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January 26, 2011

The Honorable Mark Jansen, Chair, Senate Appropriations Subcommittee on Department of Energy, Labor and Economic Growth

The Honorable Mike Kowall, Chair, Senate Committee on Economic Development
The Honorable Wayne Schmidt, Chair, House Commerce Committee

The Honorable Al Pscholka, Chair, House Appropriations Subcommittee on Energy, Labor and Economic Growth

Enclosed please find the annual report the Unemployment Insurance Agency (UIA) is required to submit pursuant to Section 22b(f) of the *Michigan Employment Security Act* being Section 421.22b of the *Michigan Compiled Laws*, which provides as follows:

- "(f) Beginning January 1, 2006, the unemployment insurance agency shall provide an annual written report to the chairpersons of the standing committees and the appropriations subcommittees of the house and senate having jurisdiction over legislation pertaining to unemployment compensation. The report shall include all of the following information in a form that does not identify individual employers:
- (i) The procedures the agency has adopted to prevent SUTA dumping.
 - (ii) The number of SUTA dumping investigations opened during the year.
 - (iii) The average length of time to resolve a SUTA dumping investigation and the number of investigations pending for more than 6 months and for more than 1 year.
 - (iv) The number of cases brought before an administrative law judge or the board of review and the agency's success rate in those cases.
 - (v) The amount of money recovered as a result of implementing the provisions of this section.
 - (vi) The amount of the balance or deficit in the unemployment compensation fund.
 - (vii) The estimated fiscal impact of SUTA dumping on the unemployment compensation fund balance and the factual basis for the estimate.
 - (viii) The number of full-time employees assigned to, and the number of employee hours devoted to, SUTA dumping preservation, investigation, and remediation
 - (ix) The number of SUTA dumping investigations that involved the transfer of employees to or from an employee leasing company.
 - (x) The number of investigations in which an employee leasing company was found to have participated in SUTA dumping.
 - (xi) The number of employee leasing companies operating in Michigan."

DELEG is an equal opportunity employer/program.
Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

The enclosed report provides the required information, using the italicized numbering system used in the quoted section of the Act.

Respectfully submitted:



**Stephen M. Geskey, Director
Unemployment Insurance Agency**

Enclosure

cc: Dick Posthumus, Senior Advisor to the Governor, Office of Legislative Affairs

Senator Tupac Hunter, Minority Vice-Chair, Senate Committee on Economic Development

Representative Jim Ananich, Minority Vice-Chair, House Appropriations Subcommittee on Energy, Labor and Economic Growth

Representative Jon Switalski, Minority Vice-Chair, House Commerce Committee

**State Unemployment Tax Act (SUTA) Dumping
Annual Report**

January 2011

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SUTA Dumping Employer Communication and Education Procedure

(i) A. General Information

Through education, detection and enforcement, the Agency seeks to reduce SUTA Dumping. The Agency takes the following steps to communicate with and educate the employer community on the amendments to the Michigan Employment Security (MES) Act and State Unemployment Tax Act (SUTA) Dumping:

1. Communication with Employer Community

The Agency has developed informational materials to educate employers regarding the amendments to the Michigan Employment Security (MES) Act and State Unemployment Tax Act (SUTA) Dumping and mail the information to employers. The information is distributed through the Quarterly Tax Report mailings, special mailings, meetings and educational forums with the employer community.

2. UIA Website

The Agency maintains a section devoted to SUTA Dumping education on its website. The website includes: state legislation, federal information, *Employer Advisor* articles, Frequently Asked Questions, informational letters sent to all employers, news releases related to SUTA Dumping, a fact sheet on SUTA Dumping, as well as a phone number to the Employer Customer Relations office for additional information on SUTA Dumping. The Agency's website is located at www.michigan.gov/uia.

3. Employer Advisor

To provide on-going communication regarding SUTA Dumping, the Agency publishes articles in the *Employer Advisor* which is a quarterly newsletter made available to the over 218,000 active employers in the state of Michigan. This newsletter is available online.

4. UIA Outreach

There are two general forms of seminars offered. One type of seminar is done as requested by employer groups. It is known as the Agency's Speakers' Bureau. Any company or organization can request a speaker by contacting the Agency's Speakers' Bureau Coordinator at (313) 456-2943. The second type of seminars are planned by the Agency to cover a variety of topics including, as needed, issues related to SUTA Dumping.

SUTA Dumping Employer Communication and Education Procedure

5. Employer Handbook

The Agency's *Employer Handbook*, which is a comprehensive guide for employers. It is revised as necessary, to include updated information on the SUTA Dumping provisions of the Michigan Employment Security (MES) Act and additional information about SUTA Dumping and other topics.

6. Updated Forms

Treasury Form 518, "Michigan Business Taxes Registration Booklet," is available in electronic format. UIA Schedule B which must be used to disclose possible transfer of business has been made available to employers as a stand-alone form and is available on the Agency's website (www.michigan.gov/uia).

Paper forms such as: UIA 1020, *Employer's Quarterly Tax Report*; UIA 1020-R, *Reimbursing Employer's Quarterly Payroll Report*; UIA 1025, *Employer Request for Address Change*; and UIA 151, *Power of Attorney Authorization* have been added in electronic versions which can be completed and submitted by employers through the Internet using an Employer Web Account.

7. Quality Assurance

The Agency conducts quality assurance reviews throughout the process to improve communication with the employer community and solicit recommendations to improve service to the Agency's customers.

Note on Legislation Affecting SUTA Dumping

The Michigan Legislature enacted 2010 PA 383, effective January 1, 2011, that requires Professional Employer Organizations, by 2014, to report by client entity the employees they share with those client entities. The amendment provides for a phase-in period, and for a method of assigning or calculating an unemployment tax rate for each client entity, based on unemployment benefit charges attributed to each client entity and tax payments, made by or on behalf of each client entity. This will reduce the difficulty the Agency has encountered in tracking the unemployment experience of employees when they transfer from an employing entity to a PEO or from one PEO to another. As this new law is implemented over the next three years and PEOs adopt the new client level reporting process, it is expected that there will be fewer SUTA cases.

SUTA Dumping Detection and Enforcement Procedure

- 1) Referrals for possible SUTA Dumping are received from the SUTA Dumping Detection System software; external sources such as other employers, claimants, and other states; and internal sources, including the Bureau of Labor Market Information and Strategic Initiatives (LMI), Attorney General's Office, other state agencies, and the Unemployment Insurance Agency's (UIA) Claimant Customer Relations, Employer Customer Relations, Problem Resolution Offices, Remote Initial Claims Centers (RICCs) and Benefit Fraud Detection Unit.
- 2) Based on Agency review of the referrals, a decision is made as to whether a SUTA Dumping investigation is needed.
- 3) If a SUTA Dumping investigation is considered necessary, documentation related to the transactions, ownership, transfers and correspondence is prepared for the case. Documentation is obtained from internal Agency records including wage records, tax filings, employer registration reports, employer correspondence, and filings with the related Corporations and Securities Bureau of the Department of Energy, Labor & Economic Growth. All known accounts and companies are reviewed.
- 4) A referral is forwarded to the UIA's Field Audit Section, along with all documentation pertaining to the case. The Field Audit Area Supervisor assigns the case to an auditor/investigator.
- 5) Documentation is reviewed by the auditor/investigator assigned. If needed, an audit and/or investigation is scheduled and an audit letter is mailed to the employer confirming the audit date, time and location. Enclosed with the letter is a brochure that explains the audit process and the records needed for the audit.
- 6) The auditor may also conduct a financial audit at either the company's business location or at the office of its financial advisor. A financial audit is conducted in compliance with Chapter Seven of the US Department of Labor Tax Performance System as mandated by federal law.
- 7) After the audit is completed, a closing conference is held with the employer at which time the auditor will provide a letter that outlines the steps for the remainder of the process.

SUTA Dumping Detection and Enforcement Procedure

- 8) The results of the audit and/or investigation are reviewed by the Field Audit Area Supervisor to assure quality and completeness.
- 9) The information is presented to appropriate UIA staff and the Labor Division, Unemployment Unit of the Department of Attorney General for review. After a thorough review, a decision is made whether SUTA Dumping has occurred. Additional information may be required and the auditor or investigator will follow up with the employer to collect the information needed.
- 10) The Agency prepares a Determination that details its decision which is mailed to the employer's address of record.
- 11) By law, the employer has 30 days to file a written protest to the Determination. Upon issuance of a Determination, the tax loss, interest and, as appropriate, penalty with interest on penalty will be posted to the employer's account.
- 12) If the employer protests the Determination in a timely manner, the written information in the protest will be considered. Following a review of the protest, a Redetermination is issued which affirms, modifies, or reverses the Determination. An employer may appeal the Redetermination to the State Office of Administrative Hearings and Rules (SOAHR) for a full evidentiary hearing before an Administrative Law Judge (ALJ).
- 13) The decision of the Administrative Law Judge may be appealed by the aggrieved party to the Michigan Employment Security (MES) Board of Review or upon stipulation by the employer and the Agency, the matter may be appealed directly to circuit court.
- 14) If either party believes that the decision of the MES Board of Review is incorrect, the case may be appealed to the circuit court for review. A decision of the circuit court may be further appealed, by leave, to the Michigan Court of Appeals, and ultimately, by leave, to the Michigan Supreme Court.
- 15) Upon issuance of a Determination or when a settlement has been reached, if applicable, adjustments will be made to the employer account. The employer has an option of entering into a payment plan

SUTA Dumping Detection and Enforcement Procedure

If at any time the employer refuses or fails to comply with the Agency's audit or requests for information (pursuant to Section 9 of the MES Act and Rule 190 of the Administrative Rules), the following steps shall occur:

- a. The Auditor contacts the employer (via letter, email, phone call, or in person) and requests additional information.
- b. If the information is not provided within five business days, a letter is mailed requesting the information within ten business days.
- c. If the employer still fails to comply, a subpoena is issued (pursuant to Section 9 of the MES Act).
- d. If the employer does not comply with the subpoena, the Labor Division, Unemployment Unit of the Office of Attorney General, may upon request, issue a demand letter citing the subpoena and requiring the requested information due within ten business days.
- e. If the employer does not comply with the demand letter, the Agency will issue its decisions based on the best available information.

(ii) The number of SUTA dumping investigations opened during the year.

As of December 31, 2010, there have been 115 SUTA Dumping investigations opened since January 1, 2010, citing possible violations of Sections 22(b), 22b, 54b, and/or Section 54(b) of the Michigan Employment Security (MES) Act.

(iii) The average length of time to resolve a SUTA dumping investigation and the number of investigations pending for more than 6 months and for more than 1 year.

The average length of time to resolve a SUTA Dumping investigation is 17 months. There have been 187 investigations pending for more than 6 months and 165 investigations pending for more than 1 year.

Please note that in calculating the length of time to resolve a SUTA Dumping investigation, the beginning of the period is the date the investigation began, and the end of the period is the date the Determination was issued, or the date when it is concluded that no SUTA Dumping has occurred. An appeal process is available to the parties pursuant to the MES Act, and includes both administrative and judicial appeal process rights and is not factored into this timeline.

- (iv) The number of cases brought before an administrative law judge or the board of review and the Agency's success rate in those cases.

There have been seventeen cases brought before an Administrative Law Judge or the MES Board of Review in 2010. Of the decisions issued (eleven decisions issued), all decisions were in the Agency's favor. Six of the eleven decisions were decisions to grant the withdrawal of appeal but are considered favorable here, since a settlement was reached.

- (v) The amount of money recovered as a result of implementing the provisions of this section.

During calendar year 2010, the Agency has recovered and returned to the Trust Fund \$2,324,777.34.

- (vi) The amount of the balance or deficit in the unemployment compensation fund.

As of December 31, 2010, the balance for Michigan's Unemployment Insurance Agency's Trust Fund is deficit of \$3.7 billion.

- (vii) The estimated fiscal impact of SUTA dumping on the unemployment compensation fund balance and the factual basis for the estimate.

The Unemployment Insurance Agency estimates the fiscal impact of SUTA Dumping on the unemployment compensation fund balance for the calendar year 2011 will be similar to the amount collected in 2010 or slightly more, approximately \$3 million in underpaid unemployment taxes is anticipated.

- (viii) The number of full-time employees assigned to, and the number of employee hours devoted to, SUTA dumping prevention, investigation, and remediation.

There were a total of 15,118 hours spent in prevention, investigation and resolution of SUTA cases in calendar year 2010. This equates to 7.26 full time employees.

(ix) The number of SUTA dumping investigations that involved the transfer of employees to or from an employee leasing company.

Of the 115 investigations initiated in 2010, 17 investigations involved the transfer of employees to or from employee leasing companies.

(x) The number of investigations in which an employee leasing company was found to have participated in SUTA dumping.

In 2010, 141 employee leasing companies investigated in 17 cases were found to have participated in SUTA Dumping.

(xi) The number of employee leasing companies operating in Michigan.

According to the Department of Energy Labor and Economic Growth (DELEG), Bureau of Labor Market Information and Strategic Initiatives, as of December 31, 2010, there were 583 active companies in Michigan identifying themselves as employee leasing companies.

The number of employee leasing companies registered in Michigan includes a variety of different status types. There are 1,493 companies that have registered as employee leasing companies on the Agency's computer systems. However, 736 of those accounts are listed as terminated, 20 are listed as non-liaible, 101 are listed as cancelled and 53 are listed as currently inactive. The status of some accounts may be subject to dispute.