

## **UNEMPLOYMENT INSURANCE: CALIFORNIA SEEKS ANOTHER WAIVER FROM FEDERAL EMPLOYMENT TAX INCREASE**

In an attempt to avert an additional 1.4 percent federal employment tax increase on employers – on top of the 1.5 percent increase from a Federal Unemployment Tax Act (FUTA) credit reduction due in January, Governor Jerry Brown on June 29 submitted an application to the U.S. secretary of labor requesting a waiver.

The governor's transmittal letter stipulated that California qualifies for a waiver of the additional tax, known as the "benefit cost ratio (BCR) add-on" that comes in the form of a FUTA credit reduction (in addition to the FUTA credit reduction employers already are bearing). The governor cited the state's waiver eligibility because the state has taken no statutory, regulatory or judicial action during the 12-month period ending September 30, 2015, that will result in a net decrease in the solvency of the state's unemployment insurance (UI) system.

Under federal law, the secretary of labor must act on the governor's request no later than November 10.

Section 3302(c) (2) of Title 26 of the U.S. Code requires that employers' FUTA credit be reduced by a specified percentage if a state has not repaid an outstanding loan from the federal unemployment insurance program after two or more consecutive years. The calculation of the FUTA credit reduction varies depending on whether a loan balance remains after two consecutive years, three to four consecutive years, or five or more consecutive years.

California began borrowing from the federal government in January 2009 to pay UI benefits. The state defaulted on that loan, and under federal law, employers had to begin paying it off in the form of reduced FUTA credits, beginning with the 2011 taxable year.

For the last five years, the FUTA credit reduction has increased 0.3 percent annually, putting the credit reduction for the 2015 taxable year at 1.5 percent. The credit reductions cost employers \$1.8 billion in additional federal employment taxes from 2012 through 2014, and the California Employment Development Department expects employers to pay an additional \$3 billion cumulatively in 2015 and 2016.

Interest payments on the loan have totaled more than \$1 billion to date.

If the federal government waives the BCR add-on, as it did in 2014, California employers will not be saddled with an additional federal employment tax burden for the 2015 taxable year, beyond the FUTA credit reduction.

### **Impact on Employers**

Employers in California will be paying higher taxes even if the governor's request is accepted, but the taxes will be significantly higher if the waiver is denied:

- If the state is successful in obtaining a waiver of the BCR add-on, California's FUTA credit reduction will be 1.5 percent for the 2015 taxable year, which equals \$105 per employee.
- If the waiver request is denied, the BCR add-on of 1.4 percent will be added to the existing 1.5 percent credit reduction, for a total credit reduction of 2.9 percent for the 2015 taxable year. This equals \$203 per employee.

Taxes are paid in the calendar year following the tax year for which the credit reduction is calculated. Therefore, while this calculation and waiver request is applicable to federal employment taxes for the 2015 taxable year, they will be paid by employers in January 2016.