



State Unemployment Taxes

FMSA – Annual Training
October 2019

What is Unemployment Tax?

- Tax Paid by Employers
- Used to Pay Benefits to Eligible Individuals Who are Out of Work Through No Fault of Their Own
- All 50 states have similar systems under Federal guidelines from DOL

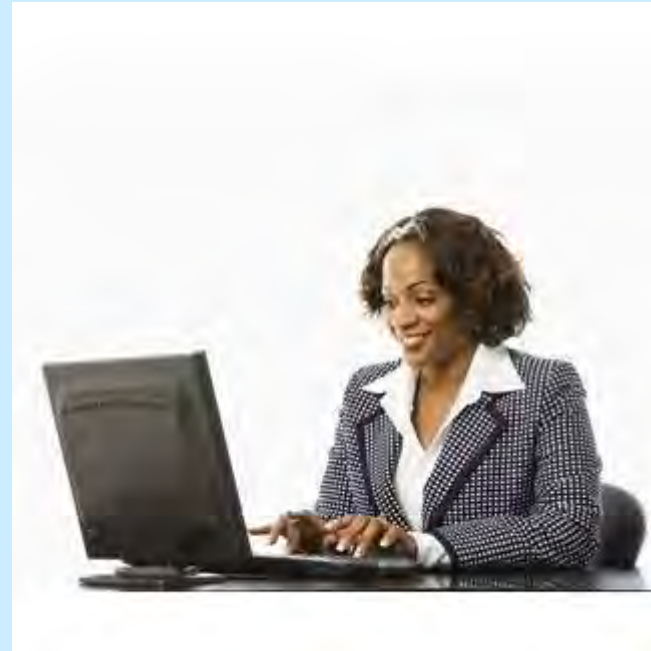


Types of Work Separations

- Voluntary
 - Resignation
 - Walking off the job
 - Job abandonment
 - Retirement
- Involuntary
 - Layoff
 - RIF
 - Discharge / termination
 - Mutual agreement
 - Resignation in lieu of discharge

Overview of the Tax Department

- Conduct Wage Investigations
- Collect Reports and Taxes
- Audit Businesses



Reports and Taxes

- Reports are due the month after the quarter ends (January, April, July, October).
- SUTA taxes are assessed on the first \$9000 in wages per employee per year.
- Late reports = penalty and interest.



2019 Tax Rates

- **New employers - 2.7%**
 - **\$243.00** (2.7% X \$9000) per employee
- **Minimum 0.36%**
 - **\$32.40** (.36% X \$9000) per employee
- **Maximum 6.36%**
 - **\$572.40** (6.36% X \$9000) per employee

Managing Tax Rates

- Chargebacks from unemployment benefits can affect rate for at least 3 years.
- **Respond immediately to all UI claims and communications from the Agency by deadline dates. Keep address current!**
- To designate a claims and/or chargeback address, complete **Form BR-001**
- Voluntary contribution option

Written Authorization

- **Required** to discuss case with agent
- **Required** for agent to sign over warrants
- **Required** for each client
- Form C-42 can be downloaded from TWC website

Written Authorization Form C-42

Mail To:
Cashier - Texas Workforce Commission
P.O. Box 140037
Austin, TX 78714-9037
512.483.2731
[TWC Website: www.texasworkforce.org](http://www.texasworkforce.org)

WRITTEN AUTHORIZATION

To represent employing unit in its relations with the Texas Workforce Commission

GRANTOR INFORMATION

1. CONTACT NAME: _____ 3. TWC ACCT NO. _____
2. PHONE NO. _____ 4. FEID NO. _____

*(5) BY THIS INSTRUMENT, _____
(Name of Grantor)

(6) an employing unit which is a/an _____
(Individual, Partnership, or Corporation, etc.)

(7) whose address is _____
(Grantor's current mailing address)

*(8) appoints _____
(Name of Authorized Grantee)

(9) whose TWC ACCOUNT NO. is _____

and whose address is _____

its lawful representative to represent it in its relations with the Texas Workforce Commission, and specifically authorizes said representative to transact any and all business as between grantor of said authorization and said Commission to do any and all acts necessary, excluding litigation in court.

This Written Authorization shall be in full force and effect until such time as a Revocation of Written Authorization, Form C-43, revoking it is filed in the office of said Commission at Austin, Texas. (Revocable by either party, the Grantor or Grantee.)

*(10) _____
Printed name, signature and title (Owner, Partner, Officer, etc.) of person signing for Grantor.

*(11) **Date Signed** _____

***MANDATORY INFORMATION**

Audits

- Reconcile Payroll
- Determine Ownership
- Verify Classification of Workers



Audit Selection

One of four ways:

1. Unemployment Insurance Claims
2. Public Complaint about misclassified workers
3. Computer Selection
4. Other miscellaneous assignments

Classification of Workers

- Employees - Workers under your direction or control
- Independent Contractors - Are Self Employed Workers over whom you have **NO direction or control**
- Questions? Review 20 factors-available online (Form C-8)
- Exemptions for certain family members

Classification of Workers continued

- Employers are responsible for classifying workers correctly.
- A worker who is called contract labor and whose wages are reported using IRS Form 1099 may not be an independent contractor.
- Neither the business nor the individual may choose whether the worker is classified as a contractor or employee. The relationship between the parties and the presence of direction and control determine whether or not a worker is an employee or an independent contractor.
- A written or oral agreement between the parties does not change the status of the worker.
- Misclassifying a worker can cost the business in taxes and interest.
- Misclassifying workers costs all Texas employers in the form of higher unemployment tax rates.

Worker Classification

Worker Classification



More information here:

<http://www.twc.state.tx.us/businesses/classifying-employees-independent-contractors>



Employment Status, Form C-4

Under the common law test, a worker is an employee if the purchaser of that worker's service has the right to direct or control the worker, both as to the final results and as to the details of when, where, and how the work is done. Control need not actually be exercised; rather, if the service recipient has the right to control, employment may be shown.

1. INSTRUCTIONS:

An Employee receives instructions about when, where and how the work is to be performed.

An Independent Contractor does the job his or her own way with few, if any, instructions as to the details or methods of the work.

2. TRAINING:

Employees are often trained by a more experienced employee or are required to attend meetings or take training courses.

An Independent Contractor uses his or her own methods and thus need not receive training from the purchaser of those services.

3. INTEGRATION:

Services of an Employee are usually merged into the firm's overall operation; the firm's success depends on those Employee services.

An Independent Contractor's services are usually separate from the client's business and are not integrated or merged into it.

4. SERVICES RENDERED PERSONALLY:

An Employee's services must be rendered personally; Employees do not hire their own substitutes or delegate work to them.

A true Independent Contractor is able to assign another to do the job in his or her place and need not perform services personally.

5. HIRING, SUPERVISING & PAYING HELPER:

An Employee may act as a foreman for the employer but, if so, helpers are paid with the employer's funds.

Independent Contractors select, hire, pay and supervise any helpers used and are responsible for the results of the helpers' labor.

6. CONTINUING RELATIONSHIP

An Employee often continues to work for the same employer month after month or year after year.

An Independent Contractor is usually hired to do one job of limited or indefinite duration and has no expectation of continuing work.

7. SET HOURS OF WORK:

An Employee may work "on call" or during hours and days as set by the employer.

A true Independent Contractor is the master of his or her own time and works the days and hours he or she chooses.

8. FULL TIME REQUIRED:

An Employee ordinarily devotes full-time service to the employer, or the employer may have a priority on the Employee's time.

A true Independent Contractor cannot be required to devote full-time service to one firm exclusively.

9. LOCATION WHERE SERVICES PERFORMED:

Employment is indicated if the employer has the right to mandate where services are performed.

Independent Contractors ordinarily work where they choose. The workplace may be away from the client's premises.

10. ORDER OR SEQUENCE SET:

An Employee performs services in the order or sequence set by the employer. This shows control by the employer.

A true Independent Contractor is concerned only with the finished product and sets his or her own order or sequence of work.

Depending upon the type of business and the services performed, not all of the twenty common law factors may apply. In addition, the weight assigned to a specific factor may vary depending upon the facts of the case.

If an employment relationship exists, it does not matter that the employee is called something different, such as: agent, contract labor, subcontractor, or independent contractor.

11. ORAL OR WRITTEN REPORTS:

An Employee may be required to submit regular oral or written reports about the work in progress.

An Independent Contractor is usually not required to submit regular oral or written reports about the work in progress.

12. PAYMENT BY THE HOUR, WEEK OR MONTH:

An Employee is typically paid by the employer in regular amounts at stated intervals, such as by the hour or week.

An Independent Contractor is normally paid by the job, either a negotiated flat rate or upon submission of a bid.

13. PAYMENT OF BUSINESS & TRAVEL EXPENSE:

An Employee's business and travel expenses are either paid directly or reimbursed by the employer.

Independent Contractors normally pay all of their own business and travel expenses without reimbursement.

14. FURNISHING TOOLS & EQUIPMENT:

Employees are furnished all necessary tools, materials, and equipment by their employer.

An Independent Contractor ordinarily provides all of the tools and equipment necessary to complete the job.

15. SIGNIFICANT INVESTMENT:

An Employee generally has little or no investment in the business. Instead, an Employee is economically dependent on the employer.

True Independent Contractors usually have a substantial financial investment in their independent business.

16. REALIZE PROFIT OR LOSS:

An Employee does not ordinarily realize a profit or loss in the business. Rather, Employees are paid for services rendered.

An Independent Contractor can either realize a profit or suffer a loss depending on the management of expenses and revenues.

17. WORKING FOR MORE THAN ONE FIRM AT A TIME:

An Employee ordinarily works for one employer at a time and may be prohibited from joining a competitor.

An Independent Contractor often works for more than one client or firm at the same time and is not subject to a non-competition rule.

18. MAKING SERVICE AVAILABLE TO THE PUBLIC:

An Employee does not make his or her services available to the public except through the employer's company.

An Independent Contractor may advertise, carry business cards, hang out a shingle, or hold a separate business license.

19. RIGHT TO DISCHARGE WITHOUT LIABILITY:

An Employee can be discharged at any time without liability on the employer's part.

If the work meets the contract terms, an Independent Contractor cannot be fired without liability for breach of contract.

20. RIGHT TO QUIT WITHOUT LIABILITY:

An Employee may quit work at any time without liability on the Employee's part.

An Independent Contractor is legally responsible for job completion and, on quitting, becomes liable for breach of contract.

Exemptions for Domestic employers

Do Not Report To TWC:

- Service of Spouse
- Service of minor child (under 21)
- Service of parents

[Job Seekers & Employees](#)[Businesses & Employers](#)[Community & Workforce Partners](#)[Students, Parents & Educators](#)[TWC Agency Information](#)

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Unemployment Tax Registration

On this page:

- [Logon to Register for a New Unemployment Tax Account](#)
- [Using Unemployment Tax Registration](#)
- [Technology Requirements & Privacy](#)
- [Frequently Asked Questions](#)
- [More Information](#)

Frequently Asked Questions

- [General information](#)
- [Who can or cannot register online](#)
- [Information required to register](#)

More Information

- [Unemployment tax contact information](#)
- Para servicio en español, [ver la lista de oficinas de impuestos del centro de la fuerza Laboral](#)
- [Unemployment tax page](#)

Logon to Register for a New Unemployment Tax Account

- [Logon with your existing TWC User ID or create a new User ID.](#)

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Using Unemployment Tax Registration

Employers must register with the Texas Workforce Commission (TWC) within 10 days of becoming subject to the [Texas Unemployment Compensation Act](#). TWC provides this quick, free, online service to make registering as easy as possible.

You will answer a series of questions about the ownership of the business and the number of locations operated. Once the registration is complete, liable employers will receive a TWC Tax Account Number and may be able to file wage reports and submit unemployment tax payments online.

The registration process takes approximately 20 minutes. The system will automatically save partial registration information once the initial details have been entered. Incomplete registrations will be accessible through this Internet site for one year; you can come back later to continue the registration process.

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Unemployment Tax Registration



Unemployment Tax Registration

Logon Screen for Unemployment Tax Registration

Quick Links

» [Logon](#)

[Sign Up for User ID](#)

[Forgot Password?](#)

[Forgot User ID?](#)

Logon

[Need help?](#)

New to Unemployment Tax Registration? If you already have a User ID for another TWC Internet application, such as Unemployment Tax Services or WorkInTexas.com, try logging on with that ID. Otherwise, please [sign up for a User ID](#).

* indicates required information

User ID:

*

Password:

*

Under [Texas state rule](#), usage may be subject to security testing and monitoring, applicable [privacy provisions](#), and criminal prosecution for misuse or unauthorized use. Texas Workforce Commission collects personal information entered into electronic forms on this Internet site. For more information on your rights to request, review and correct information submitted on this electronic form, please see TWC's [Privacy and Security Information](#).

Logon

[¿Habla español?](#)

Para servicio en español, póngase en contacto con [las oficinas de impuestos del Centro de la Fuerza Laboral](#).

[Technical Requirements](#)

Recommended browsers are [Internet Explorer](#), [Firefox](#), [Chrome](#) or [Safari](#). Click on the respective link to download the latest free version upgrade.

[Public Computer](#)

If you are using a computer in a public place, logoff and close the browser when you are finished entering information. This is for your protection and will prevent someone else from viewing your information.

[Accessibility](#)

[Equal Opportunity is the Law](#)

Benefits of QuickFile

- Multiple Clients?
- Large number of employees?
- Secure Filing
- Available 24 hours a day



QuickFile allows for the filing of multiple accounts and a large number of employees.

- See our Website for download information

Tax Contact Information

The screenshot shows the Texas Workforce Commission (TWC) website. The header includes the TWC logo, navigation links for 'About Us', 'Contact Us', 'Find Locations', 'FAQ', and language options 'En Español' and 'Tiếng Việt'. A search bar is located in the top right. Below the header, a green banner reads 'Welcome, we're here to help. Resources, tips and tools to build a stronger Texas workforce.' and features four buttons: 'Job Seekers & Employees', 'Businesses & Employers', 'Community & Workforce Partners', and 'Programs & Services'. The main content area shows the breadcrumb 'Home > Contact Us > Unemployment Tax Contact Information' and a heading 'Unemployment Tax Contact Information'. Under 'On this page:', there are links for 'Online Services', 'Tax Department', and 'Unemployment Tax Offices'. The 'Online Services' section lists: 'Unemployment Tax Registration' (register a new tax account), 'Unemployment Tax Services' (submit quarterly wage reports), 'QuickFile (Wage Reporting Program)' (submit wage reports for multiple clients), and 'More information about Unemployment Tax'. A 'Return to Top' link is at the bottom right.

Get to know your Tax Representative!

<https://twc.texas.gov/unemployment-tax-contact-information>

Help!

Paying Taxes

- Required to paid electronically
- Automated Clearing House (ACH)
- Electronic Funds Transfer (EFT)
- Debit and Credit Card

- Unable to pay electronically?
 - Approved hardship waiver on file with TWC

Non Payment of Taxes

- Notice by Statement
- Phone call
- Default Notice
- Lien
- Judgment
- Assessment
- Treasury Offset Program Collection

Treasury Offset Program (TOP)

- Capture of State debt through Federal IRS refund interception
- Mandated by Federal Law
- Any past due debts that are at least a year old including taxes
- Within 60 days of notice from TWC
 - Submit full payment
 - Submit documentation showing payment in full
 - Submit documentation explaining why it is not subject to TOP (Bankruptcy)



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Contract Administration & Provider Monitoring



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FMSA Monitoring Unit: Common Findings & Best Practices Contract Compliance & Fiscal Reviews

Presenters:

Faith Moore, *Financial Analyst*

Craig Williamson, *Financial Analyst*

FMISA Monitoring Unit

FMISA Monitoring Unit Manager

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FMISA Monitoring Unit (cont.)

Financial Analysts:

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Contract Compliance Reviews

Faith Moore, Financial Analyst

Common Findings - Contract

- Complaint log missing required elements such as:
 - Date of investigation, must be within thirty days of receipt of complaint
 - The findings of the investigation
 - Resolution of the complaint
- Employers hiring before background check and registry results are completed
- Form 1725, Background checks and registry results must be provided to employer within 2 work days of request



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Common Findings (cont. 1 of 2)

- Forms not completed by the required time frame (best practice is to document reason for the delay)
- Forms 1725, 1729, 1734 – appropriate certification boxes are not checked to support FMSA confirmed qualifications for employee were met or that employee meets eligibility

Note: leaving boxes unchecked to certify qualifications of employee will result in a recoupment of the FMSA fee up to six months of the review period



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Common Findings (cont. 2 of 2)

- Not participating in all mandatory training, including quarterly webinars authorized by HHSC
- FMSAs continue to leave some fields on Form 1730 blank or **“First date of work” and “Date of Hire” are inaccurate**
- Form 1732 not fully completed. Employers are leaving Sections II. and III. blank or FMSA not documenting date received
- New employer and employee forms not completed when they transfer in from another FMSA (ex: Form 1725, Background Check)
- Printouts of the CARE authorizations for TxHml and HCS programs not in the file.



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Lists of Excluded Individuals/Entities (LEIE)

FMSA must conduct searches of the federal and state Lists of Excluded Individuals/Entities prior to hiring and on a monthly basis.

- Screening is required for:
 - All FMSA employees as per §49.304 Background Checks and §49.305 Records; and
 - On behalf of CDS employers employees as per §41.325 Required Registry Checks of an Applicant to be an Employer and §41.329 Continued Eligibility of an Employee, Contractor, or Vendor.



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LEIE (cont. 1 of 3)

FMSA must have a written process for screening employees, which must include the following elements:

- Screening employees and contractors prior to hiring or contracting and on a monthly basis;
- Searching both the federal and Texas LEIE websites:
 - Texas Health and Human Services Commission–OIG List of Excluded Individuals/Entities online searchable database
<https://oig.hhsc.state.tx.us/Exclusions/Search.aspx>
 - HHS – OIG Excluded Individuals/Entities Search database
<http://www.oig.hhs.gov/fraud/exclusions.asp>



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LEIE (cont. 2 of 3)

FMSA must have a written process for screening employees, which must include the following elements:

- Prohibiting payment for any items or services furnished, ordered, or prescribed by an excluded individual or entity; and
- Reporting exclusion information to HHSC



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LEIE (cont. 3 of 3)

Evidence of LEIE checks must include the following required elements:

- Date of searches,
- First and last names,
- Date Of Birth,
- Printed name and signature of staff responsible for completing searches,
- Whether or not they appeared in the data base,
- Date any excluded employee was self-reported, and copy of self-report.



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LEIE References

- §49.304 Background Checks
- §49.305 Records
- CDS Hand Book Appendix II
- §41.325 Required Registry Checks of an Applicant to be an Employer
- §41.329 Continued Eligibility of an Employee, Contractor, or Vendor.



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Common Findings - Reports

Quarterly Reports:

- FMSAs not sending Quarterly Reports which can lead to complaint investigations
- Not documenting the date quarterly reports were sent to the case manager or service coordinator and employer to be able to measure timeliness

Note: Quarterly reports are based on the **individual's authorized individual service plan** and not a calendar year.

Reference: §41.317 CDSA Reports



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Common Findings continued 1 of 2

Budget Workbooks:

- Exhausting funds before ISP year ends which can lead to complaint investigations
- Only use the budget workbook applicable to the **employer's authorized services** which is provided at the following HHSC website:

www.HHSC.state.tx.us/business/communitycare/cds/CDSforms.html

- FMSA not reviewing and calculating properly when it states **"Invalid"**



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Common Findings continued 2 of 2

Budget Workbooks (cont.):

- Not providing the employer with written approval for each initial/annual/change before implementation of services
- Not updating the Budget Workbook when there is a change in SUTA rate as it occurs
- Not documenting that a copy of the budget workbook was sent to the employer
- Reference:
 - §41.509(b)(3) Budget Approval
 - §41.511(c)(3) Budget Revisions and Approval
 - §41.501(b)(3) Budget Development



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Best Practice

- Ensuring all forms are legible and includes the form name and form number when making copies
- Using the most current version of all forms obtained from the HHSC website
- Ensure all required fields on a form is complete, all appropriate boxes are checked, required signatures are obtained and dates are completed properly as required by form instructions
- Return incomplete forms to employers for proper completion, especially forms to certify employee meets qualifications



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Best Practice continued 2

- Document efforts made to meet a time frame and reasons for delays when unable to meet a required time frame
- Use Form 2067 to communicate efforts made or delays.
 - If email is used, file a copy of the email exchange in employer files
- Date stamp all documents received to support timeliness
- A document must already exist and provided to monitoring staff upon request without altering, creating it or backdating any forms



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Best Practice

- Do not leave fields on your forms blank as monitoring staff review timeliness for each employee based on Dates of Hire and First Date of Work
- Claim only the amount that was paid for a criminal history report
 - Overcharging will result in a recoupment
- Corrective Action Plans require a description of activities that will be performed to prevent the non-compliance from re-occurring
 - Restating HHSC policy or TAC rules will not meet this requirement
- Repetitive deficiencies will lead to further action or sanction if your CAP does not correct non-compliance



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Document

DOCUMENT

DOCUMENT

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DOCUMENT



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Fiscal/Tax Reviews

Best Practice - Billing

Billing Payroll to HHSC

- FMSAs require detailed documentation to support all items billed to HHSC
- Billing support must therefore be readily identifiable with the related billing
- This is accomplished by including the service dates in each billing for payroll, taxes and expense items
- We suggest the days worked, date taxes were paid and date purchases made as service dates make billing support readily identifiable with billing
- Billing for payroll or taxes not yet paid can lead to a recoupment.



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Repeated Non Compliance

When a CAP does not correct the cited deficiency further actions and sanctions can be taken.

- Referral Hold
- Vendor Hold



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Billing FUTA Taxes to HHSC

- The FUTA tax rate for Texas employers is .6%
- We have observed agencies paying FUTA at .6% and billing HHSC FUTA tax at .8%
- The difference of .2% is an over-billing to HHSC and will affect:
 - Your Fiscal Review score
 - Your Recoupment



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Billing HCS and TxHmL

- HCS and TxHmL are billed in the CARE application
- Many agencies are billing these services at the RAD rate (e.g.: \$22.01/hour for transportation, CDS Pas Hab and others)
- CDS is a reimbursement program.
 - Agencies must bill at the actual rate paid for payroll and the actual amount paid in taxes.
- Any difference between the amount billed and the amount paid will be recouped.
 - If there is a pattern of over billing the review can be expanded from the sample population to the entire population.



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Recoupments Older Than 12 months

- Contractors must ensure claims for services are submitted within 12 months after the last day of the month in which the service was provided
- Our Fiscal Monitoring's often result in some recoupments for claims beyond 12 months
 - If this is a recoupment only, the revision to the original billing transaction will post
 - If this a recoupment and re-billing, the re-billing will not post.
- Provider Claims Services assists with claims older than 12 months



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Registration as Agent for Employers – Federal Form 2678 Appointment of Agent

- Within 30 calendar days after the employer enrolls in the CDS option, FMSA applies for and receives agent authorization from the IRS using Form 2678 for each employer it represents.
- FMSA retains a copy of the executed IRS Form 2678 for each employer on file.
- The completed form 2678 allows your agency to file federal taxes on behalf of your employers.



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Employer Registration – C-42 Written Authorization

- For each employer served by the agency, the FMSA prepares and submits the signed C-42 to TWC to register as reporting agent for filing and depositing of State unemployment taxes
- For new employers enrolled in CDS, this process is to be completed within 30 Calendar days of the date the FMSA completed the employer orientation.



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Employer Registration – C-42 Written Authorization (cont. 1 of 2)

- TWC has expressed concern agencies complete form C-42 for all employers served.
 - Failure to complete is non compliant with TWC requirements, and, results in a negative score for individuals who started service during the monitoring period.
- For a transfer-in employer, this process is to be completed within 30 Calendar days of the begin date on the service authorization



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Employer Registration – C-42 Written Authorization (cont. 2 of 2)

- When completed, print a copy and keep in the employer file.
 - We will look for this when we review



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Federal and State Taxes – Employer Transfer-Out Tax Forms

- FMSA must revoke its IRS agent status within 30 **Calendar days of the employer's transfer out of CDS** or to another agency by completion and submission of IRS Form 2678 Employer/Payer Appointment of Agent to the Internal Revenue Service.
- FMSA must revoke its TWC agent status within 30 **Calendar days of the employer's transfer out of CDS** or to another agency by completion and submission of TWC Form C-43 Revocation of Written Authorization to the Texas Workforce Commission.



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Unable to Register with IRS or TWC

- If you are unable to successfully register with TWC:
 - Contact TWC for assistance and document each step you take to attempt to register.
- If you are unable to successfully register with the IRS:
 - Contact the IRS for assistance and document each step to take to attempt to register.



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Use Effective SUTA Tax Rate for the Annual Budget

- FMSA receives an annual update from the Texas Workforce Commission, usually in January, of the effective SUTA Tax Rate for an employer for the next calendar year.
- **When FMSA finalizes an employer's budget, the Tax Rate Summary can be accessed on the TWC website to obtain effective SUTA tax rate for the applicable budget year.**
- **During our reviews, we noted FMSA's entered a SUTA rate of 2.7% on the Taxable Wage and Compensation Cost TAB of the CDS Budget instead of the effective tax rate.**



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Use Effective SUTA Tax Rate for the Annual Budget (cont.)

- Use of effective tax rate will allow the amount paid to TWC for the budget year to be aligned with the amount budgeted for SUTA taxes.
- If an FMSA receives an updated effective tax rate from TWC during an employer's budget year, FMSA may assess whether a revised budget is needed to reflect the rate change.



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Documenting Federal Tax Reporting and Payment

- Agencies frequently submit forms 940 and 941 timely but fail to keep a signed and dated copy of the forms.
- We suggest you take a copy of the signed and dated forms for your records.
- Similarly, we suggest you keep a copy of the completed EFT transaction to show payment of the taxes.
- Alternatively, the IRS also makes available a report of tax reporting and payments by EIN (for most agencies, this is the “special EIN” used in aggregate reporting.)



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Thank you
