

HB3875



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3875

by Rep. Michael Unes

SYNOPSIS AS INTRODUCED:

820 ILCS 405/1402

from Ch. 48, par. 552

Amends the Unemployment Insurance Act. Provides that the Department of Employment Security may not make deductions from amounts paid as required contributions and credit the amount deducted toward any penalty outstanding on behalf of an employer without providing at least 30 days' notice of the deduction to the employer.

LRB099 07412 JLS 27531 b

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Unemployment Insurance Act is amended by
5 changing Section 1402 as follows:

6 (820 ILCS 405/1402) (from Ch. 48, par. 552)

7 Sec. 1402. Penalties.

8 A. If any employer fails, within the time prescribed in
9 this Act as amended and in effect on October 5, 1980, and the
10 regulations of the Director, to file a report of wages paid to
11 each of his workers, or to file a sufficient report of such
12 wages after having been notified by the Director to do so, for
13 any period which begins prior to January 1, 1982, he shall pay
14 to the Department as a penalty a sum determined in accordance
15 with the provisions of this Act as amended and in effect on
16 October 5, 1980.

17 B. Except as otherwise provided in this Section, any
18 employer who fails to file a report of wages paid to each of
19 his workers for any period which begins on or after January 1,
20 1982, within the time prescribed by the provisions of this Act
21 and the regulations of the Director, or, if the Director
22 pursuant to such regulations extends the time for filing the
23 report, fails to file it within the extended time, shall, in

1 addition to any sum otherwise payable by him under the
2 provisions of this Act, pay to the Department as a penalty a
3 sum equal to the lesser of (1) \$5 for each \$10,000 or fraction
4 thereof of the total wages for insured work paid by him during
5 the period or (2) \$2,500, for each month or part thereof of
6 such failure to file the report. With respect to an employer
7 who has elected to file reports of wages on an annual basis
8 pursuant to Section 1400.2, in assessing penalties for the
9 failure to submit all reports by the due date established
10 pursuant to that Section, the 30-day period immediately
11 following the due date shall be considered as one month.

12 If the Director deems an employer's report of wages paid to
13 each of his workers for any period which begins on or after
14 January 1, 1982, insufficient, he shall notify the employer to
15 file a sufficient report. If the employer fails to file such
16 sufficient report within 30 days after the mailing of the
17 notice to him, he shall, in addition to any sum otherwise
18 payable by him under the provisions of this Act, pay to the
19 Department as a penalty a sum determined in accordance with the
20 provisions of the first paragraph of this subsection, for each
21 month or part thereof of such failure to file such sufficient
22 report after the date of the notice.

23 For wages paid in calendar years prior to 1988, the penalty
24 or penalties which accrue under the two foregoing paragraphs
25 with respect to a report for any period shall not be less than
26 \$100, and shall not exceed the lesser of (1) \$10 for each

1 \$10,000 or fraction thereof of the total wages for insured work
2 paid during the period or (2) \$5,000. For wages paid in
3 calendar years after 1987, the penalty or penalties which
4 accrue under the 2 foregoing paragraphs with respect to a
5 report for any period shall not be less than \$50, and shall not
6 exceed the lesser of (1) \$10 for each \$10,000 or fraction of
7 the total wages for insured work paid during the period or (2)
8 \$5,000. With respect to an employer who has elected to file
9 reports of wages on an annual basis pursuant to Section 1400.2,
10 for purposes of calculating the minimum penalty prescribed by
11 this Section for failure to file the reports on a timely basis,
12 a calendar year shall constitute a single period. For reports
13 of wages paid after 1986, the Director shall not, however,
14 impose a penalty pursuant to either of the two foregoing
15 paragraphs on any employer who can prove within 30 working days
16 after the mailing of a notice of his failure to file such a
17 report, that (1) the failure to file the report is his first
18 such failure during the previous 20 consecutive calendar
19 quarters, and (2) the amount of the total contributions due for
20 the calendar quarter of such report (or, in the case of an
21 employer who is required to file the reports on a monthly
22 basis, the amount of the total contributions due for the
23 calendar quarter that includes the month of such report) is
24 less than \$500.

25 For any month which begins on or after January 1, 2013, a
26 report of the wages paid to each of an employer's workers shall

1 be due on or before the last day of the month next following
2 the calendar month in which the wages were paid if the employer
3 is required to report such wages electronically pursuant to the
4 regulations of the Director; otherwise a report of the wages
5 paid to each of the employer's workers shall be due on or
6 before the last day of the month next following the calendar
7 quarter in which the wages were paid.

8 Any employer who willfully fails to pay any contribution or
9 part thereof, based upon wages paid prior to 1987, when
10 required by the provisions of this Act and the regulations of
11 the Director, with intent to defraud the Director, shall in
12 addition to such contribution or part thereof pay to the
13 Department a penalty equal to 50 percent of the amount of such
14 contribution or part thereof, as the case may be, provided that
15 the penalty shall not be less than \$200.

16 Any employer who willfully fails to pay any contribution or
17 part thereof, based upon wages paid in 1987 and in each
18 calendar year thereafter, when required by the provisions of
19 this Act and the regulations of the Director, with intent to
20 defraud the Director, shall in addition to such contribution or
21 part thereof pay to the Department a penalty equal to 60% of
22 the amount of such contribution or part thereof, as the case
23 may be, provided that the penalty shall not be less than \$400.

24 However, all or part of any penalty may be waived by the
25 Director for good cause shown.

26 C. With regard to an employer required to report monthly

1 pursuant to this Section, in addition to each employee's name,
2 social security number, and wages for insured work paid during
3 the period, the Director may, by rule, require a report to
4 provide the following information concerning each employee:
5 the employee's occupation, hours worked during the period,
6 hourly wage, if applicable, and work location if the employer
7 has more than one physical location. Notwithstanding any other
8 provision of any other law to the contrary, information
9 obtained pursuant to this subsection shall not be disclosed to
10 any other public official or agency of this State or any other
11 state to the extent it relates to a specifically identified
12 individual or entity or to the extent that the identity of a
13 specific individual or entity may be discerned from such
14 information. The additional data elements required to be
15 reported pursuant to the rule authorized by this subsection may
16 be reported in the same electronic format as in the system
17 maintained by the employer or employer's agent and need not be
18 reformatted.

19 D. The Department may not deduct from a payment made by an
20 employer for contributions required under this Act any amount
21 for any penalty otherwise due and payable from the employer
22 without first notifying the employer in writing at least 30
23 days before deducting the amount of the penalty from the amount
24 of the required contribution and applying the amount deducted
25 toward payment of the penalty.

26 (Source: P.A. 97-689, eff. 6-14-12; 97-791, eff. 1-1-13;

1 98-463, eff. 8-16-13; 98-1133, eff. 12-23-14.)