c 47 § 7.]

Retroactive application—2006 c 47: "This act is remedial in nature and shall be applied retroactively to January 1, 2006." [2006 c 47 § 8.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—1996 c 238: "This act applies to unemployment contribution rates effective on and after January 1, 1996." [1996 c 238 § 2.]

Conflict with federal requirements—1996 c 238: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are

a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1996 c 238 § 3.]

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.