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**DEPARTMENT OF EMPLOYMENT AND WORKFORCE**

CHAPTER 47

Statutory Authority: 1976 Code Sections 41-29-130 and 41-31-310

47-4. Employer Legal Entity Classification

47-5. Delinquent Reports

47-6. Benefit Ratio

47-7. Interest Surcharge

47-8. Employer-Employee Relationship

47-15. Reports and Instructions Relative to Report Form

47-17. Information to Be Furnished with Respect to Changes in Ownership, Notification of Acquisitions,

and Methods for the Transfer of Experience Rating Reserve Accounts

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47-36. Review of Rulings with Respect to the Status, Liability, and Rate of Contributions of an Employer

or Employing Unit

47-39. Joint Account

47-41. Bonding Requirements for Certain Nonprofit Organizations

47-46. “National Indicator” for Extended Benefits

47-47. “State Indicator” for Extended Benefits

**Synopsis:**

The Department of Employment and Workforce of South Carolina (Department) proposes to amend existing regulations to bring them into compliance with legislative changes made in the General Assembly during the 2010 session. Additionally it seeks to add definitions associated with the legislative reforms. The proposed regulations were previously published in the *State Register* on December 24, 2010, and the Department held a public hearing regarding the proposed regulations on Friday, January 28, 2011. The Notice of Drafting was published in the *State Register* on November 26, 2010.

**Instructions:**

The regulations are modified as provided below. All other items and sections remain unchanged. Delete Sections 47-46 and 47-47.

**Text:**

47-4. Employer Legal Entity Classification.

For the purposes of assigning a legal entity classification to an employing unit, the Department will follow the legal entity classification assigned to the employing unit by the Internal Revenue Service. In the event the employing unit has not been formally notified by the Internal Revenue Service of its legal entity classification, the Department will assign a legal entity classification to the employing unit based on the characteristics of the employing unit.

47-5. Delinquent Report.

If on the rate computation date an employing unit failed to submit contribution and wage reports for any period within the last twelve calendar quarters that was inclusive in the rate computation period in which the employer was determined liable under the South Carolina Department of Employment and Workforce Laws, the missing report shall be classified as delinquent for the purpose of experience tax rate calculation and tax rate assignment.

47-6. Benefit Ratio for Zero Taxable Wages.

A. If on the rate computation date the employer has zero benefit charges and zero taxable wages for the rate computation period 2011, the employer will be assigned to tax class twelve.

B. If on the rate computation date the employer has benefit charges but zero taxable wages for the rate computation period 2011, the employer will be assigned to tax class thirteen.

C. If on the rate computation date there are zero taxable wages and zero benefit charges during the rate computation period when computing the 2012 and subsequent tax year’s benefit ratio, the employer will be assigned the prior year’s tax class. If the employer does not have a prior year tax class, the employer will be assigned tax class twelve.

D. If on the rate computation date the employer has benefit charges and zero taxable wages during the rate computation period when computing the 2012 and subsequent tax year’s benefit ratio, the employer will be assigned to the prior year’s tax class. If the employer does not have a prior year tax class, the employer will be assigned tax class thirteen.

47-7. Interest Surcharge.

All contributory employers, including governmental entities and non-profit 501(c)(3) employers who have not elected to reimburse the Department under Section 41-31-620, are required to pay the interest surcharge in effect for a tax year. The interest surcharge effective for the applicable tax year will appear on the employer’s annual rate notice and quarterly contribution report in combination with the Departmental Administrative Contingency Assessment (DACA). Certain employers are exempt from DACA per Section 41-27-410.

47-8. Employer-Employee Relationship.

The South Carolina Department of Employment and Workforce has autonomy in its determination as to whether an employer-employee relationship exists among parties. While the Department is not bound by the rulings of other entities, principally the Internal Revenue Service and the South Carolina Department of Revenue, it may consider in its determinations rules, regulations, opinions, laws, and interpretations published by the United States Department of Labor, Internal Revenue Service, South Carolina Wage and Hour Division, and State and Federal Court decisions for the purpose of determining whether an employer-employee relationship exists for the purpose of determining liability under the South Carolina Department of Employment and Workforce Laws.

47-15. Reports and Instructions Relative to Report Form.

A. Each employing unit shall make such reports as are prescribed by the Department on forms issued by and required to be returned to the Department or its authorized representative.

B. Each employing unit shall comply with instructions pertaining to the contents and due date of any report form issued by the Department. Such instructions shall have the full force and effect of regulations when published.

C. Reports Covering Wages of Individuals in Employment:

Except as otherwise provided, each employer shall submit on or before the last day of the first month following the quarter covered by such report, a form report showing each individual in his employment during the preceding quarter. The form shall set forth:

1. The employer's name and account number assigned by the Department.

2. The worker's full name.

3. The worker's social security account number.

4. Total wages paid to the worker during the quarter.

5. Such other information as required by the form.

D. Where employing units have failed to make reports previously required and similar information is now required on a different basis, the Department may allow such delinquent reports to be filed showing only such information as is now necessary; provided however, nothing herein shall be construed as relieving such delinquent employing unit from any penalty or liability for previous failure to file such report at the time previously required.

47-17. Information to Be Furnished with Respect to Changes in Ownership, Notification of Acquisitions, and Methods for the Transfer of Experience Rating.

A. Notification to Department of discontinuance of business and changes of ownership for purposes of status determination and experience rating succession.

1. Any employer who discontinues business shall give notice to the Department in writing. This notice shall include the exact date of such discontinuance and shall be submitted promptly and must not be made later than thirty (30) calendar days after the date of discontinuance.

2. Any employer who by any means transfers substantially all (95 per cent or more) of its business or assets thereof to another shall notify the Department in writing. This notice shall be submitted promptly and must not be made later than thirty (30) calendar days after the date of transfer and shall include the date on which the transfer occurred, together with the name andphysical and/or mailing address of the employing unit to whom the transfer was made.

3. Any employer who by any means transfers a portion of its business to another shall notify the Department in writing. This notice shall be submitted promptly and must not be made later than thirty (30) calendar days after the date of transfer and shall include the date on which the transfer occurred, together with the name and physical and/or mailing address of the employing unit to whom the transfer was made. The Department shall be informed as to the nature and extent of each such partial transfer with particular reference to the description or identification of the part of the business transferred, together with a notation as to the proportion of the total business thus transferred.

4. Each employing unit which by any means acquires all or a portion of the business, or assets thereof, of any employer, or which has acquired its own business, or all of the assets thereof, from another, which at the time of such acquisition was an employer subject to the Act, shall notify the Department in writing promptly and must not be made later than thirty (30) calendar days after such acquisition occurred. This notice shall be in such form as to include:

a. From whom acquired.

b. The exact date of acquisition.

c. The portion of the business or assets of the predecessor acquired by the successor.

d. Whether acquirer is an individual, partnership, corporation, or a derivative thereof. If a partnership, the name, address and legal domicile of each partner must appear.

5. In the event of any change of form of organization between, to or from a corporation to a partnership or individual ownership; from partnership to corporation or individual ownership; or from individual ownership to partnership or corporation, notice of such change and the date thereof shall be made to the Department by the successor organization within thirty (30) calendar days after such change.

6. The employer, if a corporation, shall notify the Department of any change of name, forfeiture, or cancellations of charter, reincorporation, merger or consolidation, or any other change in corporate entity promptly and must not be made later than thirty (30) calendar days after such action.

7. The employer, if a partnership, shall notify the Department of any change in the partnership by reason of any person ceasing to be or becoming a partner, and shall report the name of any such person and the date that he or she ceased to be or became a partner not later than thirty (30) calendar days after such occurrence.

8. Employers shall promptly notify the Department in the event of consolidation, dissolution, receivership, insolvency, bankruptcy, composition, assignment for the benefit of creditors, or similar proceedings not later than thirty (30) calendar days after such proceeding.

B. Total Transfer of Experience Rating Where Substantially All (95 per cent or more) of a Business, or the Assets Thereof, Have Been Transferred to Another Employer.

1. Both the transferring employer and the acquiring employer shall comply with paragraphs A.2 and A.4 of this regulation and shall furnish such additional information as may thereafter be requested by the Department.

2. The acquiring employer may expedite the total transfer to it of the experience of the transferring employer by making application therefore by letter or on such forms as the Department may furnish. Such application should be filed with the Department promptly and in no case later than thirty (30) calendar days after the succession occurred.

3. The Department shall upon its own initiative transfer the experience of the transferring employer to the acquiring employer whenever the Department ascertains that there has been a transfer of substantially all of a business, or assets thereof, inasmuch as a total transfer of the experience rating under such a condition is required by law.

C. Partial Transfer of Experience Rating Where a Portion of a Business Has Been Transferred to Another Employer.

1. Both the transferring employer and the acquiring employer shall comply with paragraphs A.3 and A.4 of this regulation and shall furnish such additional information as may thereafter be requested by the Department.

2. The transferring employer may request by letter or by such forms as the Department may furnish that the portion of its experience rating which is attributable solely to the portion of the business acquired by the acquiring employer be transferred to the acquiring employer. Such request should be filed promptly and must not be made later than thirty (30) calendar days after the succession occurred.

a. The acquiring employer may request by letter or by such forms as the Department may furnish that the portion of the experience of the transferring employer which is attributable solely to the portion of the business acquired be transferred to the acquiring employer. Such request should be filed promptly and must not be made later than thirty (30) calendar days after the succession occurred.

3. Upon receiving the request from both the transferring and acquiring employers for the transfer of the portion of the experience of the transferring employer attributable solely to the portion of the business acquired by the acquiring employer, the Department shall require that the transferring employer supply the Department with the applicable percentage(s), and if necessary, any taxable wages that are to be used in determining the part of the experience to be transferred.

4. The Benefit Experience Record shall be transferred from the predecessor to the successor as follows:

a. The payroll (taxable wages) for the quarters used in the rate computation period(s).

b. The benefits charged to the predecessor's experience rating for the quarters used in the rate computation period(s).

5. In the event that a separate subsidiary experience rating account has been maintained by the Department with respect to the distinct and severable portion of the business transferred for the entire period of the operation of such portion, Sub-Items C.3 and C.4, above, will not apply. The benefits charged and total payroll (taxable wages) appearing on such subsidiary account, together with those Items entered on that account from the preceding June 30th up to the date of the partial transfer of business will be transferred from the experience rating of the predecessor (transferring) employer to the experience rating of the acquiring employer. Attention is directed to Sections 41-31-100 through 41-31-120 of the South Carolina unemployment Law as to the conditions under which total or partial transfer of experience rating can take place and as to the provisions for rate computations upon such transfer. The law directs that no partial transfer of experience may be made unless requests are submitted to the Department by both the transferring and the acquiring employers.

47-19. Separation Notices.

A. Notice of Filing:

1. A copy of each initial or additional claim filed by a worker will be mailed by his local office to his last employer regardless as to whether the latter is liable or non-liable under the Act.

2. The employer will fill in the information called for on the back of the copy of the initial claim form received by him and return the same to the address of the office shown thereon so as to reach such office no later than the due date established in South Carolina Code Section 41-35-615.

3. A liable employer other than the last separating employer may be sent a form UCB-214, Request to Employer for Separation Information. This form requests separation information concerning the former worker. The employer shall furnish separation information on Form UCB-214 so that it will reach the office of the Department not later than ten (10) calendar days from the date such form is mailed to him by the Department.

4. A failure to respond in a timely fashion as set forth in A2 and A3 may result in the separation information not being considered in rendering an initial determination on the claim.

B. Mass Separations:

1. The term "mass separation" means a separation (permanently, or for an indefinite period), of ten or more workers employed in a single establishment at or about the same time and for the same reason; provided however, that the term "mass separation" shall not apply to separations for regular vacation periods as defined in the Act and approved by the Department.

2. In cases of mass separations the employer, shall, for each individual affected, file with the office nearest the worker's place of employment, or with such office nearest employee's residence. Form UCB-113, setting forth such information as is required thereby; such form shall be filed not later than ten (10) calendar days, exclusive of Sundays and holidays, after such separation.

C. Notice of Unemployment Due to a Labor Dispute:

1. In all cases of unemployment due to a labor dispute the employer shall follow the procedure set forth in 47-21(D).

D. In all cases of initial claims, additional claims or requests for reinstatement of benefits, where a claimant has been separated from the employ of a non-liable employer, the last covered (liable) employer by whom the claimant was employed will be requested to furnish information relative to the separation of the claimant from employment with such covered (liable) employer or as to any offer of work made to the claimant by such covered (liable) employer in accordance with 47-23 of these regulations subsequent to the separation of the claimant from the employ of such covered (liable) employer. Separation information must be maintained by employers in accordance with 47-14 (A)(2)(e) of these regulations.

47-23. Offers of Work.

A. Section 41-35-120(5) directs that a claimant may be disqualified from the receipt of benefits should he fail without good cause to apply for available suitable work, when so directed by the employment office or the Department; or should he refuse to accept available work when offered him by the employment office or the employer; or should he decline to return to his customary self-employment (if any) when so directed by the Department.

B. A written offer of work made directly by an employer shall set out the nature of the work offered, the probable wages and hours per week, the shift or daily hours of the proposed employment, the expected duration of employment, the time and place the claimant should report, and the name of the person to whom he is to report. No disqualification will be imposed by reason of the failure of a claimant without good cause to accept a direct offer of available and suitable work unless the employer submits a copy of such an offer to the Department together with a certification that it was either received and refused by the claimant, or that it was directed by registered or certified mail to the last known address of the claimant and that no response was made by the claimant; Provided, however, that no direct offer of work made in accordance with this regulation shall be considered unless a notice of such offer of work is received by the Department.

C. An oral offer of work may be made directly by an employer but before a claimant shall be disqualified to receive benefits by reason of his failure to accept, without good cause, available suitable work so offered, a sworn statement shall be submitted by the employer to the Department setting forth that the offer of work was made directly to the claimant, the nature of the work offered, the wages and hours per week, the shift or daily hours of the proposed employment, the expected duration of the employment, the time and place the claimant should have reported for duty, and any reason given by the claimant for his refusal to accept the work; Provided, however, that no direct offer of work made in accordance with this regulation shall be considered unless a notice of such offer of work is received by the Department.

47-28. Military Service.

A. This regulation shall apply only to those individuals who have volunteered or enlisted or who have been called into any branch of military service or any organization affiliated with the defense of the United States or the State of South Carolina.

B. The first benefit year following the termination of his military service shall be the one year period beginning the Sunday prior to the day of making a request for determination of insured status.

C. With respect to the benefit year as defined in Paragraph B hereof, the base period for such individual shall be the first four of the last five completed calendar quarters immediately prior to the filing of the claim or the last four of the last five completed calendar quarters if the individual does not qualify monetarily under the traditional base period. Military wages shall be assigned based on the requirements of Unemployment Compensation for Ex-Service members (UCX), Title XV of the Social Security Act.

D. Any individual, as provided for above, shall be ineligible for benefits for any week with respect to which or a part of which he has received or is seeking unemployment benefits under another unemployment compensation law of the United States.

E. All other provisions of the South Carolina unemployment Law not inconsistent with the above and foregoing provisions shall apply to the payment of claims for benefits filed hereunder.

47-36. Review of Rulings with Respect to the Status, Liability, and Rate Contributions of an Employer or Employing Unit.

A. At the request of an employing unit or employer or a field deputy, the Unemployment Insurance Tax Director or his designee shall make an administrative determination with respect to the status, liability, and rate of contributions applicable thereto, provided that such request is made within thirty (30) calendar days of the date of mailing of a proposed audit report, a liability notice, or a rate notice.

B. An administrative determination by the Unemployment Insurance Tax Director or his designee concerning the status, liability, or rate of contributions of an employing unit or employer (whether issued initially or in accordance with paragraph A, supra), will be reviewed by the Department upon the appeal of such employing unit or employer, PROVIDED:

1. The appeal be made in writing by an officer/owner of the business or an attorney and mailed or delivered to the Department not more than thirty (30) calendar days after the date of mailing of such administrative determination, and

2. The appeal contains a clear and concise statement of the reasons therefore.

C. The Department shall designate a hearing officer employed by it to conduct a hearing at a place convenient for the employing unit or employer concerned at which testimony shall be taken and evidence received in the matter.

1. Notice of the hearing shall be mailed by the hearing officer or deputy to the employing unit or employer, directed to its last known address, at least seven (7) calendar days prior to the date of the hearing. The notice shall state the time set for the hearing, together with a brief statement of the question or questions to be determined.

2. The hearing shall be conducted under the same procedure as that provided for the hearing of appeals of claims for benefits. Testimony will be recorded and exhibits will be received into evidence in the same manner. A record shall be prepared consisting of the pertinent ruling or rulings of the Unemployment Insurance Tax Director or his designee, the motion for review by the Department, a transcription of the testimony, and the documentary evidence and exhibits. This record will be reviewed by the hearing officer who will issue a decision.

3. An appeal of this decision may be made to the Appellate Panel, provided that it be made in writing by an officer/owner of the business or an attorney and mailed or delivered to the Department not more than thirty (30) calendar days after the date of mailing of such administrative ruling and contains a clear and concise statement of the reasons therefore.

D. The Appellate Panel shall give notice of at least seven (7) calendar days of a hearing to be held at its offices in Columbia for the purpose of receiving the oral or written arguments in the case. No further testimony or evidence will be received at this hearing and the Appellate Panel shall make its determination on the basis of the record submitted to it by the Appeals Hearing Officer. A written decision will be issued by the Appellate Panel setting forth its findings of fact and conclusions of law in affirmation, modification, or reversal of the administrative ruling or rulings presented for review.

47-39. Joint Account.

A. Two or more "employers" as defined in Section 41-27-200, South Carolina Code of Laws, 1976, as amended, in the same or a related trade, occupation, profession, or enterprise, or having a common financial interest, hereinafter referred to as an "Employer Group," may enter into an agreement with the Department to establish a joint experience rating account as provided in Section 41-31-20; subject to the provisions of Article 1 of Chapter 31 of Title 41 of the 1976 Code--Rates of Contribution; shall be treated as a separate employer account and subject to the following provisions:

1. A joint account may not be established for a period of less than five (5) years beginning with the first day of the calendar year in which such application for the establishment of such account is approved by the Department.

2. The contribution rate for an “employer group” shall be computed as of June 30 or December 31 based upon the date of approval by the Department. Approvals between January 1 and June 30 will be computed as of June 30; approvals between July 1 and December 31 will be computed as of December 31. This rate will be applicable for the subsequent tax year. Such computation shall be based upon the aggregate experience rating of all the members of the group for the applicable rate computation time period.

3. No "employer" may become a member of an "employer group" until such employer has satisfied the provision of Section 41-31-40 ( twelve (12) months of accomplished liability ).

4. Separate accounts shall be maintained for each employer in an "employer group" for identification, with such separate accounts being combined only for the purpose of establishing a joint experience rate.

5. No "employer group" shall have a reduced contribution rate when an execution for unpaid contributions is outstanding against one or more members of the "employer group."

6. If a member of an "employer group" acquires the business of an employer, the experience of the predecessor employer shall be transferred to the separate account of the acquiring employer. The provision of Section 41-31-100 or Section 41-31-110 as applicable shall apply to the "employer group" in accord with Sub-Item thereof.

7. All members of an "employer group" shall remain members until the dissolution thereof. This provision shall also apply to a successor who acquires the business of a member of an "employer group," provided however, if for any reason the business of a member of an "employer group" is discontinued, or if the liability of a member is terminated in accord with Chapter 37 of Title 41 of the 1976 Code, the experience in the account of the discontinued business shall remain a part of the experience of the "employer group" until the next rate computation.

8. An "employer group" may be dissolved and the joint account distributed in accord with Section 41-31-120 on the next regular computation date:

a. by 50 per cent or more of the employers in the "employer group" each of which has at least five (5) percent of the total wages on the date of the dissolution.

b. Each member of the "employer group" thus dissolved will be considered for the purposes of Section 41-31-120 as the successor to his own business and the employer group will be treated as the predecessor.

c. In the event the experience of any member of the "employer group" was retained as a part of the experience of the "employer group" upon the discontinuance of business or termination of liability in accord with Chapter 37 of Title 41 of the 1976 Code, the experience account of such an employer upon dissolution of the group:

i. will be inactivated if the employer ceased to do business;

ii. will be canceled if the employer terminated liability.

9. Each member of an "employer group" will be responsible for keeping the records and filing the reports required by the Department with respect to individuals in its employment. Every member of the "employer group" shall be liable individually or collectively for all past due penalties, contributions, and interest of any member and shall be subject to the provisions of Article 3 of Chapter 31 of Title 41 of the 1976 Code.

10. Benefits paid, chargeable to a member of an "employer group" shall be used in computing the experience rate of the "employer group;" however, only the employer to whom benefits are chargeable shall have the right of appeal in accord with the appeals provisions in Article 5 of Chapter 35 of Title 41 of the 1976 Code.

11. No provision in Section 41-31-20 or in this regulation issued pursuant thereto shall be construed as giving any member of an "employer group" any authority over the operation of another member with respect to the administration of the joint "employer group" account.

47-41. Bonding Requirements for Certain Nonprofit Organizations.

Any nonprofit organization or group of organizations which has become liable for payments of benefits in lieu of contributions and which does not possess title to real property and improvements within South Carolina valued in excess of two million dollars shall be required to post a surety bond, money deposit, or other securities with the Department to insure the payments in lieu of contributions. Such surety shall be filed with the State Treasurer in accordance with the requirements of that office. A determination relative to the value of real property and improvements of a nonprofit organization or group of organizations will be based on written information supplied by said organization certifying to the value. Such information or evidence shall be in the form of an audited financial statement or in other form acceptable to the Department.

The nonprofit organization or group of organizations shall be required to: (1) Post a money deposit; (2) Furnish an indemnity bond with a surety company authorized to do business within the State of South Carolina; or (3) In lieu of an indemnity bond, furnish U.S. Government bonds, obligations of the U.S. Government or obligations fully guaranteed both as to principal and interest by the U.S. Government; obligations of the Federal Intermediate Credit banks, Federal Home Loan banks, Federal National Mortgage Associations and banks for cooperatives and Federal Land banks; obligations of the State of South Carolina or any political subdivision thereof.

The amount of the surety bond, money deposit, securities, or other security shall be computed on the total wages paid by a nonprofit organization or group of organizations multiplied by the tax rate assigned to tax class 20. Total wages paid means wages as defined in Section 41-27-380 of the law for the four completed calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of such four calendar quarters, the amount of the surety bond, cash deposit, securities, or other security shall be as determined by the Department.

**Fiscal Impact Statement:**

There will be no increased costs to the State or its political subdivisions.

**Statement of Rationale:**

The purpose of proposing Regulations 47-4 through 47-8, 47-15, 47-17, 47-19, 47-23, 47-28, 47-36, 47-39, and 47-41 is to create uniformity and delete ambiguity in the Department’s regulations. The proposed regulations bring the Department’s regulations into conformity with legislative changes passed in the 2010 session. There was no scientific or technical basis relied upon in the development of this regulation.