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**DEPARTMENT OF EMPLOYMENT AND WORKFORCE**

CHAPTER 47

Statutory Authority: 1976 Code Sections 41-29-110 and 41-31-45(C)

47-500. Definitions

47-501. Unemployment Trust Fund Solvency

**Synopsis:**

The South Carolina Department of Employment and Workforce proposes to add regulations 47-500 and 47-501 in Article 5. Unemployment Trust Fund, as required by SC Code Ann. 41-31-45(C), to define how the Department will determine the income necessary to be raised each year to return the trust fund to an adequate level as defined in SC Code Ann. 41-31-45(A)(5).

Notice of Drafting for the proposed regulation was published in the *State Register* on August 22, 2014.

Section-by-Section Discussion

47-500. Definitions.

 This section provides definitions for terms used in the following section.

47-501. Unemployment Trust Fund Solvency.

 This section provides details on how the income necessary to be raised each year to set state unemployment insurance tax rates will be determined based on economic conditions.

**Instructions:**

Print regulation as shown below.

**Text:**

47-500. Definitions.

 (1) “Department” means the South Carolina Department of Employment and Workforce.

 (2) “Fund adequacy target” means an average high-cost multiple of one. See S.C. Code Ann. § 41-31-45(A)(5).

 (3) “Solvency surcharge” is a surcharge imposed on contributory employers in each year the unemployment trust fund is solvent but the trust fund reserve does not meet the fund adequacy target.

 (4) “Fiscal year” begins on July first of each year and ends on June thirtieth of the succeeding year.

 (5) “Tax year” begins on January first of each year and ends on December thirty-first of each year.

 (6) “Trust fund reserve” means the unemployment compensation fund, excluding distributions from the federal government, pursuant to 42 U.S.C. 1103, commonly referred to as the Reed Act. See S.C. Code Ann. § 41-31-45 (A)(6) and § 41-33-10.

 (7) “Cap” is the greater amount of either: (1) the actual benefits paid in the prior fiscal year or (2) the projected benefits for the next tax year.

47-501. Unemployment Trust Fund Solvency.

 Pursuant to South Carolina Code Annotated Section 41-31-45(C) and Section 41-31-50(1)(b), the Department must annually calculate the income necessary to pay benefits and reach the fund adequacy target for the unemployment trust fund. The Department determines the total income needed as follows:

 (1) Projected benefits will be determined for the next tax year in consultation with the United States Department of Labor and with annual data provided by the Congressional Budget Office, subject to subsection (2).

 (2) The income needed to pay benefits and return the unemployment trust fund to the fund adequacy target may also include a solvency surcharge. A solvency surcharge shall be in effect for each tax year that the trust fund reserve is less than the fund adequacy target, as of June 30th, subject to 47-501(2)(a). The aggregate amount of the solvency surcharge will be determined for each tax year to be the amount calculated to return the unemployment trust fund to the fund adequacy target within five years subject to the following:

 (a) When actual benefits paid in the prior fiscal year are greater than the actual tax collections received in the prior fiscal year, then the cap, as defined in 47-500(7), is triggered. For the purpose of this section, tax collections shall exclude all penalties, interests, contingency surcharges, and recording fees. Once the cap is triggered then:

 (i) If projected benefits for the next year are less than the cap, then the solvency surcharge shall be the difference between the cap and the projected benefits.

 (ii) If projected benefits for the next tax year are equal to the cap, then no additional solvency surcharge will be added for the next tax year.

 (3) After the cap has been triggered, as described in 47-501(2)(a), and in the prior fiscal year, actual benefits paid were less than actual tax collections , then tax rates for the next tax year will be set based on returning the unemployment trust fund to the fund adequacy target within the next five years.

 (4) If the balance of the unemployment trust fund, as of the end of the most recently completed fiscal year, is greater than the fund adequacy target, then the Department may use the surplus amount to reduce taxes in the next tax year.

 (5) Notwithstanding the provisions of 47-501(2), once the fund adequacy target has been met, in subsequent tax years, the solvency surcharge shall be set in the event the unemployment trust fund balance does not meet the fund adequacy target, as of the end of the most recently completed fiscal year, as shown in the following table:

|  |  |
| --- | --- |
| Percentage the unemployment trust fund balance is below the fund adequacy target | Rebuilding period |
| More than 0.0000%, but less than 1.8750% | One year  |
| 1.8750% or more, but less than 3.7500% | Two years |
| 3.7500% or more, but less than 5.6250% | Three years |
| 5.62500% or more, but less than 7.5000% | Four years |
| 7.5000% or more | Five years |

 (6) In a fiscal year in which the fund adequacy target is reached, the Department will determine tax rates for the following tax year without a solvency surcharge and pursuant to South Carolina Code Annotated Section 41-31-50.

**Fiscal Impact Statement:**

No additional state funding is requested. The South Carolina Department of Employment and Workforce estimates that no additional costs will be incurred by the state and its political subdivisions in complying with the proposed Regulation 47-500 and 47-501.

**Statement of Rationale:**

Regulations 47-500 and 47-501 establish the procedure by which the South Carolina Department of Employment and Workforce will determine the amount of income necessary to pay benefits and return the unemployment trust fund to an adequate level. These regulations also provide guidance to the Department for setting tax rates in the midst of a recession during the rebuilding process as well as a mechanism to lower tax rates for businesses if the trust fund exceeds its adequacy target. The Department will consult with the United States Department of Labor and review annual data provided by the Congressional Budget Office in determining the projected benefits.