

2014 -- H 8206

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- EMPLOYMENT SECURITY--
CONTRIBUTIONS

Introduced By: Representatives Morin, Phillips, Shekarchi, Casey, and Tomasso

Date Introduced: May 15, 2014

Referred To: House Labor

(by request)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-43-35 of the General Laws in Chapter 28-43 entitled
2 "Employment Security - Contributions" is hereby amended to read as follows:

3 **28-43-35. Special rules regarding transfers of experience and assignment of rates. --**

4 Notwithstanding any other provisions of chapters 42 -- 44 of this title, the following shall apply
5 regarding assignment of rates and transfers of experience:

6 (a) If an employer transfers its trade or business, or a portion thereof, to another
7 employer and, at the time of the transfer, there is any common ownership, management, or
8 control of the two (2) employers, then the unemployment experience attributable to the
9 transferred trade or business shall be transferred to the employer to whom such business is so
10 transferred. In determining whether there is any common ownership, management, or control, the
11 department may consider the following factors, which include, but are not limited to: any familial
12 relationships, principals or corporate officers, organizational structure, day-to-day operations,
13 assets and liabilities, and stated business purposes. The rates of both employers shall be
14 recalculated in the following manner:

15 (1) The total payroll of the employees on the predecessor's payroll during the last,
16 completed calendar quarter prior to the date of the transfer, who are also on the payroll of the
17 successor when the transfer takes effect shall be divided by the predecessor's total payroll during
18 the last, completed calendar quarter prior to the date of the transfer, and that percentage shall be

1 applied to the experience rating balances and payroll of the predecessor as of the end of the
2 experience year used to determine the contribution rate for the tax year in effect at the date of
3 transfer. The resulting amounts shall be subtracted from the experience-rating balances and
4 payroll of the predecessor. The predecessor's remaining experience-rating balances and payroll
5 shall be used to determine its contribution rate for the new tax year or for the remainder of the
6 current tax year, whichever is applicable, effective on the first day of the calendar quarter
7 following the date of the transfer; provided, that if the date of the transfer is the first day of the
8 calendar quarter, then the new contribution rate shall take effect on the date of the transfer.

9 (2) The balances subtracted from the predecessor's account in subdivision (a)(1) of this
10 section, shall be combined with the experience rating balances and payroll of the successors as of
11 the end of the experience year used to determine the contribution rate for the tax year in effect at
12 the date of transfer. Those combined balances shall be used to determine the contribution rate for
13 the successor for the new tax year, or for the remainder of the current tax year, whichever is
14 applicable, effective on the first day of the calendar quarter following the date of the transfer;
15 provided, that if the date of the transfer is the first day of the calendar quarter, then the new
16 contribution rate shall take effect on the date of the transfer. For successors in business for less
17 than one experience year, their contribution rate for the new tax year, or for the remainder of the
18 current tax year, whichever is applicable, shall be computed based on the transferred experience
19 rating balances and payroll of the predecessor and shall take effect on the first day of the calendar
20 quarter following the date of the transfer; provided, that if the date of the transfer is the first day
21 of the calendar quarter, then the new contribution rate shall take effect on the date of the transfer.

22 (3) A successor shall be deemed to be an eligible employer if its experience combined
23 with that of its predecessors meets the requirements of ~~subdivision~~ [§28-43-1\(3\)](#). As used in this
24 section, "successor" means the employing unit to whom a transfer as provided in this section is
25 made, and "predecessor" means the employer making the transfer and may, if the context so
26 requires, be construed as referring only to the separate establishment transferred in case of the
27 transfer of a separate establishment.

28 (b) If, following a transfer of experience under subsection (a) of this section, the director
29 determines that a substantial purpose of the transfer of the trade or business was to obtain a
30 reduced liability for contributions, then the [experience](#) rating accounts of the employers involved
31 shall be combined and the combined rate assigned to each employer account.

32 (c) Whenever a person who is not an employer under this chapter at the time that person
33 acquires the trade or business of an employer, the unemployment experience of the acquired
34 business shall not be transferred to such person if the director finds that such person acquired the

1 business solely, or primarily, for the purposes of obtaining a lower rate of contributions. Instead,
2 such person shall be assigned the new employer rate under ~~section~~ §28-43-8.3. In determining
3 whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of
4 contributions, the director shall use objective factors ~~which~~ that may include the cost of acquiring
5 the business, whether the person continued the business enterprise of the acquired business, how
6 long such business enterprise was continued, or whether a substantial number of new employees
7 were hired for performance of duties unrelated to the business activity conducted prior to the
8 acquisition.

9 (d) Subject to the provisions herein, whenever a person who is not an employer under this
10 chapter at the time that person acquires the trade or business, or a portion thereof, of an employer
11 in insolvency proceedings including federal bankruptcy courts, state receiverships, masterships or
12 other insolvency proceedings, the unemployment experience of the acquired business shall not be
13 transferred to such person. Instead, such person shall be assigned the new employer rate under §
14 28-43-8.3 unless the director finds that, at the time of the acquisition, there is common ownership,
15 management or control of the two (2) employers, and in such case all of the experience will be
16 transferred.

17 (e) Subject to the provisions herein, whenever a person who is an eligible employer prior
18 to the time that person acquires the trade or business, or a portion thereof, of an employer in
19 solvency proceeding including federal bankruptcy courts, state receiverships, mastership or other
20 insolvency proceedings, the unemployment experience of the acquired business shall not be
21 transferred to such person. Instead, such person shall continue to pay employer contributions at
22 the rate applicable to it prior to the date it made such acquisition unless the director finds that, at
23 the time of the acquisition, there is common ownership, management or control of the two (2)
24 employers, and in such case all of the experience will be transferred and a new rate computed.

25 (f)(~~4~~)(1) If a person knowingly violates or attempts to violate subsections (a), (b) or (c),
26 or any other provision of this chapter related to determining the assignment of a contribution rate,
27 or if a person knowingly advises another person in a way that results in a violation of such
28 provision, the person shall be subject to the following penalties:

29 (i) If the person is an employer, then such employer shall be assigned the highest rate
30 assignable under this chapter for the rate year during which such violation or attempted violation
31 occurred and the three (3) rate years immediately following this rate year. However, if the
32 person's business is already at such highest rate for any year, or if the amount of increase in the
33 person's rate would be less than two percent (2%) for such year, then a penalty rate of
34 contributions of two percent (2%) of taxable wages shall be imposed for such year.

1 (ii) If the person is not an employer, such person shall be guilty of a misdemeanor and
2 subject to a civil money penalty of not more than five thousand dollars (\$5,000). Any such fine
3 shall be deposited in the Rhode Island ~~G~~general ~~F~~fund.

4 (2) For purposes of this section, the term "knowingly" means having actual knowledge
5 of, or acting with deliberate ignorance, or reckless disregard for, the prohibition involved.

6 (3) For purposes of this section, the term "violates or attempts to violate" includes, but is
7 not limited to, intent to evade, misrepresentation, or willful nondisclosure.

8 (4) In addition to the penalty imposed by subparagraph (1), any violation of this section
9 may also be prosecuted as a misdemeanor, and for each offense, the person may be subject to
10 imprisonment for a period not exceeding one year.

11 ~~(e)~~(g) The director shall establish procedures to identify the transfer or acquisition of a
12 business for purposes of this section.

13 ~~(f)~~(h) For purposes of this chapter:

14 (1) "Person" shall include an individual, a trust, estate, partnership, association, company
15 or corporation; and

16 (2) "Trade or business" shall include the employer's workforce.

17 ~~(g)~~(i) This section shall be interpreted and applied in such a manner as to meet the
18 minimum requirements contained in any guidance or regulations issued by the United States
19 Department of Labor.

20 ~~(h)~~(j) Any determination of the director under this section shall be final unless an appeal
21 from it is filed by the aggrieved party within fifteen (15) days from the date that notice is mailed
22 to the last known address of that party. All appeals shall follow the provisions of ~~section~~ §28-43-
23 13.

24 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO LABOR AND LABOR RELATIONS -- EMPLOYMENT SECURITY--
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1 This act would allow new employers to receive the new employer rate with respect to the
2 employment security fund when taking over an existing business in insolvency proceedings if
3 there is no common ownership, management or control of the two (2) employers and would allow
4 existing employers to maintain their current tax rate when taking over an existing business in
5 insolvency proceedings if there is no common ownership, management or control of the two (2)
6 employers.

7 This act would take effect upon passage.

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