

Considerations for Premium v. Reimbursement

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Cities opting to be premium-paying employers should enjoy two immediate advantages. First, such cities can calculate, in advance, their annual premiums, then set their annual budgets accordingly. Second, once such premiums are paid, the city will not incur additional, unexpected costs throughout the year when layoffs or terminations occur. The downside, of course, is that a premium paying city must pay its premiums even in those years when it does not experience lay offs or terminations.

Cities that select the reimbursement option can realize considerable savings during those years when it avoids layoffs and terminations. Over a period of years, these savings can be sufficient to offset the occasional unemployment compensation claim filed against the city. The downside is the city's assumption of risk. If multiple layoffs or terminations occur, a city may be faced with a large, unbudgeted expense to reimburse the Tennessee Department of Labor for paying unemployment compensation claims.

There are several other factors to consider, including:

- It takes 36 consecutive months (ending on December 31 of each year) for a premium-paying municipality to establish an experience rating. Until the experience rating is established, cities are required to pay the entry-level premium rate (1.5 percent X maximum taxable wages).
- Even though they are not required to pay unemployment compensation premiums, reimbursement employers are still obligated to file quarterly reports with the Department of Labor indicating wages paid to their employees.
- Claimants who worked for reimbursement employers receive the same benefits and in the same manner as those who worked for premium-paying employers.
- Reimbursement employers can be held liable for any overpayment of benefits made by the Department of Labor. Such employers can receive a refund for all overpayments made to former employees only after the Department of Labor has received a refund from the claimant.
- Even if good reasons exist for firing an employee, reimbursing cities should not assume they will not have to make unemployment compensation payments. As always, it is important for cities to fully document all disciplinary problems that might lead to the firing of an employee. Unless a city can prove that it has given an employee proper notice of such disciplinary problems, as well as opportunities to correct the behavior, reimbursing cities will end up paying for unemployment compensation, even if they had solid reasons for terminating the employee.

Short of a detailed history of a problem, the only situations in which employers can avoid paying unemployment compensation are those cases in which the employee is caught stealing or committing some other crime in the scope of his or her employment. However, documenting an employee's misconduct may help cities avoid paying unemployment compensation. In the case *Ralph Williams v. Tennessee Department of Employment Security*, the Tennessee Court of Appeals — Eastern Section affirmed that misconduct is sufficient to deny unemployment compensation. Misconduct is “conduct showing willful disregard for any employer’s interest; it is conduct which deliberately violates or disregards the standards of behavior which an employer has the right to expect of an employee.”

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