

# **VIRGIN ISLANDS DEPARTMENT OF LABOR**

## ***DIVISION OF UNEMPLOYMENT INSURANCE***

### ***EMPLOYER HANDBOOK***

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## **Introduction**

The unemployment compensation program in the Virgin Islands is administered by the *Department of Labor / Employment Security Agency / Unemployment Insurance Service*, in accordance with the provisions of the Virgin Islands Unemployment Insurance Act. The primary functions of this Agency are paying unemployment benefits to eligible unemployed workers and collecting taxes from liable employers.

This pamphlet has been prepared to provide a simplified explanation of the tax, benefit and appeals provisions of the unemployment insurance program of the Virgin Islands. It does not take precedence over the law or regulations, and is subject to change at any time as a result of statutory amendments, regulatory revisions, court decisions, federal requirements, and Agency procedural changes.

This pamphlet is intended to provide employers in the Virgin Islands with information necessary to protect their experience rating accounts and to inform them of their rights and responsibilities under the law.

## **The Background of Unemployment Compensation**

Unemployment Compensation was first begun as a national program during the Great Depression of the 1930's as part of a group of social insurance programs. Its purpose was and is to provide compensation to workers who are unemployed through no fault of their own until, normally, they are able to go back to work. The amounts payable as benefits are intended to cover non-deferrable expenses during unemployment, such as housing, food, clothing, and necessary transportation.

The benefits paid help maintain purchasing power which many consider the key to business prosperity. In this way, unemployment compensation promotes economic stability and helps to stave off the downward cycles that lead to depressions. Businessmen credit this program with playing an important part in bringing about quick recoveries from business recessions.

Your contributions (taxes) paid to the Virgin Islands Government are used exclusively for payment of unemployment benefits to individuals who are eligible under the law. Your Federal unemployment taxes (*FUTA*) are used primarily to finance the administration of the Unemployment Insurance and Employment Service programs in the Virgin Islands.

For the purposes of the Unemployment compensation and Employment compensation and Employment service programs, the Virgin Islands is treated as a State.

## Definitions

**Agency:** Virgin Islands Department of Labor, Unemployment Insurance Service.

**Commissioner:** A person responsible for administering the Department of Labor.

***Director Unemployment Insurance Service:***

A person responsible for administering the programs of the Virgin Islands Unemployment Insurance Service.

**Appeal Examiner:** A person responsible for conducting an appeal hearing and issuing decisions.

**Appeal:** Process established to review determination with respect to a claim for benefits or assignment of a contribution rate.

**Base Period:** The first four of the last five completed calendar quarters immediately preceding the effective date of a claim filed by an unemployed individual. Wages paid during a base period are used to determine entitlement.

**Benefit Week:** Seven consecutive calendar days ending at midnight on a Saturday.

**Benefit Year:** The one year period beginning with the Sunday of the week in which an initial claim is filed asking for a determination of insured status.

**Calendar Week:** Period of seven consecutive days beginning on Sunday and ending the following Saturday at midnight.

**Calendar Quarter:** The period of three consecutive calendar months ending on March 31, June 30, September 30, and December 31.

**Charges:** Amount charged to an employer's experience rating account for benefit payments to former employees. *The percentage chargeable is the amount of wages each employer paid to the worker for insured work as a proportion of total wages reported during the base period of a claim.*

**Claimant:** An individual who files a claim for unemployment benefits.

**Contribution Rate:** The percentage of taxable wages payable by a contributing employer to the Agency.

**Contributions:** The unemployment insurance tax payable by contributing employers.

**Contributing Employers:** All private sector employing units are contributing (tax paying) employers. Virgin Islands Government entities and nonprofit organizations may elect to be contributing or reimbursing employers.

**Covered Employer:** Employing unit which has become subject to the provision of the Virgin Islands Unemployment Insurance Act.

**Determination:** Decision by the Agency that a claimant is or is not eligible to receive unemployment benefits, or a decision with respect to employer's coverage liability, or contribution rate.

**Disqualification:** A finding by the Agency that a claimant is not entitled to benefits for a particular reason.

**Earnings:** With respect to a week's remuneration earned in the performance of covered or non-covered service, or in self-employment, whether not yet received.

**Eligibility:** A finding by the Agency that a claimant is entitled to benefits.

**Employer Account Number:** The number assigned by the Agency and used for recording and filing tax and benefit information relating to each employer's account. (Enter this number on all remittances to the Agency and refer to it in all correspondence concerning an account.)

**Employing Unit:** Any individual, partnership, corporation, or other type of organization, which employs one or more individuals, full-time or part-time.

**Employment:** Services performed for a covered employer, either full-time or part-time, for remuneration.

**Experience Rating Account:** Account kept by the Agency for each employer to record wages paid, contributions paid, and all benefit charges as a means of computing his contribution rate annually. This is only a book account, and an employer has no property rights to the assets in an account

**Federal Identification Number:** Identification number assigned to each employer by the Internal Revenue Service and referred to as the Federal I.D. Number. The I.D. Number is used in certifications of payments made by an employer to the Virgin Islands.

**Fraud:** False representation or statement knowingly made, or a failure to disclose material facts by an individual or employing unit, officer or agent of an employing unit to prevent or reduce the payment of benefits or to obtain an increase in benefits.

**Insured Wages:** Wages paid for employment covered by the Virgin Islands Unemployment Insurance Act usable to establish a claim for benefits.

**Labor Dispute:** Any controversy concerning terms, tenure, or conditions of employment under an existing or proposed collective bargaining agreement or any lock-out by an employer of his workers.

**Local Office:** One of several offices readily available for claimants/applicants to file claims and receive job placement and training information and service.

**Most Recent Employer:** The employer who last employed the claimant immediately prior to filing an initial claim for benefits.

**Predecessor:** The employing unit that has transferred its business, assets or activities, in whole or in part, to a successor employing unit.

**Rate Determination:** A request for review of any determination made with respect to an employer's liability status or any action affecting an employer's contribution rate or account.

**Reimbursing Employers:** Nonprofit organizations and Virgin Islands governmental entities which, instead of paying quarterly contributions, make quarterly payments equal to the amount of benefits charged against their accounts.

**Successor:** An employing unit that obtained all or part of an existing entity by transfer or succession.

**Suitable Work:** Work for which a worker is qualified considering the degree of risk involved to one's health, safety, and morals, and one's prior training. Work offered as a direct result of a strike, lockout, or other labor dispute is considered not suitable. Suitability of work may be different in connection with claims for extended benefits.

**Valid Claim:** A claim filed by a jobless worker who has the required base period wages to establish a claim and a benefit year.

**Wages:** Any remuneration for covered service, from whatever source, paid by an employing unit to an individual in its employ.

## Important Highlights

The following is a capsule summary of the most significant aspects of an employer's rights and responsibilities under the law. Each of these points is discussed elsewhere in this pamphlet.

### **Required Record Keeping**

An employer who pays wages to anyone in the Virgin Islands must maintain certain prescribed records which are to be retained for the current and at least the five preceding calendar years. These and other records relating to the employer's business must be available for inspection upon request. Failure to produce these records, when requested, is a violation of the law and may result in a penalty.

### **Reporting Requirements**

When an employer begins business operations in the Virgin Islands, he is required to notify the Agency promptly in order to have his tax status determined.

Contributions and wage reports are required for each calendar quarter that an employer is covered under the law. The respective due dates are April 30, July 31, October 31, and January 31. The forms for making those reports are *mailed* to employers well in advance of the due dates.

Failure to file reports and pay the contributions (taxes) due by the due dates may result in assessments of interest and penalties; it may also adversely affect an employer's contribution rate in future years. **SUCH REPORTS ARE REQUIRED EACH QUARTER, EVEN THOUGH AN EMPLOYER MAY NOT HAVE PAID ANY WAGES DURING THE QUARTER.**

Whenever an employer discontinues business in the Virgin Islands, transfers his business, or changes his legal form (e.g. from a partnership to corporation), he must notify the agency. This information may be noted on the final quarterly tax report or in letterform addressed to the agency's *Director or Chief of Tax*.

### **Employment Subject To Law**

Service performed for any employing unit in the Virgin Islands is subject to contributions, unless specifically excluded under the law. In general, service is covered if performed for some portion of a day in the current or preceding calendar year. If two or more businesses or establishments are owned or operated by the same employer, they will be treated as a single employing entity for purposes of the law. See, however, the special rules that apply to household employee coverage below.

## **Tax Computation and Payment**

The base amount of each employee's total earnings received as remuneration for covered employment during a calendar year is subject to contributions payable by the employer. The base amount is computed for each tax (calendar) year as an amount equal to 60.0% of the average annual wage in insured work in the Virgin Islands, rounded to the nearest \$100.00.

Almost every form of remuneration paid to an employee is subject to contributions, including salaries, wages commissions, tips, bonuses and the reasonable cash value of any meals or lodging provided.

A Tax rate is assigned to each employer for each taxable year. Notice of the rate assigned is mailed by January 31st of each year.

Penalties are assessed on all delinquent wage and contribution reports, but not to exceed \$60.00 per year. Interest is assessed on all delinquent contribution and reports at a rate of 9.0% *per annum*.

## **Non-Profit Organization and Governmental Entities**

All employees of non-profit organizations and Virgin Islands governmental entities are covered under the Virgin Islands Unemployment Insurance Program. Both non-profit organizations and separate governmental entities may elect to finance their participation in the unemployment insurance program under the benefit reimbursement option rather than contribution (tax) method.

## **Charging of Benefit Payments**

Benefits paid to a claimant are charged to the experience rating or reimbursement accounts of employers who paid wages to the individual during the base period of the claim. See "base period" under "Definitions" above. Employers are notified of these charges quarterly.

An employer should promptly contact the local office if:

- a. He has work available for the claimant;
- b. The claimant has declined an offer of employment or reemployment; or
- c. He believes the claimant is currently working or otherwise not entitled to benefits.

He should also contact the Agency if he believes the benefits charged are incorrect for any reason.

## Contributions

### **Who is liable?**

Employing Units, for which services are performed by one or more individuals at any time in "employment," as defined in the law, are normally subject to contributions. The services may be performed full-time or part-time, by adults or minors.

If individuals perform personal or domestic service in a private home or in a local college club, fraternity, or sorority and the aggregate payroll in that location equals or exceeds \$500.00 in remuneration in a calendar quarter in the current or preceding calendar year, the employees are in covered employment and their wages are normally subject to contributions.

### **Wages**

*The term "wages" for the purpose of unemployment insurance under the Virgin Islands law means any remuneration for personal services. The term includes tips, commissions, bonuses, the cash value of meals, lodging, laundry, and other means of payment for employment. Wages are reportable by employers in regard to the quarter when paid.*

*The following payments are a few examples of those not considered to be wages*

- *The employer's share of contributions to a fund under a plan or system for retirement benefits or health and life insurance.*
- *Courtesy discounts on purchases.*
- *Sick pay paid under a third party plan or system*
- *Travel expenses actually incurred and paid.*

### **Household Employee Coverage**

The Virgin Islands law provides unemployment insurance protection for household employees, which is also financed by their employers normally through contributions, similarly to other employers.

The following questions are the most common asked by domestic service employers:

- Q: We have a maid. How can I tell if I am required to pay unemployment insurance taxes?
- A: The key is how much CASH wages you pay to your household help. If you paid \$500.00 in any calendar quarter of this year or the preceding year, the job of everyone working for you in your home is covered. That does not mean \$500.00 to each employee; it means \$500.00 total cash wages.

- Q: Are baby sitters counted as household employees?  
A: Yes. If over 18, the babysitter is an employee for our purposes. Here are examples of *some other individuals* considered household employees: cleaning women, governesses, chauffeurs and gardeners. Your spouse and your minor children are not considered employees for these purposes.
- Q: I have a nurse who performs service for me at my residence. Would she be covered under the law?  
A: A licensed nurse called in on a special case, who is not subject to any direction or control from the person who retains her services, is considered an independent contractor and not covered. However, a nurse, regardless of her professional standing, who does not offer her services widely and who devotes her services exclusively to one patient under contract of hire usually over an extended period of time has removed herself from the professional labor market and is an employee covered under the law.
- Q: I've paid \$500.00 in cash wages, within one calendar quarter, to individuals working in my home. What should I do?  
A: You should write or telephone this Agency and we will mail *you our official* registration form to complete and return. You will then be officially notified of your liability.
- Q: What is expected of me after I receive notice that I am a liable employer?  
A: Reporting forms will be sent to you on which you will enter certain information. When computing wages for this report, include, in addition to cash wages, the cash value of any room and board you gave your employee(s) during the quarter.

If you pay less than \$500.00 in cash wages in any calendar quarter, you have no liability for that quarter. You must still file the quarterly report showing no employees. If you do not intend to have employees in the future, you can request that your account be terminated. You will no longer be required to file reports as an employer.

### **Exempt Services**

Examples are given below of types of work which are not subject to contributions or reimbursements.

- Services performed by an individual under 18 years of age as a babysitter.
- Services performed not in the course of an employer's trade or business.
- *Services performed* by an individual in the employ of a son, daughter, or spouse. Service by a child under 21 in the employ of a parent.