



Employment Security Department
WASHINGTON STATE

ANSWERS TO FREQUENTLY ASKED QUESTIONS – CORPORATE OFFICER EXEMPTION

NEW LAW COVERS CORPORATE OFFICERS FOR UNEMPLOYMENT INSURANCE

Q1. What is the new law and when does it take effect?

A. The new law changes unemployment insurance coverage of corporate officers. Under the old law, corporate officers are exempt from unemployment insurance unless the employer elects to cover them. Under the new law, corporate officers who provide services in Washington are covered for unemployment insurance unless the employer specifically exempts them. The new law takes effect on January 1, 2009.

The new law only applies to corporations. See Q10.

Q2. What does it mean to be covered by unemployment insurance?

A. If your corporate officers are covered for unemployment, it means you must report them as employees and pay state unemployment insurance taxes on their wages each quarter. It also means that they may be eligible for unemployment benefits if they lose their jobs. See Q27 for limitations on corporate officer unemployment benefits.

If you exempt your officers from coverage, you would not be required to report them or pay state unemployment insurance taxes on them and they would not be eligible for benefits if they lose their jobs. However, **you would have to pay full federal unemployment insurance taxes (FUTA)** on them. See Q8.

Q3. Our officers are already exempt from unemployment coverage. Do we have to do anything? What happens if we do nothing?

A. Under the old law, corporate officers were exempt from coverage unless they requested coverage. Under the new law, **corporations with employees must request to exempt their officers or they will be covered.** If you want your officers to remain exempt, you must submit an exemption form. Go to <http://tax.go2ui.com> and click on "Exempting corporate officers" to begin filling out an exemption form. We highly recommend using the Web site to make sure you get the proper form.

If you want your corporate officers to be covered by unemployment insurance, you do not need to do anything.

If you do nothing, in 2009 your corporate officers will no longer be exempt from unemployment coverage. You would have to report them as employees and pay state unemployment insurance taxes on their wages each quarter.

Q4. Do we have to fill out a form if we want to exempt officers?

A. If you want to exempt your corporate officers, you must submit an exemption form for each officer. Go to <http://tax.go2ui.com> and click on "Exempting corporate officers" to begin filling out an exemption form. We highly recommend using the Web site to make sure you get the proper form. However, you may also obtain a paper form by contacting your district tax office.

Once we approve your request to exempt a corporate officer, the exemption will stay in effect while the officer remains eligible for exemption. You will not have to reapply next year.

Q5. Whom do I call if I have questions or need help with the form?

A. Please call your district tax office.

Q6. If we have corporate officers, but no employees, do we have to do anything to exempt the officers?

A. No. If a corporation has no employees other than corporate officers and all personal services are performed by bona fide corporate officers, it is not considered an employer under state unemployment insurance law unless it elects to cover its officers (RCW 50.04.080(3)). Because it is not an employer, corporate officers will continue to be uncovered, so the corporation does not need to exempt them.

HOW WILL THIS AFFECT OUR UNEMPLOYMENT TAXES?

Q7. How will this affect our state unemployment taxes?

A. Covering your corporate officers will mean that you must include the officers and their in-state taxable wages in the quarterly reports that you file for unemployment insurance. You would pay state unemployment taxes on your corporate officers each quarter just as you do for all other corporate employees.

Q8. If we exempt corporate officers from state coverage, will this affect the corporation's federal taxes?

A. Yes. **If you exempt your officers from state coverage, you will lose your tax credit for them on FUTA taxes.** Your total taxes (state taxes and FUTA) may go up or down depending on the salaries of individual corporate officers and your state tax rate.

Q9. Will our total state and federal unemployment taxes go up or down if we exempt corporate officers from state coverage?

A. The two determining factors are:

- The salary you pay the corporate officer; and
- Your corporation's state tax rate.

Generally speaking, your corporation will pay **more** total taxes if:

- You exempt a corporate officer who receives \$7,000 or less in wages and your state tax rate is less than 5.4 percent in 2009; or
- You exempt a corporate officer who receives \$35,700 or more in wages and your state tax rate is less than 1.06 percent in 2009 (rate class 9 out of 40 rate classes).

In order to determine the breakeven point for exempting officers, divide the maximum credit allowed under federal law (5.4 percent times the federal taxable wage base of \$7,000, or \$378 in 2008) by the corporate officer's salary up to a maximum of the state taxable wage base (\$35,700 in 2009). If your state tax rate is lower than this breakeven point, you would pay more total taxes if you exempt the corporate officer. However, your corporation's specific tax rate for 2009 and subsequent years cannot be calculated yet.

You may wish to consult your bookkeeper or accountant about the impact of exempting corporate officers on your state and federal unemployment taxes. We cannot answer questions about what will happen to your specific tax rates for state or federal taxes.

WHAT BUSINESSES ARE AFFECTED BY THE NEW LAW? WHO IS COVERED?

Q10. Does the new law apply to businesses other than corporations?

A. No. The new law only applies to corporate officers in corporations. **It does not apply to sole proprietors, partnerships, or limited liability companies (LLCs).**

Q11. Does the new law apply to board members or just corporate officers?

A. The new law applies to corporate officers; it does not apply to board members of corporations unless they are also corporate officers. Corporate officers include the people authorized as such in your corporation's bylaws.

Q12. Does the new law apply to nonprofit corporations?

A. In general, no. In fact, federal law dictates that nonprofits that are exempt under section 501(c)(3) of the federal tax code and those that are reimbursable cannot exempt their corporate officers from unemployment coverage.

NOTE: Nonprofit corporations do not need to register or report volunteer officers. Therefore, there is no need to exempt them. This does not change under the new law.

There may be uncommon circumstances in which a corporate officer of a nonprofit corporation that is not a tax-exempt 501(c)(3) organization earns wages from the corporation and seeks exemption. In those circumstances, we will treat the exemption for the nonprofit corporation the same as for a private corporation.

Q13. Does the new law mean that we no longer have to register corporate officers?

A. No. You are required by current law to register your corporate officers with the Employment Security Department. This still applies regardless of whether your corporate officers are covered or exempt under the new law. See Questions & Answers on corporate officer registration.

WHAT CORPORATE OFFICERS CAN BE EXEMPT?

Q14. Can we exempt some corporate officers and not others?

Yes. Nothing in the law restricts a corporation from choosing to exempt some officers and not others. However, once you choose to exempt an officer, the corporation cannot elect to reinstate the officer except under very limited conditions. (See Q21.)

Q15. How many officers can we exempt?

A. It depends on whether your corporation is private or public.

Private corporations* may exempt	Public corporations* may exempt
<p>Up to eight corporate officers who:</p> <ul style="list-style-type: none">• Are voluntarily elected or appointed under the articles of incorporation or bylaws of the corporation; and• Exercise substantial control of the daily management of the corporation; and• Voluntarily agree to be exempted. <p style="text-align: center;">OR</p> <p>Any number of corporate officers if all of the officers being exempted are related by blood within the third degree or by marriage**.</p>	<p>Any number of corporate officers who:</p> <ul style="list-style-type: none">• Are voluntarily elected or appointed under the articles of incorporation or bylaws of the corporation;• Exercise substantial control of the daily management of the corporation;• Are shareholders; and• Have primary responsibilities which do not include manual labor.

* *Public corporations* have a class of shares registered with the federal Securities and Exchange Commission. *Private corporations* do not.

** Includes spouse, children, grandchildren, great grandchildren, brothers and sisters, nephews and nieces, parents, grandparents, great grandparents, aunts and uncles. Legal adoptions or step-relatives are included.

If a private corporation exempts eight or more related corporate officers, then it may not exempt any additional non-relatives.

Q16. How will we know that our request for exemption or reinstatement was approved?

A. We will notify you whether or not we have approved your request.

Q17. What if you disapprove my request?

A. We will notify you if we disapprove your request for exemption or reinstatement. If this results in an order and notice of assessment or denial of a refund, you may appeal that decision.

Q18. After we have requested an exemption, when does it take effect?

A. If you request an exemption when you first register as an employer, it takes effect immediately. If you request an exemption after your business is registered, you must send your request to us by January 15 for the exemption to be effective for that year.

Q19. What if we send a request for exemption after January 15?

A. If postmarked or faxed after January 15, the exemption will not take effect until the following year. This also applies to officers elected or appointed after January 15. The law provides that an exemption can only take effect on January 1 and does not allow retroactive application after January 15.

Q20. What about refunds?

A. We will not give a refund or credit for periods before the effective date of the exemption.

Q21. If we use the Employment Security Department Web site for an exemption form, why do we have to send paper copies of the form?

A. The law requires signatures of both the corporate officer being exempted and another corporate officer verifying the decision for exemption. The easiest way to achieve this is with paper copies printed from the Web site. The Web site is designed to help guide you through the process of selecting the proper form for your corporation. To begin the process, go to <http://tax.go2ui.com> and click on "Exempting corporate officers."

REINSTATEMENT OF COVERAGE

Q22. When does an exemption end?

A. An exemption ends immediately for private and public company corporate officers who no longer qualify for the exemption.

For example, in a private corporation, the officer may no longer be a bona fide elected or appointed corporate officer. However, officers of private companies must have a reason other than canceling their voluntary agreement to end their exemption. For instance, the exemption does not end solely because an officer of a private company withdraws his or her voluntary agreement to be exempted. For another example, in a public corporation, the officer may no longer be a bona fide elected or appointed corporate officer or may no longer be a shareholder of the public corporation.

An exemption for an officer of a private or public corporation also ends at five year intervals if you send us written notice by January 15 requesting reinstatement. Otherwise, an approved exemption will stay in effect while the officer remains eligible. Requested reinstatement is only effective the first day of the calendar year at set intervals of five years beginning January 1, 2014, then January 1, 2019, and every five years after that.

Q23. What if there is a change in status for an exempted corporate officer?

A. You must submit any changes in corporate officers on the Update Ownership Information form (5208C-2) with your quarterly tax reports.

Q24. What about any taxes owed for reinstated officers?

A. Your company is responsible for any taxes, penalties and interest due if coverage is reinstated, regardless of whether you gave notice about the termination of the exemption.

Q25. Under what circumstances is a reinstatement request denied?

A. We will not reinstate coverage at the five-year interval for reinstatement for a corporate officer if your company:

- Committed tax-related fraud within the last five years;
- Is delinquent in paying its taxes; or
- Is currently assigned a delinquent tax rate.

Q26. Is there a form for reinstatement requests?

A. No special form for reinstatement at the five-year interval is needed at this time. Send us a letter that includes:

- Name, address, and telephone number of your corporation;
- Employment Security account number;
- Name(s) and Social Security numbers of corporate officer(s) to be reinstated.

BENEFITS

Q27. Are there special rules for when corporate officers may receive unemployment benefits?

A. Yes. Effective, January 1, 2008, there are special rules which apply only when a corporate officer owns 10 percent or more of the corporation or is a family member (related by blood or marriage as parent, stepparent, grandparent, spouse, child, brother, sister, stepchild, adopted child, or grandchild) of another corporate officer who owns 10 percent or more of the corporation. In those circumstances, the corporate officer may not be eligible for unemployment benefits unless the officer resigns or is removed as corporate officer or if the corporation dissolves. See WAC 192-310-190 for more details.