

# Financing and Solvency Basics

*This brief is part of the Unemployment Insurance Policy Hub created by the National Employment Law Project as a reference guide for state advocates to support efforts that will strengthen the economic security of workers and their families. For other Policy Hub resources, see [www.uipolicyhub.org](http://www.uipolicyhub.org).*

## Unemployment Insurance (UI) Financing and Solvency Definitions

**Experience Rating:** A system of taxing employers at different rates based on their “experience” with unemployment. In most states, experience is measured by the share of former workers who receive UI benefits over a given period.

**Extended Benefits:** A program available to workers who have exhausted regular unemployment insurance benefits during periods of high unemployment. The basic program provides up to 13 additional weeks of benefits when a state is experiencing high unemployment.

**Misclassification:** When businesses wrongfully classify employees as independent contractors, which deprives workers of UI benefits and other protections.

**Solvency:** The financial ability of a UI trust fund to pay out expected UI benefits and repay debts to the federal government.

**Taxable Wage Base:** The portion of an employee’s annual wages that are subject to UI taxes. For example, the federal taxable wage base for UI is \$7,000, so federal UI taxes must be paid on the first \$7,000 of an employee’s annual wages (for more details, see UI financing below).

**UI Trust Fund:** A fund, maintained for each state by the US Treasury, in which state UI taxes are deposited. Each state’s regular UI benefits are paid out of its trust fund.

## Overview

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At the root of many challenges facing the unemployment insurance (UI) system lies a glaring problem: federal and state policymakers have set up a tax structure that leaves the UI system chronically underfunded. As of January 1, 2022, only 16 states met the US Department of Labor’s recommended minimum financing standard for the UI trust funds used for unemployment benefits.<sup>1</sup>

Even before the pandemic threw millions of people out of work and strained states’ UI funds, 41 percent of states failed to meet minimum federal solvency standards.<sup>2</sup> Continuous underfunding of UI has consequences for workers because states with inadequate reserves

in their trust funds routinely try to compensate by reducing expenditures rather than increasing revenue. This means cutting worker benefits, restricting worker eligibility for benefits, or both—actions which have the worst impacts on workers of color.<sup>3</sup> As a result of structural racism in the economy, Black, Latinx, and Native American workers confront higher unemployment rates, are more likely to be employed in underpaying jobs with inconsistent hours that are excluded by eligibility rules, and have fewer resources to draw on in times of unemployment.<sup>4</sup>

To build a UI system that provides economic security to all jobless workers, states must secure sustainable financing to not only maintain their current systems but also expand UI eligibility, benefit levels, duration, and access.

## UI funding

UI is funded by state and federal payroll taxes. UI taxes are not imposed on all wages but on a portion of wages known as the “taxable wage base.” While UI taxes are paid by employers in most states,<sup>5</sup> researchers find that the cost is largely passed on to workers in the form of lower wages.<sup>6</sup> The primary UI taxes are:

- **The Federal Unemployment Tax Act (FUTA) tax**, levied by the federal government, funds state UI administrative costs, half the cost of the Extended Benefits program, loans to state trust funds, and other programs including labor market information and employment services for veterans. FUTA taxes are 0.6 percent times the federal taxable wage base (currently \$7,000). This is equivalent to \$42 per year for each full-time, year-round employee.<sup>7</sup>
- **The State Unemployment Tax Act (SUTA) tax**, imposed by states, funds state UI benefits and is used to repay any federal loans made to a state’s UI trust fund. Most SUTA taxes average 1 to 2 percent of the state’s taxable wage base, which varies widely by state. The actual tax rates paid by a specific employer vary depending on the employer’s past experience of laying off workers who claim unemployment benefits—a method of setting the tax rate known as “experience rating.”
- **Employees’ wages are directly taxed for UI** in three states—Alaska, New Jersey, and Pennsylvania—helping fund UI benefits in those states. No other state requires an employee contribution for UI.<sup>8</sup>

To avoid federal penalties, states must set their taxable wage bases at least at the level of the federal wage base (currently fixed at \$7,000) and establish an experience rating system for setting employer taxes.

## State UI funding structures

States otherwise have considerable power to shape their UI funding structures.<sup>9</sup> Key state financing choices include how to determine the taxable wage base, what maximum and minimum tax rates and surcharges should be, whether to impose employee taxes, how to define “employees” for purposes of UI taxation, and how to structure the experience rating system. This brief focuses on states’ ability to determine the taxable wage base, the most crucial decision in determining adequate UI financing.

Most state UI systems are chronically underfunded because policymakers set their taxable wage bases too low. In 2021, 12 states, plus Puerto Rico and Washington, DC, had taxable wage bases of less than \$10,000.<sup>10</sup> This means that employers only paid SUTA taxes on the first \$10,000 (or less) of workers' pay, leaving the rest untaxed. Only 16 states had a taxable wage base of \$25,000 or more in 2021.<sup>11</sup> A key variable in state UI financing is *how* each state sets its taxable wage base:

- **Fixed taxable wage base:** Twenty-six states plus Puerto Rico and Washington, DC tax a fixed dollar amount of wages.<sup>12</sup> This can lead to financing shortfalls because the proportion of wages that are taxed declines each year as total wages paid in the state grow.
- **Flexible taxable wage base indexed to trust fund:** Seven states set a variable taxable wage base tied to the state's UI trust fund balance.<sup>13</sup>
- **Flexible taxable wage base indexed to wages:** Eighteen states plus the US Virgin Islands set a variable taxable wage base based on a proportion of the state's average weekly wage.<sup>14</sup> Because the taxable wage base grows automatically as overall wages grow, these states often have the broadest taxable wage bases and the most stable financing. For example, Hawaii and Idaho set their taxable wage base at 100 percent of their average weekly wage. In 2021 that was \$47,400 in Hawaii and \$43,000 in Idaho. This means that the first \$47,400 in wages was subject to SUTA taxes in Hawaii, and the first \$43,000 was subject to SUTA taxes in Idaho.

State UI systems were designed to be forward financed, meaning that they take in more revenue than they pay out during periods of low unemployment. Forward financing should allow state UI systems sufficient reserves to pay benefits during economic downturns, when large numbers of workers are laid off and seeking unemployment benefits. Yet most state trust funds are too underfunded to pay out recession levels of unemployment claims.

States can take out loans from the federal government if they lack funds to pay UI benefits, but they must pay back those loans with interest. In recent recessions, the federal government has stepped in with additional unemployment funding, financing the entire cost of Extended Benefits as well as other special UI benefit programs. For example, during the pandemic recession in 2020 and part of 2021, the federal government fully financed emergency unemployment expansions, paid for the first week of regular state unemployment benefits, and funded other programs.

### **UI experience rating**

Experience rating is a system of taxing employers at different rates based on their "experience" with unemployment. While a full discussion of the issues surrounding UI experience rating is beyond the scope of this brief, several points should be highlighted. The intent behind experience rating is to ensure that employers who lay off or otherwise discharge more workers bear more of the costs of paying for the UI system. It also serves as an incentive for avoiding layoffs.

Studies show that experience rating does reduce layoffs.<sup>15</sup> But in every state except Alaska, the experience rating is based on the UI benefits paid to laid off workers, which produces a more problematic incentive: it spurs employers to discourage the workers they discharge

from filing for UI and to contest their claims if they do file.<sup>16</sup> This has produced an entire industry aimed at helping companies block laid-off workers from accessing unemployment support.<sup>17</sup>

In addition to experience rating, states can also set maximum and minimum tax rates. Here too, a full discussion is beyond the scope of this brief. Note that when taxable wage bases are set higher, the same (or lower) tax rates can raise the same amount of revenue because a greater proportion of wages are subject to taxation.

### **UI tax rates and worker misclassification**

Another way some employers try to avoid paying UI taxes is by claiming that their workers are independent contractors rather than employees. Workers who are misclassified in this way are shut out of claiming regular UI benefits<sup>18</sup> as well as other workplace protections, and their employers do not pay UI taxes on their behalf.

Workers can challenge misclassification with their state workforce agency, but this is often a long and arduous process. Researchers estimate that 30 percent or more of employers misclassify their employees as independent contractors, disproportionately impacting workers of color and immigrant workers who are overrepresented in low-paying, labor-intensive industries where misclassification is rampant.<sup>19</sup> This suggests that millions of workers are misclassified and that state and federal governments are losing billions in annual revenue to misclassification, undermining both UI coverage and solvency.<sup>20</sup>

### **Federal Requirements and Guidance**

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Federal law requires states to save their UI funds in a trust fund account and to use these funds only for paying UI benefits and other specified purposes. If states meet minimum federal requirements under FUTA and Title III of the Social Security Act, employers receive a substantial credit against their federal unemployment tax liability. Requirements include:

- Using experience rating to determine state tax rates for employers (although states retain considerable leeway in how this system is structured)
- Repayment of federal loans to state UI trust funds within a certain time frame (about three years)
- Setting state wage bases equal to or higher than the federal wage base, which has been fixed at \$7,000 since 1983

For reference, see:

- Conformity Requirements of State UC Laws – FUTA Tax Credit System  
[https://oui.doleta.gov/unemploy/pdf/uilaws\\_futataxcredit.pdf](https://oui.doleta.gov/unemploy/pdf/uilaws_futataxcredit.pdf)
- Conformity Requirements of State UC Laws – Experience Rating  
[https://oui.doleta.gov/unemploy/pdf/uilaws\\_exper\\_rating.pdf](https://oui.doleta.gov/unemploy/pdf/uilaws_exper_rating.pdf)
- UIPL 30-83, Attachment: Federal Unemployment Tax Credits and Experience Rating  
[https://oui.doleta.gov/dmstree/uipl/uipl83/uipl\\_3083a.htm](https://oui.doleta.gov/dmstree/uipl/uipl83/uipl_3083a.htm)
- The Financing chapter of the Comparison State Unemployment Compensation Laws  
<https://oui.doleta.gov/unemploy/pdf/uilawcompar/2021/financing.pdf>

## Policy Recommendations

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The system of state financing for unemployment benefits produces damaging incentives—state policymakers want to keep UI taxes low to appeal to businesses, which can produce a ruinous “race to the bottom” in UI taxes and revenue, especially during and after recessions, when UI trust funds are depleted.<sup>21</sup>

Limited UI funding creates pressure to cut costs by reducing benefit levels, duration, or eligibility, which harms unemployed workers. Workers of color have experienced the greatest negative impact from UI cuts since, as discussed above, they confront higher unemployment rates, are more likely to be employed in underpaying jobs with inconsistent hours that make them more likely to be excluded by eligibility rules, and have fewer resources other than UI benefits to draw on in times of unemployment as a result of structural racism.<sup>22</sup>

A shift to full federal financing of unemployment benefits would address this harmful dynamic, eliminating the incentive for states to compete for low UI taxes. At minimum, the federal government should fully finance UI expansions during recessions. In the absence of federal UI reform, states can act to improve the financing of their own systems.

States should:

- 1. Broaden the taxable wage base and index taxes to wages** to automatically keep pace with wage growth. In 2021, 18 states plus the US Virgin Islands set a flexible taxable wage base indexed to the state’s average weekly wage.<sup>23</sup> Jurisdictions with an indexed taxable wage base include conservative states such as Idaho, North Dakota, Oklahoma, and Utah.
  - Set the taxable wage base at a high proportion of average wages. For example, Hawaii (2021 taxable wage base \$47,400) and Idaho (2021 taxable wage base \$43,000) index their wage base to 100 percent of their average annual wage, while Oregon and Montana use 80 percent and Alaska uses 75 percent.<sup>24</sup> On average, employers in Hawaii contributed \$596 per covered employee in SUTA taxes in 2021.<sup>25</sup>
  - Another option, proposed by researchers at the Economic Policy Institute, is to set the taxable wage base at half of the Social Security taxable wage base limit, which was \$147,000 for 2022 (so that half would be \$73,500).<sup>26</sup> The Social Security tax wage base is itself indexed so that it automatically adjusts to keep pace with wages. No states have adopted this proposal yet.
- 2. Reform experience rating** by shifting to a model where employers pay higher rates whenever they cut payroll or reduce hours worked, not when their former employees claim benefits. Because UI claims by former employees would no longer increase a company’s taxes, these reforms would eliminate incentives to prevent laid-off workers from successfully filing UI claims. States must also ensure their maximum and minimum tax rates are sufficient to finance their UI system.
  - Alaska uses an experience rating system based on payroll increases and reductions rather than on UI benefit payments and separations.<sup>27</sup>

- For an alternative proposal for experience rating based on changes in employee hours worked, see [Reforming Unemployment Insurance](#), p. 36.

3. **Keep businesses from dodging UI taxes** by using the “ABC test” to prevent worker misclassification and enforcing its standard. The ABC test is a legal rule for determining when a worker should be considered an employee for UI eligibility and taxation purposes. It’s the strongest standard for workers because it broadly defines who should be covered for UI, it strengthens trust fund solvency, and it is not easily manipulated by employers.

The ABC test states that an individual providing a service to a business is presumed to be an employee of the business unless the individual (a) is free from the direction and control of the business, (b) provides labor outside the usual course of the business, and (c) is customarily engaged in their own independently established business.<sup>28</sup>

As of 2022, more than 20 states—including West Virginia, Louisiana, and New Hampshire—currently use the ABC test to determine UI taxes and to prevent workers from being misclassified as independent contractors.<sup>29</sup> It is essential that states not only include the ABC test in their laws but also enforce its standard to prevent employers from evading taxation. For more on worker misclassifications, see [Proactive Solutions for Contracted Workers](#).

## Research Findings and Arguments to Support Reform

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### **UI financing is important for workers and for racial equity.**

Adequate UI financing is vital for workers and for building a racially equitable economy. States with inadequate trust fund reserves routinely try to contain program costs by cutting UI benefits, restricting eligibility for benefits, or both—actions which have the worst impacts on workers of color, as described below.<sup>30</sup> Pressure to reduce UI benefits is most intense during and just after major recessions—just when workers need benefits the most.

During and after the Great Recession (2007-2009), 10 states cut the maximum number of weeks that workers could receive UI benefits, from the traditional 26 weeks to as few as 12 weeks.<sup>31</sup> Other states tightened eligibility or failed to adjust the maximum UI benefit level for inflation, eroding the value of benefits. Following the pandemic economic crisis, another wave of states proposed cuts to the maximum weeks of benefits.<sup>32</sup>

Slashing benefit weeks disproportionately harms Black workers, as it takes longer on average for unemployed Black workers to find new jobs as a result of hiring discrimination and systemic racism in labor markets.<sup>33</sup> For example, in the last quarter of 2021, Black workers experienced an average of 31 weeks of unemployment, as opposed to 26 weeks for white workers.<sup>34</sup> Allowing benefit levels to erode also inflicts the most hardship on Black and Latinx workers because households of color typically have few other resources to draw on as a result of racial wealth inequality.<sup>35</sup> States need sufficient UI funding not only to sustain their current UI systems and prevent harmful cuts but also to improve UI and reverse policies that exclude workers of color.<sup>36</sup>

### **Current UI financing is inadequate.**

State UI systems are supposed to be fully funded by UI taxes, but current taxable wage base rates in most states are inadequate for funding benefits even in times of low unemployment and fare worse during economic crises when unemployment rates rise. For example, in 2021, 45 states and jurisdictions were taxing employers below the minimum financing rate needed to recover benefits and build up trust fund reserves—only eight states had set their average tax rate at the level needed for adequate financing.<sup>37</sup>

On average, UI benefits replace 30 to 45 percent of the paychecks workers earned before layoff, but the share of wages that states tax for UI benefits has plummeted from 97.9 percent in 1938 to just 24.3 percent in 2020.<sup>38</sup> This perpetual shortfall guarantees that taxes will fail to keep up with benefits in most states.

### **Broadening the taxable wage base is vital.**

If the federal taxable wage base had kept pace with inflation, it would be more than \$55,000 in current dollars.<sup>39</sup> Instead the FUTA tax base has been stuck at \$7,000 since 1982, and many states have fixed tax bases pegged to the federal rate or not much higher.<sup>40</sup> Although the federal Social Security program and UI started out with the same taxable wage base in the 1930s,<sup>41</sup> Social Security's tax base was indexed to changes in the national average wage. As a result, it had a taxable wage base of \$147,000 in 2022, compared to \$7,000 for FUTA.<sup>42</sup>

In addition to being inadequate, the low taxable wage base for UI taxes is inequitable: companies that employ many low-paid workers are taxed more heavily than those with a higher paid workforce because the taxable wage base functions as a cap. As an analysis from the Century Foundation points out:

In California in 2020, for example, taxes would only be assessed on 6 percent of the wages of a software engineer earning \$125,000 per year, while a fast-food worker earning the average annual wage of \$24,250 per year would have taxes assessed on nearly 25 percent of their salary. Moreover, since the unemployment tax is due on the first \$7,000 per worker per year, and fast-food workers turn over quickly, it is easy to imagine a low-wage employer paying quadruple taxes to cover one single full-time equivalent line.<sup>43</sup>

The tax impact on employers that pay low wages affects workers in several ways. Although in most states, UI taxes are charged to employers, research finds that employers pass this cost on to workers by paying them less.<sup>44</sup> Since workers of color and women are concentrated in underpaying industries due to systemic oppression and sexism, UI taxes are levied on a much larger share of their wages and may disproportionately push down their pay.

This negative effect is multiplied for workers who hold multiple part-time jobs, since UI taxes are levied on each job (even though workers' part-time status may exclude them from claiming benefits in many states).<sup>45</sup> In addition, because low taxable wage bases disproportionately raise the cost of hiring part-time and lower-paid workers, a low UI tax base may disincentivize employers from hiring these workers. One study suggests that expanding the taxable wage base would significantly raise the teenage employment rate.<sup>46</sup>

### **Stopping worker misclassification helps bolster UI financing.**

As mentioned above, states can capture more UI revenue by stopping employers from dodging UI taxes through use and strong enforcement of the “ABC test” to determine who is an employee. While data on worker misclassification is elusive, researchers estimate that 30 percent or more of employers misclassify their employees as independent contractors, disproportionately impacting workers of color and immigrant workers, who are overrepresented in low-paying, labor-intensive industries where misclassification is rampant.<sup>47</sup>

This suggests that millions of workers are misclassified and that state and federal governments are losing billions in revenue annually to misclassification.<sup>48</sup> In fact, state audits find many misclassified workers:<sup>49</sup> in 2019 Maryland detected 9,462 workers improperly classified as independent contractors and \$52.2 million in taxable wages unreported to the UI system.<sup>50</sup> In 2020, Wisconsin identified 8,925 misclassified workers, recovering \$2.34 million in UI taxes and interest.<sup>51</sup> By using the ABC test, rather than other legal tests that can be more easily manipulated by employers, and enforcing the standard, states can cut down on tax dodging.<sup>52</sup> This measure also increases tax fairness for businesses that do not misclassify employees and already pay UI taxes for all of their workers.

### **Reforming experience rating can realign employer incentives.**

For a discussion of experience rating and the need to realign employer incentives, see [\*Reforming Unemployment Insurance\*](#), p. 45.

## **Data and State Comparison Resources**

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### **Compare your state’s methods of financing UI to other states.**

Consult USDOL’s annual [\*Comparison of State Unemployment Insurance Laws\*](#) for a detailed comparisons of states’ methods of financing UI, including:

- The current level of each state’s taxable wage base and whether the wage base is fixed or flexible (Table 2-1)
- How taxable wage bases are determined in states with flexible taxable wage bases (Table 2-2)
- Details on experience rating (Tables 2-3–2-5)
- Processes for charging employers (Tables 2-6–2-9)
- Maximum and minimum tax rates (Table 2-10)
- Surcharges, surtaxes, and adjustments (Table 2-11)
- Other procedures, including treatment of new employers, voluntary contributions, and interest repayment taxes (Tables 2-12–2-18)

For an overview chart of key statistics on state UI programs, including quick comparisons of each state’s wages subject to tax and minimum and maximum tax rates, see USDOL’s annual [\*Significant Provisions of UI State Laws\*](#). Both of these resources are updated annually, so table references may change.

### **Evaluate your state’s UI tax system and compare its adequacy to other states.**

Check your state’s page in USDOL’s annual [\*State Unemployment Insurance Tax Measures Report\*](#). The publication includes a US overview and pages for each state that provide details such as the state’s average tax rate and average employer UI tax contributions for every



\$100 of wages paid. Each state page includes a color-coded scale illustrating the state's average tax rate compared to a minimum adequate financing rate, making it easy to see whether the state's current financing structure is adequate for maintaining the system.

### **Evaluate the solvency of your state's UI trust fund and compare it to other states.**

Check your state's page in USDOL's annual [State Unemployment Insurance Trust Fund Solvency Report](#). Like the *Tax Measures* report described above, this publication includes a US overview and pages for each state. The report includes statistics such as the trust fund balance compared to yearly benefit costs. As in the *Tax Measures* report, each state page also includes a color-coded scale illustrating the trust fund solvency level.

The Century Foundation's [Unemployment Insurance Dashboard](#) includes a map of states with easy comparisons of trust fund solvency and balances. Click on "How is UI financed?" to view the maps.

### **Find additional UI financial data for your state.**

Consult USDOL's annual [Unemployment Insurance Financial Data Handbook](#) for additional financial data available by state. Some particularly useful stats in this handbook include a comparison between average wages in employment covered by UI and average *taxable* wages—which can illustrate the very low proportion of wages that are taxed in many states. The handbook also provides year-by-year state information on total UI contributions collected, interest credited to the state trust fund, benefits paid, trust fund reserves at the end of the year, and the year-end balance of any federal loans to the state reserve funds.

### **Find out how much UI tax revenue your state is losing to worker misclassification.**

Check the website of [your state workforce agency](#) for reports on audits that detect employers dodging UI taxes by misclassifying workers in your state.

## **References and Essential Articles**

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### **General UI Financing**

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### **Worker Misclassification and UI Taxes**

Veena Dubal et al., *Open Letter to State Unemployment Insurance Agencies on Uber & Lyft Drivers*, April 8, 2020, <https://www.nelp.org/wp-content/uploads/Open-Letter-State-UI-Agencies-Uber-Lyft-Drivers-v2.pdf>.

*Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, National Employment Law Project, October 2020, <https://www.nelp.org/publication/independent-contractor-misclassification-imposes-huge-costs-workers-federal-state-treasuries-update-october-2020/>.

*Proactive Solutions for Contracted Workers*, National Employment Law Project, March 2022, <https://www.nelp.org/publication/proactive-policy-solutions-for-contracted-workers/>.

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### **Experience Rating**

Michael Miller and Robert Pavosevich, “Alternative Methods of Experience Rating Unemployment Insurance Employer Taxes,” *Public Budgeting & Finance* 39, no. 4 (Winter 2019): 28–47, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3616269](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3616269).

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## Endnotes

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<sup>1</sup> States that met USDOL's recommended minimum solvency standard for UI trust funds included AK, AR, DE, IA, ID, KS, ME, MS, MO, ND, NE, OR, SC, SD, UT, and WY. "State Unemployment Insurance Trust Fund Solvency Report 2022," US Department of Labor Office of Unemployment Insurance, April 2022, <https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2022.pdf>. However, the federal standard itself is problematic. For more on why the current "high cost multiple" system promotes cutting benefits rather than increasing revenue when trust funds are low, see Josh Bivens et al., "Reforming Unemployment Insurance," Center for American Progress, Center for Popular Democracy, Economic Policy Institute, Groundwork Collaborative, National Employment Law Project, National Women's Law Center, and Washington Center for Equitable Growth, June 2021, 39, <https://www.nelp.org/publication/reforming-unemployment-insurance-stabilizing-a-system-in-crisis-and-laying-the-foundation-for-equity/>.

<sup>3</sup> Claire McKenna and George Wentworth, "Unraveling the Unemployment Insurance Lifeline," National Employment Law Project, August 2011, [https://s27147.pcdn.co/wp-content/uploads/2015/03/Unraveling\\_UI\\_Lifeline\\_Report.pdf](https://s27147.pcdn.co/wp-content/uploads/2015/03/Unraveling_UI_Lifeline_Report.pdf).

<sup>4</sup> Amy Traub and Kim Diehl, "Reforming Unemployment Insurance is a Racial Justice Imperative," National Employment Law Project, February 2022, <https://www.nelp.org/publication/reforming-unemployment-insurance-is-a-racial-justice-imperative/>.

<sup>5</sup> Three states—Alaska, New Jersey, and Pennsylvania—also require payment of UI taxes by workers. "Comparison of State Unemployment Insurance Laws 2021," US Department of Labor, 2021, <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2021/complete.pdf>.

<sup>6</sup> Patricia M. Anderson and Bruce D. Meyer, "The Effects of the Unemployment Insurance Payroll Tax on Wages, Employment, Claims and Denials," *Journal of Public Economics* 78, no. 1–2 (October 2000), <https://www.sciencedirect.com/science/article/abs/pii/S0047272799001127>.

<sup>7</sup> "Comparison of State Unemployment Insurance Laws 2021," 25.

<sup>8</sup> *Id.*, 28.

<sup>9</sup> The penalty is a dramatic increase in the FUTA tax rate on employers. The full FUTA rate is 6%, but it is reduced to 0.6% in states that are in compliance with federal law. USDOL has never found a state to be so out of compliance, so the 6% rate has never been triggered.

<sup>10</sup> States with a taxable wage base of less than \$10,000 in 2021 included AL, AZ, FL, GA, IN, LA, MD, MI, OH, TN, TX, and VA, as well as PR and DC. "Comparison of State Unemployment Insurance Laws 2021," 29 (Table 2-1).

<sup>11</sup> States with a taxable wage base of \$25,000 or more in 2021 included AK, HI, ID, IA, MN, MT, NV, NJ, NM, NC, ND, OR, RI, UT, WA, and WY as well as VI. "Comparison of State Unemployment Insurance Laws 2021," 29 (Table 2-1).

<sup>12</sup> States with a fixed taxable wage base in 2021 included AL, AZ, CA, CO, CT, DE, FL, GA, IN, KS, KY, ME, MD, MA, MI, MS, NE, NH, NY, OH, PA, SC, SD, TX, VA, WI, as well as DC and PR. "Comparison of State Unemployment Insurance Laws 2021," 29 (Table 2-1).

<sup>13</sup> States that set a variable taxable wage base tied to the trust fund balance included AR, DE, IL, LA, MO, TN, and WV. "Comparison of State Unemployment Insurance Laws 2021," 30–31 (Table 2-2).

<sup>14</sup> States with a flexible taxable wage base linked to average wages included AK, HI, ID, IA, MN, MT, NV, NJ, NM, NC, ND, OK, OR, RI, UT, VT, WA, and WY, as well as VI. "Comparison of State Unemployment Insurance Laws 2021," 30–31 (Table 2-2).

<sup>15</sup> Julien Albertini, Xavier Fairise, and Anthony Terriau, "Unemployment Insurance, Recalls and Experience Rating," working paper, 2020 <https://ssrn.com/abstract=3589296>; David D. Ratner, "Unemployment Insurance Experience Rating and Labor Market Dynamics," Board of Governors of the Federal Reserve System Finance and Economics Discussion Series No. 2013-86, December 2013, <https://www.federalreserve.gov/pubs/feds/2013/201386/201386pap.pdf>.

<sup>16</sup> Traub and Diehl, "Reforming Unemployment Insurance," section 2.

<sup>17</sup> Jason DeParle, "Contesting Jobless Claims Becomes a Boom Industry," *New York Times*, April 3, 2010, <https://www.nytimes.com/2010/04/04/us/04taix.html>.

<sup>18</sup> During the pandemic recession, federal Pandemic Unemployment Assistance benefits were extended to independent contractors. As a result, they also covered workers who were misclassified as independent contractors. Pandemic Unemployment Assistance expired in September 2021.

<sup>19</sup> "Independent Contractor Misclassification Imposes Huge Costs on Workers And Federal and State Treasuries," National Employment Law Project, October 2020, <https://www.nelp.org/publication/independent-contractor-misclassification-imposes-huge-costs-workers-federal-state-treasuries-update-october-2020/>; Lynn Rhinehart et al., "Misclassification, the ABC Test, and Employee Status," Economic Policy Institute, 2021, <https://www.epi.org/publication/misclassification-the-abc-test-and-employee-status-the-california-experience-and-its-relevance-to-current-policy-debates/>.

<sup>20</sup> "Independent Contractor Misclassification Imposes Huge Costs."

<sup>21</sup> Traub and Diehl, "Reforming Unemployment Insurance," section 2.

<sup>22</sup> Alexa Tapia and Nzingha Hooker, "Slashing Unemployment Benefit Weeks on Jobless Rates Hurts Workers of Color," National Employment Law Project, May 2021, <https://www.nelp.org/publication/slashing-unemployment-benefit-weeks-on-jobless-rates-hurts-workers-of-color/>.

<sup>23</sup> States with a flexible taxable wage base linked to average wages included AK, HI, ID, IA, MN, MT, NV, NJ, NM, NC, ND, OK, OR, RI, UT, VT, WA, and WY, as well as VI. "Comparison of State Unemployment Insurance Laws 2021," 30–31 (Table 2-2).

<sup>24</sup> "Comparison of State Unemployment Insurance Laws 2021," 29.

<sup>25</sup> "State Unemployment Insurance Tax Measures Report 2021," US Office of Unemployment Insurance, March 2022, <https://oui.doleta.gov/unemploy/pdf/sigmeasures/sigmeasuitsys21.pdf>.

<sup>26</sup> Marokey Sawo and Jennifer Sherer, "Strong and Equitable Unemployment Insurance Systems Require Broadening the UI Tax Base," *Working Economics Blog*, Economic Policy Institute, May 6, 2022, <https://www.epi.org/blog/strong-and-equitable-unemployment-insurance-systems-require-broadening-the-ui-tax-base/>.

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- <sup>27</sup> “Alaska Unemployment Insurance Tax System: Frequent Q&As,” Alaska Department of Labor and Workforce Development, December 2020, [https://live.laborstats.alaska.gov/uiprog/Tax\\_Overview.pdf](https://live.laborstats.alaska.gov/uiprog/Tax_Overview.pdf).
- <sup>28</sup> Jon O. Shimabukuro, “Worker Classification: Employee Status Under the National Labor Relations Act, the Fair Labor Standards Act, and the ABC Test,” Congressional Research Service, April 20, 2021, <https://crsreports.congress.gov/product/pdf/R/R46765>.
- <sup>29</sup> States that use the ABC Test to determine eligibility and taxation for unemployment insurance included AK, CA (also considers other factors), CT, DE, HI, FL (also considers other factors), IL, IN (also considers other factors), LA, MA, MD, ME, NE (also considers other factors), NH, NJ, NM, NV, RI, VT, WA, and WV as well as PR and VI. Several other states use parts of the ABC test. For a full discussion, see “Comparison of State Unemployment Insurance Laws 2021,” 15–16 (Table 1-4).
- <sup>30</sup> McKenna and Wentworth, “Unraveling the Unemployment Insurance Lifeline.”
- <sup>31</sup> Katelin P. Isaacs, “Unemployment Insurance: Consequences of Changes in State Unemployment Compensation Laws,” Congressional Research Service, October 2019, <https://sgp.fas.org/crs/misc/R41859.pdf>.
- <sup>32</sup> Greg Iacurci, “States Put Unemployment Insurance on Chopping Block,” *CNBC*, April 6 2022, <https://www.cnbc.com/2022/04/06/states-put-unemployment-insurance-on-chopping-block.html>.
- <sup>33</sup> Tapia and Hooker, “Slashing Unemployment Benefit Weeks.”
- <sup>34</sup> Bureau of Labor Statistics, Current Population Survey.
- <sup>35</sup> Traub and Diehl, “Reforming Unemployment Insurance.”
- <sup>36</sup> *Id.*
- <sup>37</sup> “State Unemployment Insurance Tax Measures Report 2021.”
- <sup>38</sup> “Unemployment Insurance Financial Data Handbook,” US Department of Labor Employment and Training Administration, <https://oui.doleta.gov/unemploy/hb394.asp>.
- <sup>39</sup> Andrew Stettner, “Increasing the Taxable Wage Base Unlocks the Door to Lasting Unemployment Insurance Reform,” The Century Foundation, July 2021, <https://tcf.org/content/commentary/increasing-taxable-wage-unlocks-door-lasting-unemployment-insurance-reform/?agreed=1>.
- <sup>40</sup> Stettner, “Increasing the Taxable Wage Base.”
- <sup>41</sup> *Id.*
- <sup>42</sup> “Topic No. 751 Social Security and Medicare Withholding Rates,” Internal Revenue Service, May 2022, <https://www.irs.gov/taxtopics/tc751>.
- <sup>43</sup> Stettner, “Increasing the Taxable Wage Base.”
- <sup>44</sup> Anderson and Meyer, “The Effects of the Unemployment Insurance.”
- <sup>45</sup> Thanks to Jacob Fallman of Sugar Law Center for raising this point.
- <sup>46</sup> Po-Chun Huang, “Employment Effects of the Unemployment Insurance Tax Base,” *Journal of Human Resources*, March 9, 2022, <http://jhr.uwpress.org/content/early/2022/03/01/jhr.0719-10316R2.refs>.
- <sup>47</sup> “Independent Contractor Misclassification Imposes Huge Costs.”
- <sup>48</sup> *Id.*
- <sup>49</sup> *Id.*
- <sup>50</sup> “2019 Annual Report of the Joint Enforcement Task Force on Workplace Fraud,” Maryland Department of Labor, 2020, <https://www.dlir.state.md.us/workplacefraudtaskforce/>.
- <sup>51</sup> “Joint Enforcement Task Force on Payroll Fraud and Worker Misclassification Report 2021,” State of Wisconsin Department of Workforce Development, 2021, <https://dwd.wisconsin.gov/misclassification/pdf/2021-misclassification-task-force-report.pdf>.
- <sup>52</sup> Rhinehart et al., “Misclassification, the ABC Test, and Employee Status.”