The impact of COVID-19 on employer unemployment insurance costs

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To contain the outbreak of COVID-19, states and localities temporarily closed nonessential businesses and issued "stay-at-home" orders, creating a historic disruption to the US workforce that prompted federal legislation to extend and expand unemployment insurance benefits. Yet despite this federal funding of state jobless benefits, the impact on the state unemployment insurance (SUI) system was greater than that of the financial crisis of 2008/2009, leaving states to decide if and how employers would be shielded from substantial SUI cost increases in 2021 and future years.

Just as SUI trust funds took years to recover following the last economic disruption, the same is anticipated now, but with the added complexity of inconsistency in how states will integrate federal COVID-19 relief provisions. Accordingly, employers will be challenged in upcoming years with not only SUI cost increases but also the uncertainty that comes from a flux of state statutory and administrative activity in response to the impact from COVID-19.

Following is an explanation of the federal relief provisions for COVID-19, how those provisions were adopted by the states, and the immediate and long-term impact that employers can expect on their federal and state unemployment insurance costs.

Federal unemployment insurance changes in response to COVID-19 through September 6, 2021

In response to the national emergency that has been in effect since March 1, 2020, to address the COVID-19 pandemic, the U.S. Department of Labor (USDOL) and Congress took steps to expand on the existing state unemployment insurance (SUI) programs for lost wages related to stay-at-home orders, business interruptions and other consequences connected with the virus. The following provides an overview of these unemployment insurance (UI) changes of interest to employers as enacted through March 11, 2021.

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History of federal COVID-19 legislation impacting UI

Below is a chronological listing of the legislation enacted through March 2021 that provides unemployment-related COVID-19 relief.

Fig. 1: History of federal UI legislation for COVID-19 relief through March 2021

Date enacted	Law name	Abbreviation	Public law number	USDOL Program Letter Number*
03-18-2020	Families First Coronavirus Response Act	FFCRA	P.L. 116-127	13-20
03-27-2020	Coronavirus Aid, Relief, and Economic Security Act	CARES Act	P.L. 116-136	14-20; 18-20; 21-20
08-03-2020	Protecting Nonprofits Act	PNA	P.L. 116-151	18-20, Change 1
12-27-2020	Consolidated Appropriations Act, 2021	CAA	P.L.116-260	9-21
03-11-2021	American Rescue Plan Act	ARPA	P.L.116-260	14-21

* For all USDOL Program letters for COVID-19, go here.

Noncharging of regular UI benefits to employer accounts for experience rating purposes

Effective March 18, 2020, and through December 31, 2020, the FFCRA provides that in the context of COVID-19, states have the flexibility of determining whether UI benefits *that are not federally funded* will be charged to employer accounts for experience rating purposes and should consider how to fairly distribute these costs to employers. (This provision remains in place under the CARES Act, CAA and ARPA.)

If states choose to provide noncharging relief to reimbursable employers (i.e., governmental and nonprofit employers), the same noncharging relief must also be provided to contributory (i.e., experienced-rated) employers.

Note that states are not allowed to relieve an employer account of UI benefit charges if the employer, or agent of the employer, (1) is at fault for failing to respond timely or adequately to the state's request for information relating to an unemployment compensation (UC) benefits claim that was subsequently overpaid and (2) has established a pattern of failing to respond timely or adequately.

Program flexibility

Effective March 18, 2020, and through December 31, 2020 (extended to March 14, 2021, by the CAA and to September 6, 2021, by the ARPA), the FFCRA allows states to temporarily modify their UI laws and policies in response to the COVID-19 emergency in the following areas.

- Suspend UI applicant requirements for work search and a waiting week to receive UI benefits.
- Amend the instances in which "good cause" is considered in determining eligibility for UI benefits. "Good cause" often applies in job separations where the individual voluntarily quits, as well as issues of suitable work, able-and-available requirements and reporting requirements. Under this provision, states may expand on the allowable reasons for extending deadlines or suspending in-person reporting requirements.

Federal funding for first week of UI benefits

Effective on the date that the state enters into an agreement with the USDOL, and ending with weeks of unemployment on or before December 31, 2020 (extended through March 14, 2021, by the CAA and through September 6, 2021, by the ARPA), if the state does not have a waiting week for the payment of regular UI benefits, the CARES Act provides 100% funding to states for the total amount of regular UI benefits paid to individuals for their first week of regular UI.

This benefit is federally funded and is not charged to employer accounts for experience rating purposes.

Pandemic Unemployment Assistance (PUA)

Effective with weeks of unemployment beginning on or after January 27, 2020, and ending on or before December 31, 2020 (extended to March 14, 2021, by the CAA and to September 6, 2021, by the ARPA), the CARES Act provides up to 39 weeks of UI benefits (increased to 50 weeks by the CAA and to 79 weeks for periods of unemployment ending after March 14, 2021, by the ARPA) to individuals who are self-employed, seeking part-time employment or who otherwise would not qualify for regular UI benefits or extended benefits (EB) under state law, federal law or the Pandemic Emergency Unemployment Compensation (PEUC) program.

PUA is available in the US, American Samoa, Commonwealth of the Northern Mariana Islands, the District of Columbia, Federated States of Micronesia, Guam, Marshall Islands, Puerto Rico, the Republic of Palau and the US Virgin Islands, provided the state/territory signs an agreement with the USDOL.

To qualify for PUA, individuals must demonstrate that they are otherwise able to work and available for work within the meaning of applicable state law, except that they are unemployed, partially unemployed, or unable or unavailable to work because of COVID-19.

PUA benefits are federally funded and are not charged to employer accounts for experiencing rating purposes.

Pandemic Emergency Unemployment Compensation (PEUC)

Through December 31, 2020 (extended to March 14, 2021, by the CAA and to September 6, 2021, by the ARPA), the CARES Act provides for an additional 13 weeks of UI benefit (increased to 24 weeks by the CAA, and to 53 weeks by ARPA for any week of unemployment ending on or before March 14, 2021). The PEUC covers individuals who have exhausted all rights to regular UI benefits under state or federal law; have no rights to regular UI benefits under any other state or federal law; are not receiving compensation under the UI laws of Canada; and are able to work, available for work and actively seeking work.

Note, however, that states are required to offer flexibility in meeting the "actively seeking work" requirement if individuals are unable to search for work because of COVID-19, including because of illness, quarantine or movement restriction.

Federal Pandemic Unemployment Compensation (FPUC), Lost Wages Assistance (LWA) and Mixed Earners Unemployment Compensation (MEUC)

April 5, 2020, through July 21, 2020 (FPUC)

Effective for all weeks of unemployment between April 5, 2020, and July 31, 2020, the CARES Act provided an additional $600 per week to individuals who were collecting regular UI benefits.

Through September 6, 2021, the FPUC provision (as extended under the CAA and ARPA) also applies to individuals receiving UI benefits under the following programs:

- Unemployment Compensation for Federal Employees (UCFE)
- Unemployment Compensation for Ex-servicemembers (UCX)
- PEUC
- PUA
- EB
- Short-Term Compensation (STC)
- Trade Readjustment Allowances (TRA)
- Disaster Unemployment Assistance (DUA)
- Self-Employment Assistance (SEA)

Note that through September 6, 2021, FPUC (as extended under CAA and ARPA) is available in the US, Puerto Rico and the US Virgin Islands, provided the state/territory signed an agreement with the USDOL.

FPUC is federally funded and is not charged to employer accounts for experiencing rating purposes.

September 1, 2020, to December 27, 2020 (LWA)

In consideration that the added $600 per week of federal UI benefits of FPUC authorized under the CARES Act ended on July 31, 2020, the Administration authorized the Federal Emergency Management Agency (FEMA) to spend up $44 billion from the Disaster Relief Fund to continue funding UI benefits for lost wages due to COVID-19.

Under this LWA program, qualified individuals could receive an added federally funded benefit of up to $300 per week and an optional $100-per-week benefit paid by the state or territory. (*FEMA: Lost Wages Supplemental Payment Assistance Guidelines*.)

The $300 weekly benefit was paid directly by FEMA and was not charged to employers' UI accounts for experience rating purposes thereby not affecting the future assigned SUI tax rates of employers.

FEMA funding to each state was based on the state's projected estimate of the amount of lost wages supplemental payments to be made per week, the estimate of eligible claimants and a planning estimate for the state, inclusive of FEMA's budgetary authority.

All states (except South Dakota) and the District of Columbia, Guam and the US Virgin Islands applied for the LWA grants before the September 10, 2021, deadline. Only five states (Kansas, Kentucky, Montana, Vermont and West Virginia) provided the full $400 weekly benefit; the remaining paid only the federally funded amount of $300 per week. (*See EY Tax Alert 2020-2281*.)

December 27, 2020, to September 6, 2021 (FPUC and MEUC)

For weeks of unemployment beginning after December 26, 2020, and ending on or before March 14, 2021, the CAA and ARPA reauthorize the FPUC at $300 per week. This FPUC is not payable with respect to any week during the gap in applicability (i.e., weeks of unemployment ending after July 31, 2020, through weeks of unemployment ending on or before December 26, 2020).

Beginning with weeks of unemployment no earlier than the week ending January 2, 2021 (January 3, 2021, for states with a Sunday week ending date) and through the week of unemployment ending on or before September 6, 2021, the CAA and ARPA also authorize an additional $100 per week under the new Mixed Earners Unemployment Compensation (MEUC) program.

To be eligible for this additional MEUC payment, the individuals must:

- Have received at least $5,000 of self-employment income in the most recent tax year prior to their application for regular UI benefits
- Be receiving a UI benefit (other than PUA) for which FPUC is payable
- Submit documentation substantiating their self-employment income

This additional payment does not apply to individuals collecting PUA.

Short-term compensation (STC)

STC, also known as "shared work" or "workshare," is a layoff-aversion program where an employer reduces the hours for a group of workers to avoid layoffs and these workers receive a partial unemployment benefit payment.

Currently, 29 states have an active workshare program, or legislation in place for one.

Starting with weeks of unemployment beginning on or after March 27, 2020, and ending with weeks of unemployment ending on or before December 31, 2020 (extended to March 14, 2021, by the CAA and to September 6, 2021, by the ARPA), the CARES Act provides that states with an existing STC program may be reimbursed for 100% of STC benefit costs, up to a maximum of 26 weeks of STC per individual.

If a state enacts a new law providing for the payment of STC after March 27, 2020, reimbursements are available starting with the effective date of the state law enactment and ending with weeks of unemployment ending on or before December 31, 2020 (extended to March 14, 2021, by the CAA and to September 6, 2021, by the ARPA).

States without an existing STC program in the state's UC law may provide STC benefits under an agreement with the USDOL and be reimbursed for 50% of STC benefit costs, with the employer paying the other 50%, up to a maximum of 26 weeks of STC per individual. This federal STC program is available for weeks of unemployment beginning on or after the date on which the state enters into an agreement with the USDOL and ending with weeks of unemployment ending on or before December 31, 2020 (extended to March 14, 2021, by the CAA and to September 6, 2021, by the ARPA).

Interest on federal unemployment loans

Under the ARPA, interest on federal UI loans to pay UI benefits starting in 2020 will begin to accrue as of September 7, 2021 (extended from January 1, 2020, by the FFCRA and from March 15, 2021, under the CAA).

As a result, and unless further federal legislation is enacted, the first interest payments on federal UI loans will begin to be due from states in the fall of 2021.

Most states pass the cost of federal UI loan interest on to employers in their states through surcharges that are added to the regular state UI tax rate. (*See USDOL Program Letter No. 14-21*.)

Reimbursing employers

Rather than paying UI based on an assigned tax rate (i.e., contributory employer), state and local governmental entities, certain nonprofit organizations and federally recognized Indian tribes have the option under federal law to reimburse the state directly for UI benefits paid to their employees (i.e., reimbursing employers).

Under the CARES Act, and for the period of unemployment beginning on March 13, 2020, and ending on or before December 31, 2020 (extended to March 14, 2021, under the CAA and to September 6, 2021, under ARPA), transfers are authorized from the federal unemployment account to state unemployment trust funds for 50%* of the amount of UI benefits paid to employees of reimbursing employers. This transfer applies for the covered period, even if individuals are unemployed for reasons other than COVID-19.

** For weeks of unemployment beginning after March 31, 2021, and through September 6, 2021, the ARPA increases from 50% to 75%.*

The USDOL explained in Program Letter 18-20 that reimbursing employers remit to the state 100% of the UI benefits paid to their employees. Upon receipt of payment from the reimbursing employer, the state may then refund to that employer up to 50% (75% effective after March 31, 2021) of the UI benefits paid in the covered period.

The PNA amended the CARES Act by requiring that states use COVID-19 federal UI funds exclusively to reduce the amount required to be paid by the reimbursing employer in lieu of contributions. The amendment relieves reimbursing employers of the financial hardship of fronting cash for UI benefit claims that will later be refunded. (*See USDOL Program Letter No. 18-20,Change 1*.)

Employee notice concerning availability of UI benefits

Employers in most states have long been required to inform employees about their rights to unemployment insurance and how to claim benefits, if eligible. Our 2021 survey of state workforce agency websites shows that, except for Hawaii and South Carolina, all states require employers to post a notice in the workplace about the availability of UI benefits to eligible workers.

Due to the significant increase in the number of jobless in connection with COVID-19, the USDOL wanted employers to go further in letting employees know about their rights to UI benefits. Accordingly, to be eligible for emergency funds, the FFCRA stipulates that states must require employers to provide a notice to separated employees of the availability of UI benefits.

Prior to the COVID-19 emergency, just nine states required that a notice concerning the availability of UI benefits be provided to each separated employee (Arizona, California, Delaware, Illinois, Massachusetts, Nevada, New Jersey, Oklahoma and Tennessee). Because of the FFCRA, CARES Act, CAA and ARPA funding incentives, the requirement now applies in most states.

States have flexibility in determining the contents of the required employee notice; however, in Unemployment Insurance Program Letter 13-20, the USDOL provides a model notice that states may use. States are also given flexibility in determining the form that employers may use in providing the notice to employees (such as by letter, email, text message or fliers).

See our special report for details concerning the state notice requirements as of November 9, 2020.

Employer reporting of job refusals by UI benefit claimants

Effective January 26, 2021, the CAA imposes the requirement for tracking a UI benefit recipient's refusal to accept work. States are encouraged to make the following provisions permanent, despite their requirement only for the period that states have entered into a COVID-19-relief agreement with the USDOL.

- **Process for addressing work refusals**

  States must have a method to address circumstances in which an individual refuses to return to work or to accept an offer of suitable work without good cause. The key requirement is that states have a procedure for how reports are received, evaluated/adjudicated and resolved to determine the impact on an individual's continued eligibility for UI benefits.

- **Reporting method for employers**

  States must provide a reporting method for employers to notify the state agency when an individual refuses an offer of employment. Examples of this reporting method include a phone line, email address or online portal by which employers can notify the state agency. The CAA does not require employers to report work refusals, only that states have a method allowing them to submit this information.

- **Notification to individuals**

  States must provide a plain-language notice to claimants who refuse to return to work or to accept an offer of suitable work without good cause. The contents of this notice are included in USDOL Program Letter 9-21.

Ernst & Young LLP insights

Unlike with the federal DUA, availability of the expanded UI benefit provisions under the FFCRA, CARES Act, CAA and ARPA depend on each state and territory meeting the requirements for federal funding. As a result, the speed and manner with which expanded UI benefits are adopted and implemented vary by jurisdiction.

Employers and employees will be challenged to deal with the inconsistencies in the COVID-19 UI benefit procedures and policies across the states and territories.

Finally, employers will need to be diligent in identifying employees eligible for UI benefits due to COVID-19 and to confirm that their accounts were not incorrectly charged for those benefits.

Many states to resume including regular COVID-19 unemployment insurance benefits in the computation of employer SUI tax rates

In all jurisdictions, except Alaska and the Virgin Islands (effective January 1, 2021), an employer's state unemployment insurance (SUI) tax rate can rise based on the unemployment insurance (UI) benefits paid to its laid-off workers. That is why the jobless rate can be a strong indicator of the future trajectory of SUI tax rates.

Because of the COVID-19 emergency, the jobless rate rose in all jurisdictions in 2020. The average US jobless rate was 3.7% in April 2019 compared to 13.3% in May 2020, with some individual jurisdictions experiencing a jobless rate in May 2020 as high as 25.3% (Nevada).

To assist unemployed workers during the COVID-19 emergency, Congress passed a series of laws that through September 6, 2021, directly funds expansions and increases to unemployment insurance benefits through various programs, including Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), Federal Pandemic Unemployment Compensation (FPUC) and the Mixed Earners Unemployment Compensation (MEUC). Because these programs are federally funded, they have no impact on an employer's SUI tax rate. (*See EY Tax Alert 2021-0869*.)

These federal COVID-19 UI benefits do not apply to all workers and periods of unemployment. Consequently, when regular (unfunded) UI benefits are paid to workers as a result of the COVID-19 emergency, they are paid from the jurisdictions' UI trust funds and can be reflected in employers' SUI tax rates.

To cushion businesses from the financial impact of COVID-19 regular UI benefits, federal law provides that effective March 18, 2020, and through September 6, 2021, jurisdictions have the flexibility of determining whether unemployment insurance benefits that are not federally funded will be charged to employer accounts for experience rating purposes. Jurisdictions are also encouraged to consider how these costs are fairly distributed to employers.

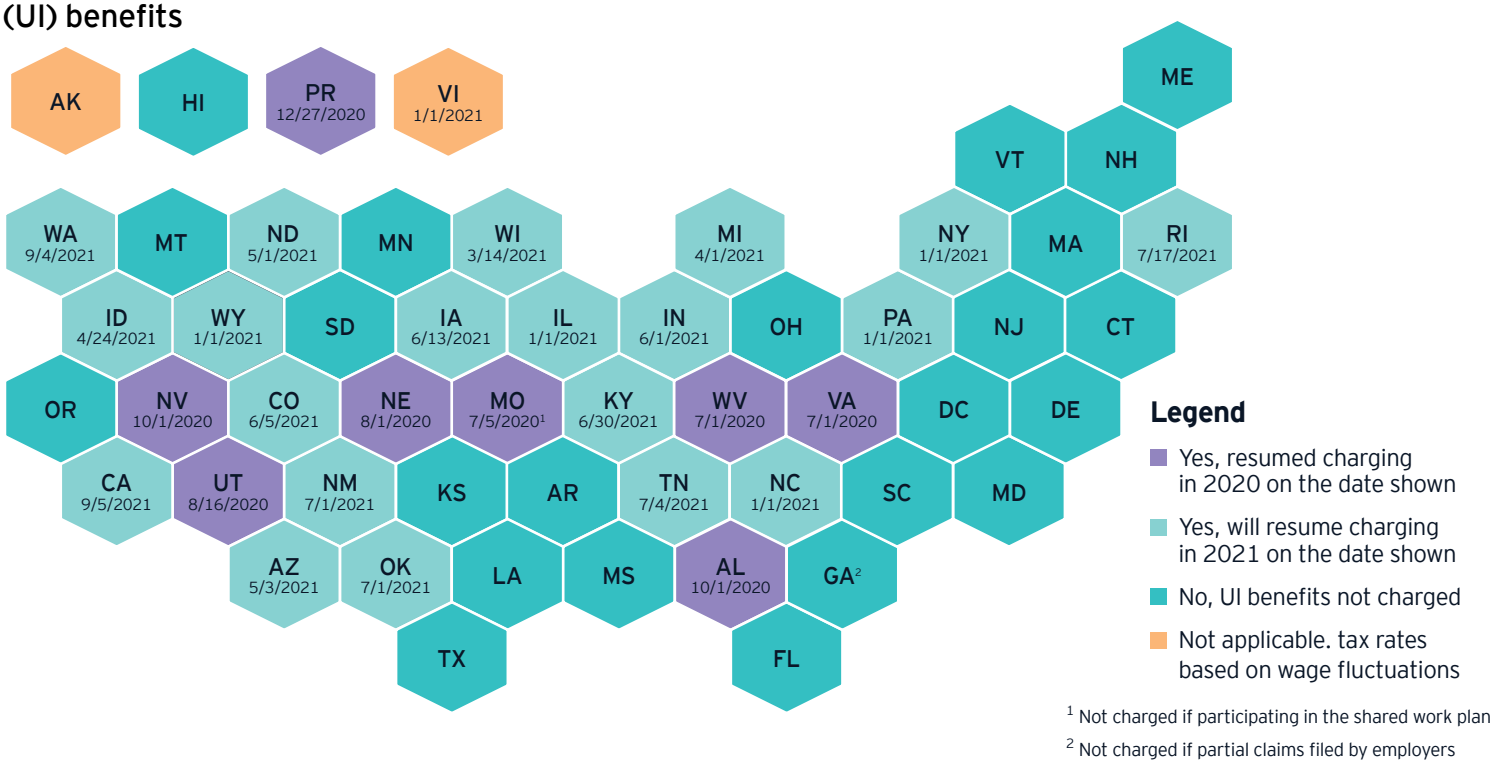
If states choose to provide noncharging relief to reimbursable employers (i.e., governmental and nonprofit employers), the same noncharging relief must also be provided to contributory (i.e., experienced-rated) employers.

States are not allowed to relieve an employer account of UI benefit charges if the employer, or agent of the employer: (1) is at fault for failing to respond timely or adequately to the state's request for information relating to a UI benefits claim that was subsequently overpaid and (2) has established a pattern of failing to respond timely or adequately to UI benefit claim notices.

State inconsistency in charging employer accounts for regular UI benefits

How jurisdictions have been approaching the charging of regular UI benefits to the accounts of experience-rated employers varies considerably.

States that will not charge employer accounts with regular COVID-19 unemployment insurance (UI) benefits



[1] Not charged if participating in the shared work plan

[2] Not charged if partial claims filed by employers

Ernst & Young LLP insights

How a jurisdiction deals with regular COVID-19 UI benefits can have a direct impact on current and future SUI contribution rates. With SUI tax costs rising significantly in many jurisdictions, it is important that employers take these steps to potentially lower the impact.

- Understand the jurisdiction's rules for charging regular UI COVID-19 benefits to your SUI account
- Timely protest where possible UI benefits that are improperly charged to your SUI account
- Work with your employment tax advisor to identify jurisdictional provisions that have the potential to lower your future SUI tax rates

For more information on COVID-19 state payroll and employment tax developments, see our special report.

Many employers face higher state unemployment insurance tax costs due to COVID-19

Here we examine the impact the COVID-19 emergency has had on SUI costs and actions jurisdictions have taken to lessen the financial impact on employers while also maintaining adequate funds for the ongoing payment of unemployment insurance (UI) benefits.

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Background

Since 2014, as SUI trust funds began to recover from the financial collapse of 2008/2009, employers have generally enjoyed consistency, even decreases, in their SUI tax rates. For example, the range of SUI tax rates between 2014 and 2021 dropped in more than 15 states, with 2016 being the most favorable with 26 states moving to lower SUI tax rating schedules.

This favorable trend in employer SUI costs abruptly ended in 2021 as UI trust funds in every jurisdiction faced sharp increases in UI benefit payouts because of the COVID-19 emergency that began in March 2020.

To help replenish SUI trust funds hard hit by COVID-19 benefit claims, 23 jurisdictions moved to a higher base SUI tax-rating schedule in 2021 compared to just six that increased their range of base SUI tax rates in 2020. In addition to the base SUI tax rate, some states also impose surcharges, and a few of these increased in 2021 as well.

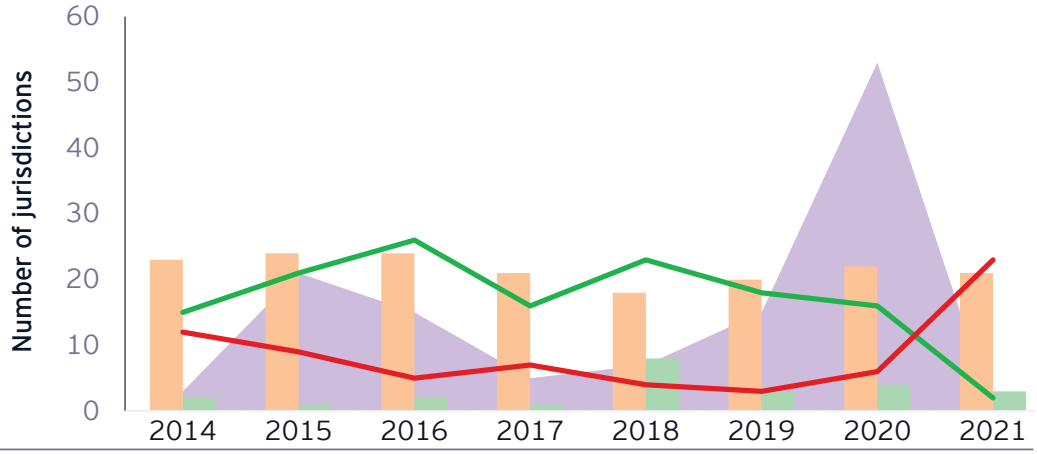
The extent of the 2021 SUI cost impact on employers depends largely on steps that jurisdictions took to shield businesses from the rise in tax rates that are automatically triggered by individual employer experience and/or falling UI trust fund levels.

Figure 1: SUI cost trends 2014-2021

Observations of cost trends 2014 to 2021

- There were more jurisdictions that increased their base tax rates in 2021 than in any other year since 2014.
- The jobless rate increased in every jurisdiction in 2020.
- In 2021, every state saw a reduction in their jobless rates since May 2020, but some states' jobless rates still remain higher than they were in May 2019.

SUI wage base, tax rates and jobless rates
Basic comparison 2014–2021



	2014	2015	2016	2017	2018	2019	2020	2021
States with increase in jobless rate	3	21	15	5	7	15	53	0
Increase in wage base	23	24	24	21	18	20	22	21
Decrease in SUI wage base	2	1	2	1	8	3	4	3
Decrease in SUI base tax rates	15	21	26	16	23	18	16	2
Increase in SUI base tax rates	12	9	5	7	4	3	6	23

Impact of COVID-19 UI benefits on individual employer 2021 SUI experience rates

As previously reported (see page 3, UI benefits made available from the following federal programs have no impact on the jurisdictions' UI trust funds nor an individual employer's SUI experience rate:

- Pandemic Unemployment Assistance (PUA)
- Pandemic Emergency Unemployment Compensation (PEUC)
- Federal Pandemic Unemployment Compensation (FPUC)/ Lost Wages Assistance (LWA)
- Mixed Earners Unemployment Compensation (MEUC)

Additionally, and as previously explained, under federal law, states have the option effective March 18, 2020, and through September 6, 2021, to relieve employer accounts of regular UI benefits paid in connection with COVID-19. How jurisdictions have been approaching the charging of COVID-19 regular UI benefits to the accounts of experience-rated employers varies considerably. (See page 10).

Hence, although federal law seeks to lessen the financial impact of COVID-19 UI benefits, employers cannot assume that they are shielded completely from any direct impact of regular COVID-19 UI benefit claims.

Impact of COVID-19 on jurisdictional base 2021 SUI tax rate schedules

To maintain the solvency, jurisdictions compute the range of base SUI tax rates that will apply for the upcoming rating year based on the balance of their UI trust funds. Generally, if UI benefit claims have increased overall for a jurisdiction, employers can expect that jurisdiction will move to a higher base SUI tax schedule in future years.

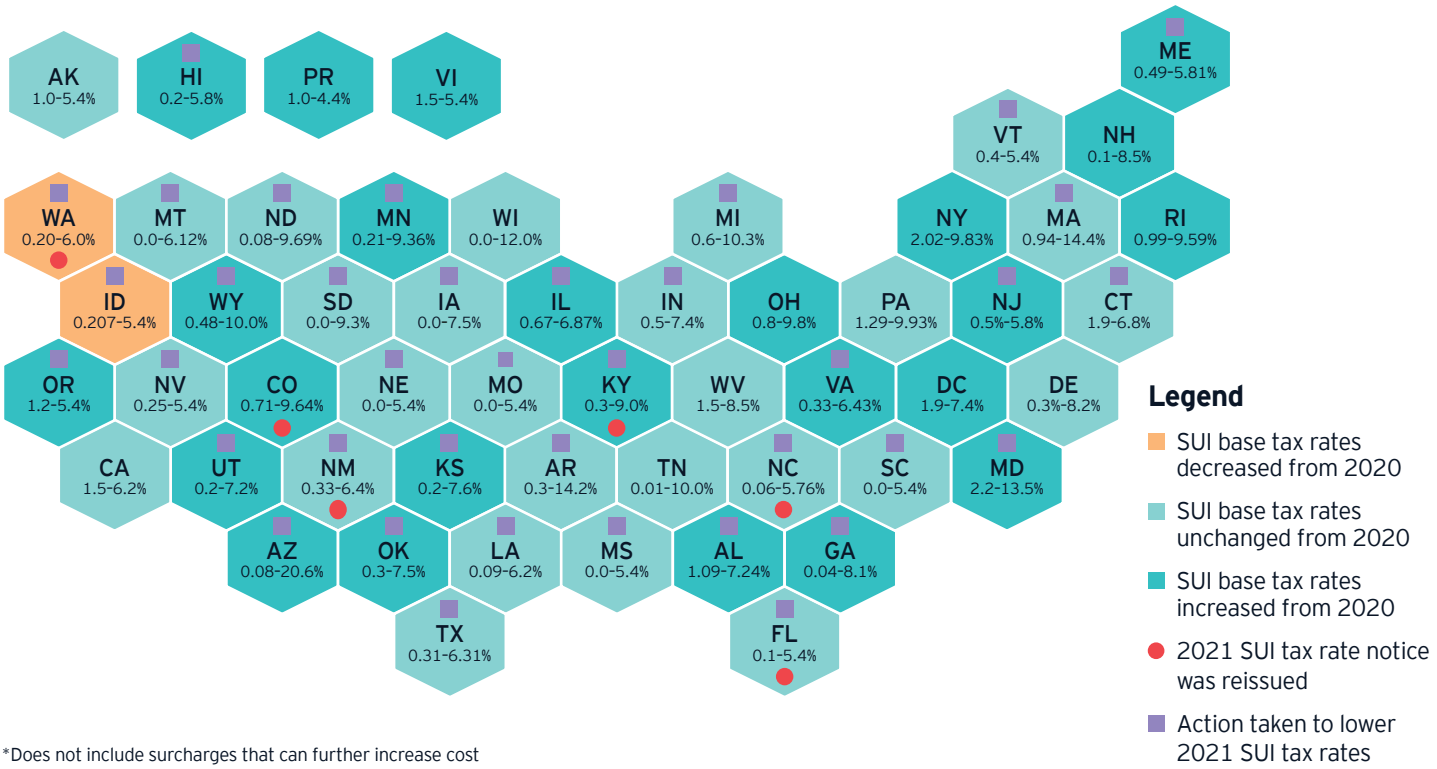
In 2020, all jurisdictions faced declines in their SUI trust fund balances; however, for the 2021 rating year, only 15 jurisdictions (as of May 26, 2021) took action to cushion employers from financial impact, as follows.

- **Federal relief.** As allowed under federal law, 20 jurisdictions increased the balance of their UI trust funds by transferring money available through the federal Coronavirus Relief Fund (CRF)/Fiscal Recovery Funds (FRF).
- **Legislative, executive and/or regulatory action.** In addition to, or in lieu of CRF funds, 20 jurisdictions took legislative, executive or regulatory action to hold the 2021 base SUI tax rate schedules at the 2020 level, despite trust fund balances that that would have automatically triggered a higher base SUI tax rate schedule. Additionally, legislative or executive action was taken to relieve employer accounts of regular COVID-19 UI benefits.
- **Other actions.** Some states have taken other actions to elevate their UI trust funds. Florida law, for instance, allows for the distribution of sales and use tax from remote sellers to be transferred to its UI trust fund.

Despite their actions to reduce the impact of falling SUI trust funds, 16 jurisdictions moved to a higher SUI tax rate schedule, with the increase significant in some cases. In Arizona, for instance, the range of SUI tax rates increased from 0.05%-12.85% in 2020 to 0.08%-20.6% in 2021.

Figure 2: 2021 SUI base tax rates for experience-rated employers

2021 state unemployment insurance (SUI) base tax rates for experience-rated employers*



*Does not include surcharges that can further increase cost

The challenge of late and reissued 2021 SUI rate notices

The process of removing regular COVID-19 UI benefits from employer accounts, legislative/administrative actions to adjust 2021 base SUI tax rate schedules, or both, created delays in the issuance of SUI tax-rate notices in 2021. For calendar year states, SUI rate notices are typically issued in November/December, giving employers enough time to adjust systems that accrue for and compute remittances of SUI tax. In 2021, the issuance of SUI tax notices was not only delayed, but in some cases, retroactively reissued. In the case of Texas, 2021 SUI rate notices were first issued in late July 2021, a delay from December 2020.

Because of delays/corrections, some states postponed the due date for 2021 first-quarter SUI tax payments (e.g., Florida, New Mexico, Texas); alternatively, employers could estimate their SUI tax payments using their 2020 assigned SUI tax rate.

Unlike previous years, employers will need to be diligent in determining their correct 2021 SUI tax rate and take immediate action to apply for refunds if they have paid more SUI taxes than they should have.

Figure 3: States that reissued their 2021 SUI tax-rate notices

- Colorado
- Delaware
- Florida
- Kentucky
- New Mexico
- North Carolina
- Washington

Underpayments of SUI may also arise due to SUI rate notices that were issued later than normal. These, too, should be addressed as soon as possible, keeping in mind that some states can impose a higher "penalty" SUI rate for SUI underpayments.

Figure 4: States with penalty rates for SUI underpayments/delinquent filings

- Alaska
- Delaware
- Florida
- Hawaii
- Indiana
- Michigan
- Mississippi
- Montana
- Nebraska
- Ohio
- Pennsylvania
- Utah
- Virginia
- Washington
- West Virginia
- Wyoming

SUI tax costs in 2022 and beyond

Whether base SUI tax rates will increase in 2022 and future years will depend on several factors as follows:

- **Continued elevation in jobless rates**

  Future SUI tax rates will depend on the speed at which the economy recovers at the jurisdictional level. Although every jurisdiction has seen improvements in their jobless rates compared to May 2020, as of April 2021, 47 jurisdictions continue to have a jobless rate that is higher than it was before the COVID-19 emergency (*Bureau of Labor Statistics, April 2021*). See Figures 5 and 6.

Figure 5: Jurisdictions with lower jobless rates in April 2021 compared to May 2019

Jurisdiction	Jobless rate May 2019	Jobless rate May 2020	Jobless rate April 2021
Alabama	3.7%	9.9%	3.6%
Kansas	3.5%	10.0%	3.5%
Nebraska	3.0%	5.2%	2.8%
South Dakota	2.9%	9.4%	2.8%
Utah	2.9%	8.5%	2.8%

Figure 6: Jurisdictions with higher jobless rates in April 2021 compared to May 2019

Jurisdiction	Jobless rate May 2019	Jobless rate May 2020	Jobless rate April 2021
Alaska	6.4%	12.6%	6.7%
Arizona	4.9%	8.9%	6.7%
Arkansas	3.6%	9.5%	4.4%
California	4.2%	16.3%	8.3%
Colorado	3.2%	10.2%	6.4%
Connecticut	3.8%	9.4%	8.1%
Delaware	3.2%	15.8%	6.4%
District of Columbia	5.7%	8.9%	7.5%
Florida	3.4%	14.5%	4.8%
Georgia	3.8%	9.7%	4.3%
Hawaii	2.8%	22.6%	8.5%
Idaho	2.4%	8.9%	3.1%
Illinois	4.4%	15.2%	7.1%
Indiana	3.6%	12.3%	3.9%
Iowa	2.4%	10.0%	3.8%
Kentucky	4.0%	11.0%	4.7%
Louisiana	4.4%	13.3%	7.3%
Maine	3.3%	9.3%	4.8%
Maryland	3.8%	9.9%	6.2%
Massachusetts	3.0%	16.3%	6.5%
Michigan	4.2%	21.2%	4.9%
Minnesota	3.3%	9.9%	4.1%
Mississippi	5.0%	10.6%	6.2%
Missouri	3.3%	10.1%	4.1%
Montana	3.6%	9.0%	3.7%
Nevada	4.0%	25.3%	8.0%
New Hampshire	2.4%	14.5%	2.8%
New Jersey	3.8%	15.2%	7.5%
New Mexico	5.0%	9.2%	8.2%
New York	4.0%	14.5%	8.2%
North Carolina	4.1%	12.9%	5.0%
North Dakota	2.3%	9.1%	4.2%
Ohio	4.1%	13.7%	4.7%
Oklahoma	3.2%	12.6%	4.3%
Oregon	4.2%	14.2%	6.0%

Jurisdiction	Jobless rate May 2019	Jobless rate May 2020	Jobless rate April 2021
Pennsylvania	3.8%	13.1%	7.4%
Puerto Rico	8.1%	8.5%	8.4%
Rhode Island	3.6%	16.3%	6.3%
South Carolina	3.5%	12.5%	5.0%
Tennessee	3.3%	11.3%	5.0%
Texas	3.5%	13.0%	6.7%
Vermont	2.1%	12.7%	2.9%
Virgin Islands	4.9%	13.6%	8.1%
Virginia	3.0%	9.4%	4.7%
Washington	4.7%	15.1%	5.5%
West Virginia	4.8%	12.9%	5.8%
Wisconsin	2.8%	12.0%	3.9%
Wyoming	3.5%	8.8%	5.4%

- **Relief from charging of COVID-19 regular benefits to employer accounts**

  Although, through September 6, 2021, federal law gives jurisdictions the option of not charging employer accounts with regular COVID-19 benefits, 8 jurisdictions resumed charging employer accounts in 2020, and 20 jurisdictions will resume charging before September 6, 2021, unless they take legislative/executive action to extend the relief. (See page 10.)

- **Cash transfers to jurisdiction UI trust funds**

  As in 2021, most states will again have the option of transferring federal CRF/FRF dollars to their UI trust funds; however, to do so, legislative/administration action will be necessary in most jurisdictions.

- **Legislative/administration action to freeze rates**

  As in 2021, jurisdictions can again take action to hold their base SUI tax rate schedules at the same level as 2020. As of May 26, 2021, the jurisdictions below have already taken this step.

Figure 7: State action to lower SUI tax rates in 2022 and later years

Jurisdiction	Action taken to freeze base SUI tax rate schedules
Connecticut	Legislation enacted to lower SUI tax rates for 2022
Florida	Legislation enacted to lower SUI tax rates for 2021–2025
Hawaii	Legislation enacted to lower SUI tax rates 2021–2022
Illinois	Legislation enacted to lower SUI tax rates for 2022
Kansas	Legislation enacted to lower SUI tax rates for 2022 and 2023 if CRF transfers are made
Louisiana	Legislation pending to lower 2022 SUI tax rates
Maryland	Legislation enacted to lower SUI tax rates 2022–2023
Massachusetts	Legislation enacted to lower SUI tax rates for 2021 and 2022
Missouri	Legislation enacted to lower SUI tax rates for 2022
Nevada	Legislation enacted to lower SUI tax rates for 2022
New Jersey	Legislation enacted to lower 2021 SUI tax rates starting July 1, 2021, through June 30, 2024
Oregon	Legislation enacted to lower SUI tax rates for 2022–2024
Washington	Legislation enacted to lower SUI tax rates 2021–2025

- **Insolvent UI trust funds and debt financing**

Jurisdictions that face an insolvent UI trust fund may be forced to borrow money so they may continue to pay UI benefits. Some jurisdictions may finance this debt on their own, such as through the issuance of bonds. Jurisdictions also have the option of obtaining federal UI loans. Regardless how the debt is financed, jurisdictions often pass the interest cost on to employers through the form of a SUI surcharge. Such surcharges are not treated as SUI contributions for purposes of computing the federal unemployment insurance (FUTA) credit reduction.

Federal UI loans taken to pay UI benefits starting in 2020 will begin to accrue interest on September 6, 2021 (extended from December 31, 2020, by HR 133, Pub. Law 116-260 and from March 15, 2021, under Public Law 117-2). As a result, and unless further federal legislation is enacted, the first federal interest payments will come due in the fall of 2021. (*See U.S. Department of Labor Program Letter No. 14-21*.)

In anticipation of interest for UI trust-fund financing, three jurisdictions — Massachusetts, Michigan and Texas — are already imposing interest surcharges on employers.

Under federal law, if all or a portion of a federal UI loan is still outstanding after two years, employers in those jurisdictions are required to make payments toward the outstanding federal UI loan balance in the form of a FUTA credit reduction that increases the FUTA taxes employers pay. For jurisdictions that began borrowing in 2020 and still have an outstanding loan balance as of November 10, 2022, a FUTA credit reduction of 0.3% would go into effect in 2022.

Once the FUTA credit reduction is triggered, it can take years for it to go away. California, for instance, began borrowing in 2009 and its federal UI loan balance was not repaid until 2018, subjecting California employers to the FUTA credit reduction for seven years (2011 to 2018). California anticipates the FUTA credit reduction in connection with COVID-19 will be in place until 2030 or 2031 (10 to 11 years).

See Figure 8 for the federal loan balances reported by Treasury Direct.

Figure 8: States with outstanding federal UI loan balances as of July 1, 2021

Jurisdiction	Federal UI loan balance	Jurisdiction charges a UI interest assessment starting in 2021
California	$22,068,217,845	
Colorado	$1,014,167,919	
Connecticut	$725,073,503	
Georgia	Paid off	
Hawaii	$717,019,822	
Illinois	$4,232,873,402	
Kentucky	$505,731,674	
Louisiana	$184,145,942	
Maryland	$68,528,256	
Massachusetts	$2,268,015,460	0.1%-0.76%
Minnesota	$1,141,701,659	Base SUI tax rate + 0.1% x 4%
Nevada	$332,407,747	
New Jersey	$473,079,158	
New Mexico	$196,390,781	
New York	$9,762,316,112	
Ohio	$1,471,790,844	
Pennsylvania	$1,559,422,237	
Texas	$6,915,964,929	0.03%
Virgin Islands	$96,805,881	
West Virginia	$184,910,035	

Ernst & Young LLP insights

The COVID-19 emergency has had more of an impact on SUI tax costs than the financial collapse of 2008-2009. It is important that businesses take the following steps to proactively respond during this period of rapid change.

- Understand the jurisdiction's rules for charging regular UI COVID-19 benefits to your SUI account
- Track legislative/executive actions in your applicable jurisdictions to identify provisions that impact on your SUI costs
- Timely protest where possible UI benefits that are improperly charged to your SUI account
- Confirm your 2021 SUI tax rate quarterly and promptly update payroll systems to reflect the correct rate
- Act promptly to request refunds where SUI tax payments were overpaid
- Timely respond to UI claim notices and state requests for employee wage information
- Act promptly to remit any SUI tax underpayments
- Work with your employment tax advisor to identify jurisdictional provisions that have the potential to lower your future SUI tax rates

For more information on COVID-19 state payroll and employment tax developments, see our special report.

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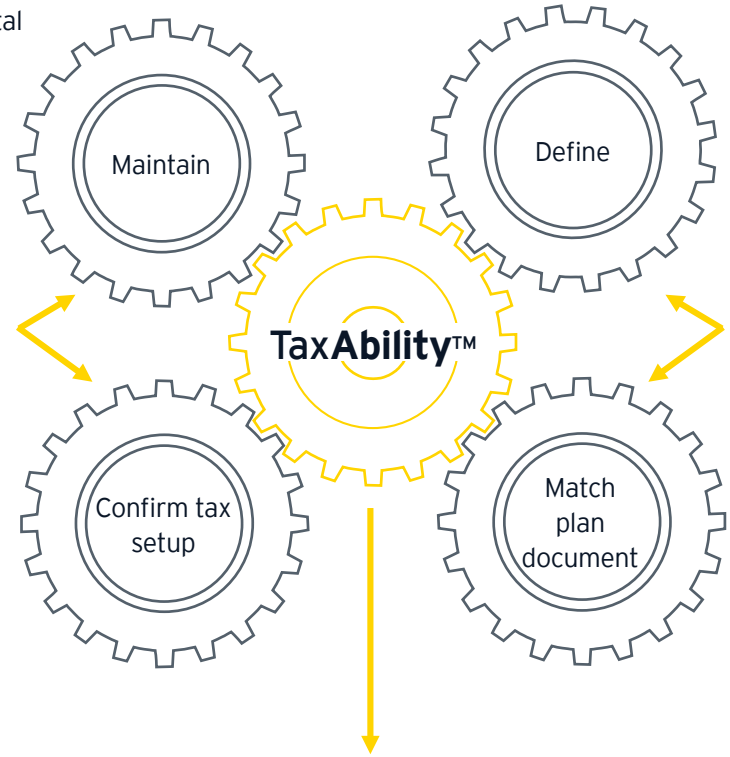

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