

## ENROLLED ORIGINAL

### AN ACT

*Codification  
District of  
Columbia  
Official Code*

2001 Edition

2007 Winter  
Supp.

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Publisher

### IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Unemployment Compensation Act to comply with the federal SUTA Dumping Prevention Act of 2004 by preventing the manipulation of employer contribution rates

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,  
That this act may be cited as the “Unemployment Compensation Contributions Federal Conformity Amendment Act of 2006”.

Sec. 2. The District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat 947; D.C. Official Code § 51-101 *et seq.*), is amended as follows:

(a) Section 3 (D.C. Official Code §51-103) is amended as follows:

(1) Subsection (c)(7) is amended as follows:

(A) Subparagraph (A) is amended as follows:

Amend  
§ 51-103

(i) Strike the phrase “If all or substantially all of the business of any employer is transferred” and insert the phrase “After December 31, 2005, if any employer transfers all or a portion of its trade or business to another employer” in its place.

(ii) Sub subparagraph (i) is amended by striking the phrase “whether or not all or substantially all” and inserting the phrase “what portion” in its place.

(iii) Sub subparagraph (ii) is amended by striking the phrase “all or substantially all” and inserting the phrase “a portion” in its place.

(2) A new subsection (n) is added to read as follows:

“(n) Notwithstanding any other provision of this act, all assignments of contribution rates and transfers of experience in any year commencing after December 31, 2005 shall be made in accordance with the following:

“(1) If an employer transfers all or a portion of its trade or business to another employer and, at the time of transfer, there exists any common ownership, management, or control of the 2 employers, the unemployment experience for the trade or business shall be transferred to the employer receiving the trade or business. The contribution rates of both employers shall be recalculated and made effective on the 1<sup>st</sup> day of the next rating year. Any penalties that may be imposed on the transfer under section 4 shall be retroactive to the beginning of the year in which the transfer occurred.

“(2) If a person is not subject to this act at the time it acquires the trade or business of an employer subject to this act, the unemployment experience of that trade or business shall not be transferred if the Director determines that the acquisition was solely or primarily for purpose of obtaining a lower contribution rate. In such event, the person shall be

assigned a new employer rate under subsection (c)(3)(A) of this section. The Director shall use objective criteria to determine whether the trade or business was acquired solely or primarily for the purpose of obtaining a lower contribution rate, including:

“(A) The cost of acquiring the trade or business enterprise;  
“(B) Whether the trade or business was continued by the person after acquisition;

“(C) The length of time that the trade or business was continued; and  
“(D) Whether a substantial number of new employees were hired to

perform duties unrelated to the trade or business activity prior to the acquisition.

“(3) The Director shall establish procedures to identify the transfer or acquisition of a trade or business for the purposes of this act.”

(b) Section 4 (D.C. Official Code § 51-104)) is amended by adding a new subsection (p) Amend  
§ 51-104 to read as follows:

“(p)(1) For purposes of this subsection, the term:

“(A) “Knowingly” means having actual knowledge of or acting with deliberate ignorance or reckless disregard of the prohibitions under this subsection.

“(B) “Person” means an individual, a trust, estate, partnership, association, company, or corporation.

“(C) “Trade or business” includes the employer’s workforce.

“(D) “Violates or attempts to violate” includes acts evidencing an intent to evade, misrepresentation, or willful nondisclosure of material information.

“(2) Any person that knowingly violates or attempts to violate any provision of this act related to the calculation, determination, or assignment of contribution rates, or knowingly advises another person in a way that results in a violation of any of those provisions, shall be subject to the following penalties:

“(A) If the person is an employer subject to this act, the highest rate shall be assigned for the duration of the rate year in which the violation or attempted violation occurred and for the following 3 consecutive years; provided, that if the employer is already subject to the highest rate for the year that the violation or attempted violation occurred or if the increased rate would be less than 2% for that year, an additional 2% of taxable wages shall be imposed for that year and for the following 3 consecutive years.

“(B) If the person is not an employer subject to this act, a fine shall be imposed in the amount of \$5,000 for the 1<sup>st</sup> violation and in an amount not to exceed \$25,000 for each additional violation. Fines shall be enforced by civil action brought by the Director and shall be deposited in the Special Administrative Expense Fund established by section 14(b).

“(3) Any violation of this subsection may also be prosecuted on information brought by the Attorney General for the District of Columbia in the Superior Court. Any person that is convicted shall be guilty of a misdemeanor and shall be subject to a fine not to exceed \$5,000, imprisoned not more than 180 days, or both, and shall be liable for costs of prosecution.

“(4) This subsection shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the Secretary of Labor.”.

**Sec. 3. Applicability.**

This act shall apply as of January 19, 2007.

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**Sec. 4. Fiscal impact statement.**

The Council adopts the fiscal impact statement provided by the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

**Sec. 5. Effective date.**

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1- 206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia