CHAPTER 1

COVERAGE

IN GENERAL

This chapter provides information about the variations among states with respect to coverage: which employers are liable for Unemployment Insurance (UI) contributions and which workers accrue UI benefit rights.

When examining coverage, there is one overarching issue: are the services performed by a worker covered? To make that determination, the following questions must be answered.

- Were the services performed for an employer?
- Were the services performed in an employer-employee relationship?
- Were the services performed in employment?
- Were wages paid for the services?

If the answer is "yes" to all the questions listed then the services are covered by UI law. Note that not all payments may be considered "wages" for purposes of UI.

Other than service performed for the Federal government and railroads, Federal UI law does not technically "cover" services since no benefit rights accrue under Federal law. However, the taxing provisions of the Federal Unemployment Tax Act (FUTA) influence state coverage provisions since employers who pay taxes under an approved state UI law may credit their state contributions against a specified percentage of the FUTA tax owed.

Federal law requires, as a condition for approval of the state's UI law, that certain services not subject to the FUTA tax – services performed for state and local governments, certain nonprofit organizations, and federally recognized Indian tribes – must be covered by state law. Further, since states cannot tax the Federal government, coverage is extended to Federal service under the Unemployment Compensation for Federal Civilian Employees (UCFE) and Unemployment Compensation for Ex-Service Members (UCX) programs.

The Federal and state definitions of employment exclude from coverage certain types of service as well. Since 1939, railroad workers have been excluded from the federal-state UI system. They are covered by a special Federal UI program administered by the Railroad Retirement Board. Since this program is not administered by the states, it is not discussed further in this publication.

State laws governing coverage generally incorporate the Federal exclusions, although nothing in Federal law requires them to do so. Most states, however, permit voluntary election of coverage by employers for excluded workers. Also, most state laws provide that any service taxed by FUTA is covered under state law. Many state laws also automatically cover any service that Federal law requires to be covered as a condition of approval of the state's UI law.

EMPLOYERS

As mentioned previously, one of the basic factors in determining coverage is whether services are performed for employers. The coverage provisions of most state laws use the terms "employing unit" and "employer" to make the distinctions needed to address this issue. "Employing unit" is the more generic term. It applies to any one of several specified types of legal entities that has one or more individuals performing service for it within a state. An "employer" is an employing unit that meets the specific requirements of UI law. Hence, services provided to an employer are covered. As a result, an employer is subject to UI tax liability and its workers accrue rights for UI benefits.

For UI purposes, whether an employing unit is an employer depends on the number of days or weeks a worker is employed or the amount of the employing unit's quarterly or yearly payroll. Except for agricultural labor and domestic service, FUTA applies to employing units who, during any calendar quarter in the current or immediately preceding calendar year, paid wages of $1,500 or more, or to employing units with 1 or more workers on at least 1 day in each of 20 weeks during the current or immediately preceding calendar year. About half of the states use this definition. The following table provides information on which employing units are considered employers in each state that uses a definition other than the one in FUTA.

TABLE 1-1: DEFINITION OF EMPLOYER (IF DIFFERENT FROM FUTA 20 WEEKS/$1,500 RULE)

State	Minimum Period of Time or Payroll	Alternative Conditions	State	Minimum Period of Time or Payroll	Alternative Conditions	State	Minimum Period of Time or Payroll	Alternative Conditions
AK	Any time		AR	One employee for 10 or more days in a CY		CA	Over $100 in quarter	
DC	Any time		HI	Any time		IN	$1 or more in quarter	Employer liable for wages to 1 or more workers
MD	Any time		MA	13 weeks	$1,500 in quarter	MI	20 weeks	$1,000 in CY
MN	Any time		MT	$1,000 in current or preceding year		NV	$225 in quarter	
NJ	$1,000 in year		NM	20 weeks	$450 in quarter	NY	$300 in quarter	
OR	18 weeks	$1,000 in quarter	PA	Any time		PR	Any time	
RI	Any time		UT	Any time		VI	Any time	
WA	Any time		WY	Any time				

Historical Note: The Federal law was originally applicable to employing units of 8 or more workers on at least 1 day in each of 20 different weeks in a calendar year. This threshold was reduced to 4 workers in 1956 and to 1 in 1972.

AGRICULTURAL LABOR—The FUTA agricultural labor provisions apply to employing units who paid wages in cash of $20,000 or more for agricultural labor in any calendar quarter in the current or preceding calendar year, or who employed 10 or more workers on at least 1 day in each of 20 different weeks in the current or immediately preceding calendar year. Most states have followed the FUTA provision and, therefore,

have limited coverage to service performed on large farms. A few states cover services on smaller farms. The following table describes each state's agricultural labor provisions that differ from the FUTA provisions.

TABLE 1-2: AGRICULTURAL LABOR PROVISIONS (IF DIFFERENT FROM FUTA 20 WEEKS/$20,000 RULE)	
CA	1 at any time and wages in excess of $100 in a CQ
DC	1 at any time
FL	5 in 20 weeks or $10,000 in a CQ
MN	4 in 20 weeks or $20,000 in a CQ; agricultural labor performed by an individual 16 years of age or younger is excluded from agricultural coverage unless the employer is covered under Federal law
NY	$500 in CQ
PR	1 or more at any time
RI	1 or more at any time
TX	3 in at least 20 different calendar weeks of the calendar year or wages in cash of $6,250 during a CQ
VI	1 or more at any time
WA	1 or more workers at any time, excluding workers attending or between terms in school; on corporate farms, does not include services performed by spouses or unmarried children under 18 years of age

Most state laws follow the FUTA definition of agricultural labor. Under FUTA, agricultural labor is performed when workers:

- raise or harvest agricultural or horticultural products on a farm;
- work in connection with the operation, management, conservation, improvement, or maintenance of a farm and its tools and equipment;
- handle, process, or package any agricultural or horticultural commodity if a farm produced over half of the commodity (for a group of more than 20 operators, all of the commodity);
- do work related to cotton ginning, and processing crude gum from a living tree; or
- do housework in a private home if it is on a farm that is operated for profit.

The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, as well as plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. Agricultural labor does not include reselling activities that do not involve any substantial activity of raising agricultural or horticultural commodities, such as operation of a retail store or a greenhouse used primarily for display or storage.

Historical Note: When the UI program began, all agricultural labor was excluded from the definition of employment regardless of the size of the agricultural employer. Administrative regulations of the Bureau of Internal Revenue first defined agricultural labor for Federal UI law purposes. All services on a farm in the raising and harvesting of any agricultural produce were excluded from coverage, as were services in some processing and marketing activities if performed for the farmer who raised the crop and as an incident to primary farming operations. A definition of agricultural labor added to FUTA in 1939 also excluded from coverage some processing and marketing activities (services performed in the employ of someone other than the farmer) and services in the management and operation of a farm (if they were performed for the farm owner or operator). Amendments made to FUTA in 1970 changed the definition of agricultural labor, effectively extending coverage to some marginal agricultural activities. The 1976 amendments added the current dollar/employment thresholds that resulted in coverage of services performed on large farms.

COVERAGE

States have the option of excluding from coverage service performed in agricultural labor on or after January 1, 1995, by aliens who are admitted to the United States pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act. However, these aliens are counted in determining whether an agricultural employer meets the wage or size-of-firm requirements for coverage.

The FUTA established a special rule for determining who will be treated as the employer and, therefore, liable for the FUTA tax, in the case of agricultural workers who are members of a crew furnished by a crew leader to perform services in agricultural labor for a farm operator. Workers who are members of a crew furnished by a crew leader to perform service in agricultural labor for a farm operator are treated as employees of the crew leader if the leader is registered under the Migrant and Seasonal Agricultural Protection Act, or if substantially all of the members of the crew operate or maintain mechanized equipment furnished by a crew leader. A member of a crew furnished by a crew leader to perform service in agricultural labor for a farm operator will not be treated as an employee of the crew leader if the individual is an employee of the farm operator within the meaning of the state law. Conversely, any worker who is furnished by a crew leader to perform service in agricultural labor for a farm operator but who is not treated as an employee of the crew leader is treated as an employee of the farm operator. This special rule is intended to resolve any question as to whether an individual's employer is the farm operator or crew leader. The same size-of-firm coverage provisions (10 in 20 weeks or $20,000 in a calendar quarter) apply to a crew leader as to a farm operator.

DOMESTIC SERVICE—FUTA applies to any employer who, during any calendar quarter in the current or preceding calendar year, paid wages in cash of $1,000 or more for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority. As a result, all states cover such domestic service. The following table includes the provisions for states that do not utilize the FUTA provisions.

TABLE 1-3: DOMESTIC SERVICE PROVISIONS (IF DIFFERENT FROM FUTA $1,000 RULE)	
CA	Covers in-home supportive services provided under the Welfare and Institution Code
DC	Quarterly payroll at least $500
HI	Excludes domestic in-home and community-based services for a person with developmental and intellectual disabilities under the Medicaid home and community-based services program or when provided to individuals ineligible for Medicaid and performed by an individual in the employ of a recipient of social service payments unless the individual is an employee and not an independent contractor of the recipient of social service payments under FUTA
NY	Quarterly payroll at least $500
VA	Excludes: (1) medical services performed by an individual employed to perform those services in a private residence or medical institution if the employing unit is the person receiving the services; and (2) services performed under agreement with a Public Human Service Agency in the home of the recipient of the service or the provider of the service
VI	Quarterly payroll at least $500

EMPLOYER-EMPLOYEE RELATIONSHIP

Most state laws contain strict tests to determine whether there is sufficient absence of control by an employer that the worker is not an employee but an independent contractor. More than half of the states provide criteria commonly called the "ABC" test under which service for remuneration is considered employment and the worker is an employee unless each of three tests is passed:

- the worker is free from direction or control in the performance of the work under the contract of service and in fact;
- the service is performed either outside the usual course of the business for which it is performed or is performed outside of all places of business of the enterprise for which it is performed; and

- the individual is customarily engaged in an independent trade, occupation, profession, or business.

Other states have variations of this "ABC" test. For example, in some states only the "A" and "C" tests apply.

The IRS uses the 20-factor test to determine whether direction and control exists in an employer/employee relationship and to what degree. A few states use this 20-factor test instead of the ABC test. The 20-factor test is an analytical tool; there is no magic number of factors that must be met or not met. The 20-factor test looks for three basic types of evidence.

- Behavioral: Facts that illustrate whether there is a right to direct or control how the worker performed the specific task as opposed to what task the worker performed.
- Financial: Facts illustrating whether there is a right to direct or control how the business aspects of a worker's activities are conducted.
- Relationship: Facts that illustrate how the parties perceive their relationship to each other; whether the worker's activity is part of a regular business activity; employee benefits; and the intent of parties.

Factors of lesser importance include whether the work is part time or full time, the place of the work, and hours of work. None of the 20 factors is singularly determinative, and some factors may not apply to certain occupations. The degree of importance of each factor may vary depending on the occupation.

The different tests used in states are listed in the following table.

TABLE 1-4: WORKERS CONSIDERED EMPLOYEES UNLESS:

State	Workers Free from Control Over Performance (A)	Service Outside Regular Course or Place of Employer's Business (B)	Worker in an Independent Business (C)	Other Tests	State	Workers Free from Control Over Performance (A)	Service Outside Regular Course or Place of Employer's Business (B)	Worker in an Independent Business (C)	Other Tests
AK	X	X	X		AL				Master-servant[1]
AR	X	X	X		AZ				Service performed by an employee for the entity employing him
CA	X	X	X	Contract of hire, written or oral, express or implied[2]	CO	X		X	
CT	X	X	X		DC				Contract of hire, written or oral, expressed or implied
DE	X	X	X		FL	X	X	X	X[2]
GA	X		X	SS-8 Determination from the IRS	HI	X	X	X	

TABLE 1-4: WORKERS CONSIDERED EMPLOYEES UNLESS:									
State	**Workers Free from Control Over Performance (A)**	**Service Outside Regular Course or Place of Employer's Business (B)**	**Worker in an Independent Business (C)**	**Other Tests**	**State**	**Workers Free from Control Over Performance (A)**	**Service Outside Regular Course or Place of Employer's Business (B)**	**Worker in an Independent Business (C)**	**Other Tests**
IA	X			Contract of hire, written or oral, expressed or implied	ID	X		X	
IL	X	X	X		IN	X	X	X	20-factor test
KS	X				KY				Master-servant[1]; by judicial interpretation
LA	X	X	X		MA	X	X	X	
MD	X	X	X		ME	X	X	X	
MI				20-factor test[3]	MN			X	Master-servant[1]
MO				Common law right to control	MS	X			Master-servant[1]
MT				Works under approved IC exemption certificate	NC				Contract creating employee relationship
ND				20-factor test	NE	X	X	X	Contract creating employee relationship
NH	X	X	X		NJ	X	X	X	
NM	X	X	X		NV	X	X	X	
NY				Contract of hire, written or oral, expressed or implied	OH	X			Contract of hire, written or oral, expressed or implied
OK	X	X	X		OR	X		X	
PA	X		X		PR	X	X	X	
RI	X	X	X		SC				Contract of hire, written or oral, expressed or implied
SD	X		X		TN	X	X	X	
TX				Common law	UT	X		X	
VA				20-factor test	VI	X	X	X	

COVERAGE

TABLE 1-4: WORKERS CONSIDERED EMPLOYEES UNLESS:									
State	**Workers Free from Control Over Performance (A)**	**Service Outside Regular Course or Place of Employer's Business (B)**	**Worker in an Independent Business (C)**	**Other Tests**	**State**	**Workers Free from Control Over Performance (A)**	**Service Outside Regular Course or Place of Employer's Business (B)**	**Worker in an Independent Business (C)**	**Other Tests**
VT	X	X	X		WA	X	X	X	
WI				Statutory factors[4]	WV	X	X	X	
WY	X			X[5]					

[1] AL, KY, MN, and MS - master-servant refers generally to the employer's right of direction and control.
[2] CA and FL - in addition to the A, B, and C tests, the following tests are considered: 1) in locality, work is usually done by specialist without supervision; 2) specialized skill is required in the particular occupation; 3) length of time for which person is employed suggests an independent relationship; 4) method of payment is by the job rather than by time; 5) parties do not believe they are creating a master and servant relationship; 6) principal not in business; and 7) principal does not supply the instrumentalities, tools, and the place of work for the person doing the work.
[3] MI - an individual from whom an employer is required to withhold federal income tax will be prima facie considered to perform services in employment.
[4] Direction and control and independent business (i.e. A and C) tests used for governmental and nonprofit entities, loggers, and truckers.
[5] Individual must represent services to the public as being in self-employment or as an independent contractor, and individual must be able to substitute another individual to perform the services.

EMPLOYMENT

For UI purposes, employment is generally defined as the performance of any services, of whatever nature, by an employee for the person employing him or her. However, there are some exceptions. Also, since each state operates its own UI program, it is essential to determine which state covers a worker's employment. These topics will be explored in the following section.

LOCATION OF EMPLOYMENT

Localization of Work—In general, workers are covered by the UI law of the state in which the work is performed. To avoid duplicate coverage or no coverage at all when a worker works for one employer in more than one state, states agreed in the early days of the UI program on how to determine which state would cover such workers. These provisions of states' UI laws are called "localization of work" provisions.

Historical Note: Model state legislation to put this agreement into effect was developed by the U.S. Department of Labor and incorporated into all states' UI laws in the 1940s. The government of Canada agreed to the localization of work provisions in 1947. Additional guidance was provided in the September 1950 edition of the Manual of State Employment Security Legislation. UI Program Letter 20-04 was issued to address new concerns, such as telecommuting.

There are 4 tests to determine the state in which service should be reported (hence, the state in which a worker is covered). The tests are applied in the following sequence until a determination is made.

- Are the workers' services localized in any state?
    - Are the services performed entirely in one state; or
    - Are the services performed out of that state incidental (e.g. temporary or transitory) to the services performed in that state?

- If the workers' services are not localized in any state, do the workers perform some service in the state in which their base of operations is located?

- If the workers do not perform any service in the state in which their base of operations is located, do they perform any service in the state from which the services are directed and controlled?

- If the workers do not perform any service in the state from which their services are directed and controlled, do they perform any service in the state in which they live?

Thus, even if a worker's services are not localized in any state, the last three tests listed will help in determining the state in which a worker is covered.

Election of Coverage of Services Performed Outside of the State—The laws of most states permit employers to elect coverage of workers who perform their services entirely outside the state if they are not covered by any other state or Federal UI law. Of the states permitting such elections, residence is required in the state of election in all but Connecticut, Illinois, Indiana, Michigan, Nebraska, Oregon, Pennsylvania, and Wisconsin.

Coverage of Services Performed Outside the United States—Prior to the 1970 amendments to the FUTA, employment included only services performed within the United States, with the exception of certain services performed in connection with an American vessel or aircraft. With respect to services performed after 1971, Federal law also requires coverage of services performed outside the United States by an American citizen for an American employer. Coverage of such services is not applicable to services performed in a contiguous country with which the United States has an agreement relating to UI (Canada).

In determining the state of coverage, the following four tests are applicable:

- the state in which the employer has the principal place of business;

- the state in which the employer is located;

- the state in which the employer elects coverage; or

- the state in which the individual files a claim.

Election of Coverage Through Reciprocal Coverage Arrangement—If none of the localization of work tests determine the state in which a worker is covered, most state laws allow the employer, all of its employees, and all states involved to sign an agreement in order for the services to be covered by a state. An employer can cover all the services of such a worker in any state in which any part of the service is performed, the state of residence, or the state in which the employer maintains a place of business. All states but Connecticut, Kentucky, Mississippi, and New York participate in these arrangements.

All states have provisions for the election of coverage of services outside the state not covered elsewhere or of services allocated to the state under a reciprocal agreement.

EMPLOYMENT SPECIFICALLY EXCLUDED

State exclusions from employment generally follow the FUTA exclusions. However, the states often exclude other types of employment as well. This section presents a brief discussion of each of the exclusions that occur in all or nearly all of the state laws. A great many miscellaneous exclusions, which occur in only a few states and affect relatively small groups, are not included. The following table provides an overview of some of the basic exclusions from the definition of employment used by states.

TABLE 1-5: SIGNIFICANT MISCELLANEOUS EMPLOYMENT EXCLUSIONS

State	Insurance Agents on Commission	Real Estate Agents on Commission	Casual Labor Not in Course of Employer's Business	Part-Time Service for Nonprofit Organizations Exempt from Federal Income Tax[1]	State	Insurance Agents on Commission	Real Estate Agents on Commission	Casual Labor Not in Course of Employer's Business	Part-Time Service for Nonprofit Organizations Exempt from Federal Income Tax[1]
AL	X	X	X	X	AK	X	X	X	X[2]
AZ	X	X	X	X	AR	X	X	X	X
CA		X	X	X	CO	X	X	X	X
CT	X	X	X	X	DE	X	X		
DC	X		X	X	FL	X	X	X	X
GA	X	X	X		HI	X	X	X	X[2]
ID	X	X			IL	X	X		X
IN	X		X	X	IA		X		
KS	X	X	X	X	KY	X	X	X	X
LA	X	X	X	X	ME	X	X		X[1]
MD	X	X	X	X	MA	X	X	X	X
MI	X	X		X	MN	X[3]	X[3]	X	
MS	X	X	X	X	MO	X	X		
MT	X	X	X		NE	X	X	X	X
NV		X			NH	X	X	X	X
NJ	X	X			NM	X	X		
NY		X			NC	X	X	X	X
ND	X	X	X	X	OH	X		X	X
OK	X	X			OR	X	X	X	
PA	X	X	X		PR		X	X	
RI	X[3]	X	X	X	SC	X	X	X	X
SD	X			X	TN	X	X		
TX	X	X			UT	X	X	X	X
VT	X	X	X	X	VA	X	X	X	X
VI			X		WA	X	X	X	
WV	X				WI	X	X		X
WY		X	X						

[1] All states this exclusion is limited to remuneration of less than $50 in any CQ, except in AK, (less than $250), and ME (less than $150).
[2] Exclusion not limited to part-time service.
[3] RI - does not exclude such service if performed for a corporation or by industrial and debit insurance agents; MN does not exclude such service if performed by a corporate officer.

Service For Relatives—All states exclude service performed for an employer by a spouse or minor child and, with few exceptions, service of an individual in the employ of a son or daughter.

Service by Students and Spouses of Students—FUTA excludes service performed in the employ of a school, college, or university by a student enrolled and regularly attending classes at such school. FUTA excludes service performed by a student's spouse for the school, college, or university at which the student is enrolled and regularly attending classes, provided the spouse's employment is under a program designed to give financial assistance to the student, and the spouse is advised that the employment is under such student-assistance program and is not covered by any UI program. Also excluded is service by a full-time student in a work-study program provided that the service is an integral part of the program. The following table provides additional information about states' legal provisions with respect to student employment.

TABLE 1-6: STUDENT EMPLOYMENT EXCLUDED FROM COVERAGE

State	Student Nurses and Interns in Employ of a Hospital	Students Working for Schools[1, 2]	State	Student Nurses and Interns in Employ of a Hospital	Students Working for Schools[1, 2]	State	Student Nurses and Interns in Employ of a Hospital	Students Working for Schools[1, 2]	State	Student Nurses and Interns in Employ of a Hospital	Students Working for Schools[1, 2]
AL	X	X	AK	X	X	AZ	X	X	AR	X	X
CA	X	X	CO		X	CT	X	X	DE		X
DC	X	X	FL	X	X	GA	X	X	HI	X	X
ID	X	X	IL	X	X	IN	X	X	IA		X
KS		X	KY	X	X	LA	X	X	ME	X	X
MD	X	X	MA	X	X	MI		X	MN	X	X
MS	X	X	MO		X	MT		X	NE	X	X
NV		X	NH	X	X	NJ	X	X	NM		X
NY		X	NC		X	ND	X	X	OH	X	X
OK	X	X	OR	X	X	PA	X	X	PR		X
RI		X	SC	X	X	SD	X	X	TN		X
TX	X	X	UT	X	X	VT		X	VA	X	X
VI		X	WA		X	WV		X	WI	X	X
WY		X									

[1] AK, AR, DE, DC, FL, HI, ID, KS, LA, ME, MN, NM, OH, PR, RI, TX, VI, VA, and WV - do not exclude service by the spouse of a student in the employ of the school; all other states exclude such service.

[2] All states exclude students in work-study programs; however, DC and HI - exclude only elementary or secondary school students. DC - excludes services performed by a student in the employ of an organization exempt from Federal income tax if the remuneration does not exceed $50 in a CQ.

Service by Patients for Hospitals—These services may be excluded from coverage under the state law whether they are performed by a hospital operated for profit, not-for-profit, or by a state.

Service for Federal Instrumentalities—An amendment to FUTA, effective with respect to services performed after 1961, permits states to cover Federal instrumentalities that are neither wholly nor partially owned by the United States, nor exempt from the FUTA tax by virtue of any other provision of law that specifically refers to such section of the Internal Revenue Code in granting such exemptions. All states except New Jersey have provisions in their laws that permit the coverage of service performed for non-wholly or partially owned Federal instrumentalities.

COVERAGE

Maritime Workers—FUTA permits a state to cover maritime services if the operation of an American vessel operating on navigable waters within, or within and without, the United States is ordinarily regularly supervised, managed, directed, and controlled by such state. Most state laws currently cover such services.

> *Historical Note:* The FUTA and most state laws initially excluded maritime workers, principally because it was thought that the Constitution prevented the states from covering such workers. Supreme Court decisions in *Standard Dredging Corporation v. Murphy* and *International Elevating Company v. Murphy*, 319 U.S. 306 (1943), were interpreted to mean that there is no such bar. In 1946, the current FUTA provision was added.

Voluntary Coverage of Excluded Employment—In all states except Alabama, Massachusetts, and New York employers, with the approval of the state agency, may elect to cover most types of employment that are exempt under their state laws.

Self-Employment—Employment, for purposes of UI coverage, is employment of workers who work for others for wages; it does not include self-employment. Although the protection of the Federal old-age, survivors, and disability insurance program has been extended to most of the self-employed, protection under the UI program is not feasible, largely because of the difficulty of determining whether in a given week a self-employed worker is unemployed.

COVERAGE OF OFFICERS OF CORPORATIONS

Under FUTA, an officer of a corporation is defined as an employee of the corporation, and wages paid to the employee are subject to the FUTA tax. However, some states have enacted exclusions from coverage and restrictions on benefits for corporate officers (with the exception of any corporate officers for whom coverage is required). Since FUTA contains no exclusion, when states exclude these services, the employers of corporate officers are liable for the full FUTA tax on wages paid to these individuals. The following table outlines the exclusions and restrictions for which states have opted.

TABLE 1-7: CORPORATE OFFICERS

State	Provisions
AK	Services are exempt only if the corporation is not a non-profit or governmental entity and the employee is an executive officer of the corporation.
CA	Exempts services performed by an individual in the employ of a corporation of which he/she is the majority or controlling shareholder and an officer if not subject to FUTA. Also exempts an officer or shareholder of an agricultural corporation unless the corporation is an employer defined under FUTA.
DE	Exempts services performed by an officer of a corporation organized and operated exclusively for social or civic purposes, provided the services performed by the officer are part time and when the remuneration received does not exceed $75 in any CQ.
HI	An individual will not be eligible for benefits if an owner-employee of a corporation brings about his/her unemployment by divesting ownership, leasing the business interest, terminating the business, or by other similar actions. Also, excludes from coverage services for a family-owned private corporation, organized for profit, that employs family members who own at least 50% of the corporate shares, provided certain criteria are met.
IA	Exempts services performed by an individual in the employ of a corporation of which he/she is the majority or controlling shareholder and an officer if not subject to FUTA.

TABLE 1-7: CORPORATE OFFICERS	
State	**Provisions**
ID	Permits exemption of corporate officers from coverage and permits reinstatement of corporate officers previously exempted. A corporate officer whose benefit claim is based on wages with a corporation in which he/she or his/her family member has an ownership interest is not "unemployed" and is ineligible for benefits in any week during his/her term of office with the corporation. However, the corporate officer is unemployed in any week not employed by the corporation for an indefinite period of time due to circumstances beyond his/her control or the control of a family member who has an ownership interest in the corporation; if at any time during the BY, the corporate officer resumes, or returns to, work for the corporation, there is a rebuttable presumption that his/her unemployment was within his/her control, and all benefits paid are considered an overpayment. A corporation that is a public company may elect to exempt from coverage any corporate officer who is voluntarily elected or voluntarily appointed, is a shareholder of the corporation, exercises substantial control in the daily management of the corporation, and whose primary responsibilities do not include the performance of manual labor; a corporation that is not a public company may elect to exempt from coverage any corporate officer, without regard to his/her performance of manual labor, if he/she is a shareholder of the corporation, voluntarily agrees to be exempted from coverage, and exercises substantial control in the daily management of the corporation that has a class of shares registered with the Federal Securities and Exchange Commission.
MI	Limits to no more than 7 weeks benefits payable based on services performed in a family corporation in which the individual or his/her son, daughter, spouse, or parent owns more than 50% of the proprietary interest in the corporation.
MN	An individual who has been paid 4 times his/her WBA may not use wages paid by an employing unit if the individual (a) individually or jointly with a spouse, parent, or child owns or controls 25% or more interest in the employing unit; or (b) is the spouse, parent, or minor child of any individual who owns or controls 25% or more interest in the employing unit; and (c) is not permanently separated from employment. Also exempts officers or shareholders in a family agricultural corporation. Contracts to obtain a taxpaying employer's workforce must include coverage of corporate officers for the duration of the contract.
NJ	Excludes corporate officers and individuals with at least 5% ownership of employing business.
ND	Exempts corporate officers when ¼ or more of the ownership interest was owned or controlled by the individual's spouse, child, or parent or by any combination of them if the corporation requests exemption from coverage.
OK	Exempts services, not considered nonprofit, if he/she owns 100% of the stock.
OR	Exempts services performed by corporate officers who are directors of the corporation, who have a substantial corporate ownership interest, and who are related by family if the corporation elects not to provide coverage for the related family members.
TX	An individual will not be eligible for benefits from the date of the sale of a business and until he/she is re-employed and eligible for benefits based on the wages received through the new employment if the business was a corporation and the individual was an officer or a majority or controlling shareholder in the corporation and was involved in the sale of the corporation; or if the business was a limited or general partnership and the individual was a limited or general partner who was involved in the sale of the partnership; or the business was a sole proprietorship and the individual was the proprietor who sold the business.
SC	Exempts service performed by an officer of a corporation. A corporation may elect, in writing, to cover its officers and must notify its officers they are ineligible for UI benefits, if the corporation does not elect to provide coverage. Coverage must be provided for at least 2 calendar years and shall terminate January 1 subsequent to the 2-year period if the employer files a written application before January 15 of that year.
WA	Exempts services performed by corporate officers unless corporation elects coverage for all officers; wages for corporate officer must be less than 25 percent of total base year wages to be eligible for benefits. However, this exemption does not apply to corporate officers employed by nonprofit or governmental employers.
WI	The amount of BPW used to compute total benefits payable to an individual may not exceed 10 times the individual's WBA based on the individual's employment with a corporation or a limited liability company that is treated as a corporation if ½ or more of the ownership interest in the corporation or limited liability company during the employment was owned or controlled by the individual's spouse or by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them; or in the case of a corporation, if ¼ or more of the ownership interest in the corporation during the employment was owned or controlled by the individual. Also, a corporate employer having taxable payrolls less than the amount used to establish separate solvency contribution rates may elect not to have the principal officers covered if the officers have a direct or indirect substantial ownership interest in the corporation.

COVERAGE BY REASON OF A FEDERAL REQUIREMENT

As a result of amendments to FUTA made in 1970, 1976, and 2000, certain services performed for nonprofit organizations, state and local governments, and Indian tribes must be covered as a condition for approval of state law. These special "required coverage" provisions exist because the services are not taxable

under FUTA. Normally, if a state law fails to cover services that are taxed under the FUTA, the employer must pay the full FUTA tax. Since this scheme does not encourage coverage for services not subject to the FUTA tax, Federal law requires services performed for the previously mentioned entities to be covered as a condition of approval and, as a result, a necessary condition for all employers in the state to receive credits against the FUTA tax.

States are required to pay UI benefits based on services performed for governmental entities, nonprofit organizations, and federally recognized Indian tribes in the same amounts and under the same terms and conditions as for services covered under state law. There are, however, special provisions applicable to school personnel. They are commonly called "between-and-within-terms denial provisions."

Federal law permits states to exclude from this required coverage all of the exclusions from employment available for private employers. Moreover, additional exclusions are available for nonprofit organizations, state and local governments, and Indian tribes. These include services performed:

- by an individual receiving rehabilitation help in a facility that carries out programs for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury;
- as part of an unemployment work-relief or work-training program financed partially or completely by a governmental entity; or
- by an inmate of a custodial or penal institution.

Other exclusions are listed in the following sections relating to nonprofit organizations and governmental entities.

State law is also required to give governmental entities, nonprofit organizations, and federally recognized Indian tribes a choice concerning benefit financing. They can pay taxes as employers do or they can reimburse UI benefits paid that are attributable to services performed for them.

NONPROFIT ORGANIZATIONS—State coverage is required for services performed for religious, charitable, or educational nonprofit organizations. (These organizations are described in section 501(c)(3) of the Federal Internal Revenue Code of 1986, and are exempt from Federal income tax under section 501(a) of the Code.) Although coverage is required only for those organizations employing four or more workers in 20 weeks, a number of states have provisions that cover smaller nonprofit organizations as well. The following table lists the states that have expanded their coverage provisions beyond Federal requirements.

Table 1-8: NONPROFIT ORGANIZATIONS: STATES COVERING ORGANIZATIONS WITH 1 OR MORE EMPLOYEES

Arkansas	California	Connecticut	District of Columbia	Hawaii	Idaho
Iowa	Maryland	Massachusetts	Michigan	Minnesota	Montana
New Hampshire	New Jersey	New Mexico	Oregon	Pennsylvania	Puerto Rico
Rhode Island	Virgin Islands	Washington			

Federal law permits states to exclude from required coverage services performed by a minister in the exercise of ministerial duties or services performed in the employ of any of the following:

- a church, convention, or association of churches;
- an organization operated primarily for religious purposes, which is operated, supervised, controlled, or principally supported by a church, convention, or association of churches; or
- an elementary or secondary school operated primarily for religious purposes, regardless of affiliation with a church, convention, or association of churches.

COVERAGE

GOVERNMENTAL ENTITIES—Federal law requires states to cover most services for the state and its political subdivisions. When service is performed for an instrumentality owned by more than one state or political subdivision, coverage is determined based on the location of the work.

Since Federal law includes no size-of-firm restrictions for governmental entities as it does for nonprofit organizations, all governmental entities, regardless of size, must be covered. There are, however, certain types of services Federal law permits states to exclude from governmental coverage. These include service performed:

- as an elected official;
- as a member of a legislative body or a member of the judiciary;
- as a member of the state National Guard or Air National Guard;
- as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar declared emergency; or
- in a position which, under the state law, is designated as a major, non-tenured, policymaking or advisory position, or a part-time policymaking position which ordinarily requires 8 or fewer hours a week.

Most states have opted to exclude all types of services mentioned previously. For states that do not exclude all of the aforementioned types of services, the following table shows which provisions are excluded under state law.

TABLE 1-9: STATE AND LOCAL GOVERNMENTS: SERVICE EXCLUDED FROM COVERAGE

State	Elected Officials	Legislators and Members of Judiciary	Members of State National Guard and Air National Guard	Temporary Emergency Employees	Policymaking and Advisory Positions
AK	X	X	X	X	
AR	X	X	X		X
FL	X	X		X	X
GA	X	X	X		X
MT	X				
WA	X		X		X

INDIAN TRIBES—Amendments to FUTA made in 2000 added Indian tribes to the set of entities for whom coverage is required although they are not liable for FUTA taxes. As a result, workers performing services for tribes are now potentially eligible to receive UI benefits. Coverage is required when service is performed for any tribal or native entity which is recognized and eligible for Federal assistance by the United States Bureau of Indian Affairs. The same permissible exclusions from coverage applicable to other governmental entities also apply to services performed for Indian tribes. If an Indian tribe fails to make payments to states as required, it loses its FUTA tax exemption and may lose coverage.

UNEMPLOYMENT COMPENSATION FOR FEDERAL CIVILIAN EMPLOYEES AND FOR EX-SERVICEMEMBERS

Two Federal UI programs – one for Federal civilian employees and the other for ex-servicemembers – are provided by Federal law (5 U.S.C. 8501 et seq.).

COVERAGE

Under agreements entered into between the Secretary of Labor and the state UI agencies, the Federal programs of unemployment compensation for Federal civilian employees and for ex-servicemembers are administered by the state agencies as agents of the United States government.

Federal civilian and military wages are assigned to the appropriate state agency in accordance with Federal law. Thereafter, eligibility for unemployment insurance benefits and the amount of benefits paid are determined under applicable state law. Thus, the claims of Federal civilian employees and ex-servicemembers are subject to the same eligibility and disqualification provisions as those filed by any other individual claiming benefits under that state's UI law.

UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES (UCFE)—An unemployed Federal civilian worker's eligibility is determined under the UI law of the state where:

- The worker's official duty station was located for the most recent Federal civilian employment;
- If there was subsequent private covered employment, in the state in which the covered employment was performed; or
- If employed outside the United States, the state in which the worker resides when filing the claim.

States determine UCFE eligibility under the same terms and conditions as those applied to services covered under state law.

UNEMPLOYMENT COMPENSATION FOR EX-SERVICEMEMBERS (UCX)—States administer the UCX program on behalf of the Federal government under agreements with the U.S. Department of Labor (Department). States must follow the Department's guidance in operating the program, including the use of the Federal Schedule of Remuneration, to determine UCX benefit eligibility. The Department issues an updated schedule yearly.

In general, ex-servicemembers must be honorably discharged and have completed their first full term of service to qualify for UCX. However, ex-servicemembers who did not complete their first full term of service, were separated under honorable conditions, and were separated for certain "acceptable narrative reasons" may qualify for UCX. Some "acceptable narrative reasons" for separation require 365 days of service to be applicable. Narrative reasons are found in Block 28 of the DD Form 214, Certificate of Release or Discharge from Active Duty. A consolidated list of acceptable narrative reasons for separation from the military for UCX claim purposes is attached to Unemployment Insurance Program Letter No. 9-10.

Members of the National Guard and Reserves must have 90 days of continuous active service and be separated under honorable conditions to qualify for UCX benefits.