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THE UNIVERSITY of TENNESSEE
MUNICIPAL TECHNICAL ADVISORY SERVICE

...in cooperation with the Tennessee Municipal League

#201
HOT topic

October 4, 2010

UNEMPLOYMENT INSURANCE — WHO IS NOT COVERED?

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Unemployment insurance is a program that provides up to 26 weeks of benefits to Tennessee workers who have lost their jobs through no fault of their own. Most employers in Tennessee participate in this program by paying an unemployment premium on the first $9,000 of an employee's calendar year wages to the Tennessee Department of Labor and Workforce Development (TDLWD). The rate varies from employer to employer but is normally not more than 10 percent of employees' taxable wages. Municipalities have an option to be a "premium paying" employer, which mirrors the process followed by the private sector in Tennessee, or they can choose to be a "reimbursing" employer. In the latter case, the municipality would reimburse the state for unemployment benefits paid on behalf of former employees of the municipality.

The method the municipality uses determines both the amount and timing of any payments to the state. In both cases, the municipality must accurately report quarterly the employees covered and the amount of wages paid for that quarter. Premium paying municipalities must remit an amount quarterly based on the taxable covered wages for that quarter. Reimbursing municipalities must report the gross wages for each employee; however, they are not required to submit premium amounts with the report. It is important for municipalities to determine who should be included on the quarterly report. That is the focus of the remainder of this brief.

WHO IS AN EMPLOYEE?

Your standard answer might be "everyone who receives a payroll check from the city." But for purposes of the Tennessee Employment Security Law, that would be incorrect. T.C.A. § 50-7-207(c) lists several types of activities that are considered "excluded services" under the Tennessee Employment Security Law. Any wages paid to someone for those activities would *not* be reported on the Wage Report (LB-0851) or Premium Report (LB-0456) filed quarterly with the TDLWD.

The exclusion that affects municipalities is found in T.C.A. § 50-7-207(c)(5)(D). It specifically excludes elected officials, as well as anyone employed by the municipality in a position that is designated by law as "a major nontenured policymaker or advisory position; or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week." It also excludes an employee working on a temporary basis due to a "fire, storm, snow, earthquake, flood or similar emergency."

Following are some individuals who under normal circumstances would not be considered employees of the municipality under the Tennessee Employment Security Law:

- Any elected official (e.g., mayor, council members, judge, recorder, etc.);

- Board members (e.g., beer board, planning and zoning board, utility board, etc.);
- Election workers; and
- Temporary personnel employed due to an emergency situation (e.g., police officers, EMTs, paramedics, firemen, etc.).

I SHOULD NOT HAVE REPORTED AN INDIVIDUAL(S) — CAN I CORRECT IT?

Yes, you can correct any overstatement of reported wages by filing a Claim for Adjustment or Refund form (LB-0459). This form is available at http://www.state.tn.us/labor-wfd/Employers/forms/LB-0459.pdf or from your local Tennessee Employment Security Employer Accounts Office. If the municipality is a "premium paying" employer, a credit for premiums paid will be issued by TDLWD. Since a "reimbursing" employer reimburses TDLWD for their proportionate share of benefits paid to a claimant, they will receive a credit only after TDLWD has received a repayment of benefits from the claimant. Either credit can be applied against future premiums and reimbursements, or a refund

the claimant. Either credit can be applied against future premiums and reimbursements, or a refund
may be requested. All refund requests must be made be within three years of the payment.

For more information, please contact your MTAS management or finance consultant or any of these resources:

1. *Tennessee Unemployment Insurance Handbook for Employers* can be downloaded at http://www.state.tn.us/labor-wfd/Employers/forms/emphand00.pdf.
2. T.C.A. § 50-7-207 contains information on what is considered employment under the Tennessee Employment Security Law.
3. You may contact the Employment Security Division of the Tennessee Department of Labor and Workforce Development in Nashville at (615) 741-1619 or your area's Employer Account Office. A listing of these local offices can be found at http://www.state.tn.us/labor-wfd/Employers/taxoffices.html.

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The Municipal Technical Advisory Service (MTAS) is a statewide agency of the University of Tennessee Institute for Public Service. MTAS operates in cooperation with the Tennessee Municipal League to provide technical assistance services to officials of Tennessee's incorporated municipalities. Assistance is offered in areas such as accounting, administration, finance, public works, ordinance codification, and water and wastewater management.

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