

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: Wages, taxes, remuneration, travel expenses, seasonal.

Rule Number(s): 4141-9-01, 4141-9-02, 4141-9-04, 4141-9-06, 4141-9-07, 4141-9-08, 4141-9-12, and 4141-32-01

Date: 7/31/18

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Amended Substitute Senate Bill 3 of the 130th General Assembly changed the enforcing statute for the adoption, amendment or rescission of unemployment compensation rules from Ohio Revised Code (ORC) Section 4141.14 to ORC Section 119.03. These rules reflect the statutory change. These rules have no language content change.

Rule 4141-9-01 Wages reported and paid. This rule states wages shall be reported for the calendar quarter in which any payday occurs.

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Rule 4141-9-02 Tax Base. This rule explains the requirements of the amount of tax due if an employer is found liable for unemployment compensation tax.

Rule 4141-9-04 Remuneration. This rule explains the process for receiving payment on the basis of piecework, or percentage of profits, paid hourly, daily, weekly, monthly, annually or based on any other measurement of time.

Rule 4141-9-06 Reporting of weeks by institutions of higher education and educational institutions. This rule sets forth guidelines for institutions of higher education and educational institutions to file quarterly wage reports.

Rule 4141-9-07 Weeks to be reported. This rule sets forth guidelines for every employer to file quarterly wage reports.

Rule 4141-9-08 Remuneration in lieu of notice. This rule sets forth guidelines for the continuation of wages for a designated period after a termination of employment.

Rule 4141-9-12 Travel expenses. This rule sets forth guidelines for travel expenses as it relates to remuneration.

Rule 4141-32-01 Determination of seasonal status. This rule sets forth guidelines for filing for seasonal employer status.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Section 4141.13 of the ORC is the statute authorizing the Agency to adopt this rule.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

Yes, all of the rules implement federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act. 26 USC 3301 through 26 USC 3311.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

No, none of the rules include provisions exceeding federal requirements.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Rule 4141-9-01. The intent of rule 4141-9-01 is to clarify that for purposes of the quarterly filings and contribution payments, wages must be reported for the calendar quarter in which the payday occurs. A payday occurs when the payment is credited to or set apart for the employee and is

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available to such employee on demand. Rule clarity encourages employers to report payroll and pay unemployment insurance tax through the tax structure permitted by law, which helps fund the payment of unemployment benefits.

Rule 4141-9-02. The intent of rule 4141-9-02 is to clarify that contributions shall be paid on the wages defined in Division (G)(l) of ORC Section 4141.01 and explains the payment of contributions shall not be prorated over the entire calendar year or any part thereof. The limit on taxable wages applies only to the remuneration paid by each employer to each individual. The limit is an exemption earned by each contributory employer, and the individual's other such employers cannot share in the exemption. In case it is determined that there has been a successorship within the calendar year, the wages of any employee upon which the predecessor has paid contributions shall be included in computing the taxable wages.

Rule 4141-9-04. The intent of rule 4141-9-04 is to further explain and clarify the definition of the term "remuneration". For example, remuneration includes such things as payment on the basis of piecework, or a percentage of profits, and it may be paid hourly, daily, weekly, monthly, annually, or based on any other measurement of time. Remuneration may be paid in cash and may be denominated by terms such as vacation pay or allowance, separation pay, holiday pay, paid absence allowance, downtime paid absence allowance, or short workweek pay.

Rule 4141-9-06. The intent of rule 4141-9-06 is to clarify the reporting requirements by institutions of higher education and educational institutions and states they shall, in submitting the quarterly report of wages, report for each employee a number of weeks that includes the number of calendar weeks within the quarter in which services were performed, plus the number of calendar weeks within the quarter in which no services were performed but to which remuneration, other than wages, was allocated.

Rule 4141-9-07. The intent of rule 4141-9-07 is to clarify that every employer must submit quarterly reports of wages and weeks. The total number of weeks that must be reported for each employee must equal the number of calendar weeks within the quarter in which the employee performed services, plus the number of calendar weeks within the quarter in which no services were performed but to which remuneration was allocated.

Rule 4141-9-08. The intent of rule 4141-9-08 is to define "remuneration in lieu of notice" as a continuation of wages for a designated period after termination of employment. Remuneration in lieu of notice constitutes wages for the designated payment period, is subject to contributions, and shall be deemed to be remuneration for the purposes of establishing a qualifying week and a benefit year. Therefore, Unemployment Benefits otherwise payable for any week must be reduced by the amount of remuneration or other payments a claimant receives with respect to such week in which there is remuneration in lieu of notice pursuant to Section 4141.31 of the ORC.

Rule 4141-9-12. The intent of rule 4141-9-12 is to define "travel expenses" as amounts paid by an employer as allowances or reimbursements for traveling in the course of the employer's trade or

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business. Travel expenses must be considered remuneration if such amounts exceed costs actually incurred by the individual. Travel expenses must be detailed in current documentation maintained by the employer and employees and such documentation shall be available for inspection by the director as a basis upon which to exclude from or include amounts paid as remuneration.

Rule 4141-32-01. The intent of rule 4141-32-01 is to explain what information needs to be provided by an employer in an application to obtain seasonal employer status. This information includes the total number of individuals employed by the employer, the number of individuals employed by the employer in seasonal employment in the proposed seasonal industry, the number of individuals employed by the employer who are not in seasonal employment in the proposed seasonal industry and are in administrative and maintenance operations, the beginning and ending date of the proposed seasonal period, the nature of the operations and business conducted by the employer, and the employer's state unemployment tax account number. The rule also defines "Seasonal employer", "Seasonal industry", and "Seasonal employment". Finally, the rule explains a seasonal period cannot exceed forty weeks in any consecutive fifty-two period and that any employer determined to be a seasonal employer must apply annually no later than sixty days prior to the beginning date of the proposed seasonal period.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes? All of these rules are clarifying in nature therefore the success can be measured by how well the regulated community understands the underlying process. The Department believes these particular provisions are helpful to and well understood by the regulated community, as there has been substantial compliance. Since these rules have been in place for at least five years, and in some cases decades, with the full knowledge and cooperation of employers, the Department has proposed no changes to these rules. The Agency will measure the success of these rules through continued compliance with ORC 119.03, 4141.01, 4141.13, 4141.20, 4141.23, 4141.241, 4141.28, 4141.29, 4141.31, 4141.33 and through compliance with federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. The Agency's clearance process allows all employer and claimant/employee stakeholder interests to review and comment on any rule online. The Ohio Chamber of Commerce, Policy Matters Ohio, and the National Federation of Independent Business (NFIB) are among those stakeholders that the Agency has identified as receiving clearance notification of this rule.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency? There were no comments received during the clearance period.

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9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed? No scientific data was used to develop the rules or the measurable outcomes of the rules.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives? None. These rules reflect the directives of the Federal Department of Labor (DOL) pursuant to the Federal Unemployment Tax Act and Chapter 4141 of the Ohio Revised Code (ORC) under the purview of the Ohio General Assembly.

11. Did the Agency specifically consider a performance-based regulation? Please explain.
No, this would not apply because the Agency is directed by the DOL and the ORC.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation? The Agency's legal and subject matter experts carefully review all rule language to ensure no redundancy or duplication occurs.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community. The Agency's plan for implementation is to strictly follow federal guidelines as defined by the DOL and by the Ohio General Assembly through the ORC.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community; Approximately 227,000 employers file reports and pay into the Ohio Unemployment Compensation Trust Fund as required by federal and state law;

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); -- Time expended by employers to comply and the amount of the unemployment insurance tax contribution. Specifically, each employer that pays into the Ohio Unemployment Trust Fund is required to pay tax on up to \$9,500 in wages per employee annually per ORC Section 4141.01(G).

c. Quantify the expected adverse impact from the regulation.

Rule 4141-9-01

ORC Section 4141.20 states that every contributory employer shall file a quarterly contribution and wage report by a certain date. The statute explains what information needs

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to be provided including the total and taxable remuneration paid to all employees during the quarter, the name and social security number of each individual employed during the calendar quarter, the total remuneration paid the individual, the number of weeks during the quarter for which the individual was paid remuneration, and any other information required by section 1137 of the Social Security Act. ORC Section 4141.20 also provides for the due dates of these quarterly filings and explains the amount of the forfeiture penalties if the quarterly filings are not made by the due dates. The Department expects no adverse impact to the regulated community as a result of the adoption of rule 4141-9-01. While rule 4141-9-01 makes reference to certain reporting requirements imposed throughout chapter 4141 of the Revised Code, and the regulated community will be affected by the statutory requirements, the rule itself only serves to aid the regulated community by clarifying the process, and does not impose additional requirements beyond those found in Revised Code section 4141.20.

Rule 4141-9-02

ORC Section 4141.01(G)(1) defines the term "wages" to mean remuneration paid to an employee by each of the employee's employers with respect to employment; except that wages shall not include that part of remuneration paid during any calendar year to an individual by an employer or such employer's predecessor in interest in the same business or enterprise, which in any calendar year is in excess of nine thousand five hundred dollars. Remuneration in excess of such amount shall be deemed wages subject to contribution to the same extent that such remuneration is defined as wages under the "Federal Unemployment Tax Act," 84 Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as amended. The remuneration paid an employee by an employer with respect to employment in another state, upon which contributions were required and paid by such employer under the unemployment compensation act of such other state, shall be included as a part of remuneration in computing the amount specified in this division.

The wages threshold has been in excess of nine thousand five hundred dollars since January 1, 2018.

Rule 4141-9-02 clarifies that contributions shall be paid on the wages defined in Division (G)(1) of ORC Section 4141.01 and explains the payment of contributions shall not be prorated over the entire calendar year or any part thereof. The limit on taxable wages applies only to the remuneration paid by each employer to each individual. The limit is an exemption earned by each contributory employer, and the individual's other such employers cannot share in the exemption. In case it is determined that there has been a successorship within the calendar year, the wages of any employee upon which the predecessor has paid contributions shall be included in computing the taxable wages.

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An example of what Rule 4141-9-02 means is that if an employee receives wages from an employer in the amount of \$15,000.00 in the first quarter of a year then the employer shall pay contributions into the unemployment compensation fund on only the first \$9,500.00 of the \$15,000.00 in wages. No wages in excess of \$9,500.00 are taxable. Therefore, wages earned in subsequent quarters of that year will not require contribution payments because the \$9,500.00 threshold was already reached in the first quarter. However, if the employee receives wages from a different employer in that same year the \$9,500.00 threshold applies separately and contributions must be paid by that different employer until that threshold is reached. In contrast, if the employer is a successor to a previous employer, such as when an entire business is sold, the successor employer will be credited for any of the \$9,500.00 taxable wages threshold upon which the previous employer paid contributions. There is no adverse impact to the regulated business community relating to Rule 4141-9-02 because there is no license, permit, or any other prior authorization required to engage in or operate a line of business. This rule does not impose a criminal penalty, a civil penalty, or another sanction, and does not create a cause of action for failure to comply. This rule does not require specific expenditures or the report of information as a condition of compliance. This rule is included in this Business Impact Analysis due to the potential appearance of an adverse impact to the regulated business community found in other rules in Chapter 4141-9 of the Ohio Administrative Code.

Rule 4141-9-04

ORC Section 4141.01(H)(1) and (H)(2) define the terms "remuneration" and "cash remuneration." Remuneration means all compensation for personal services, including commissions and bonuses and the cash value of all compensation in any medium other than cash, except that in the case of agricultural or domestic service, "remuneration" includes only cash remuneration. Gratuities customarily received by an individual in the course of the individual's employment from persons other than the individual's employer and which are accounted for by such individual to the individual's employer are taxable wages.

The reasonable cash value of compensation paid in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the director, provided that "remuneration" does not include:

- (a) Payments as provided in divisions (b)(2) to (b)(16) of section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, as amended;
- (b) The payment by an employer, without deduction from the remuneration of the individual in the employer's employ, of the tax imposed upon an individual in the employer's employ under section 3101 of the "Internal Revenue Code of 1954," with respect to services performed after October 1, 1941.

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"Cash remuneration" means all remuneration paid in cash, including commissions and bonuses, but not including the cash value of all compensation in any medium other than cash. Rule 4141-9-04 further explains and clarifies the definition of the term "remuneration." For example, remuneration includes such things as payment on the basis of piecework, or a percentage of profits, and it may be paid hourly, daily, weekly, monthly, annually, or based on any other measurement of time. Remuneration may be paid in cash and may be denominated by terms such as vacation pay or allowance, separation pay, holiday pay, paid absence allowance, downtime paid absence allowance, or short workweek pay.

There is no adverse impact to the regulated business community relating to Rule 4141-9-04 because there is no license, permit, or any other prior authorization required to engage in or operate a line of business. This rule does not impose a criminal penalty, a civil penalty, or another sanction, and does not create a cause of action for failure to comply. This rule does not require specific expenditures or the report of information as a condition of compliance. This rule is included in this Business Impact Analysis due to the potential appearance of an adverse impact to the regulated business community found in other rules in Chapter 4141-9 of the Ohio Administrative Code.

Rule 4141-9-06

ORC Section 4141.01(Y) defines "institution of higher education" to mean a public or nonprofit educational institution, including an educational institution operated by an Indian tribe. All colleges and universities in this state are institutions of higher education.

ORC Section 4141.01(CC) defines "educational institution" to mean an institution other than an institution of higher education, including an educational institution operated by an Indian tribe. The courses of study or training which the institution offers may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

As stated earlier, ORC Section 4141.20 identifies the information that employers shall provide including a quarterly contribution report and a quarterly report of wages, the due dates of these quarterly filings and explains the amount of the forfeiture penalties if the quarterly filings are not made by the due dates.

Rule 4141-9-06 clarifies the reporting requirements by institutions of higher education and educational institutions and states they shall, in submitting the quarterly report of wages, report for each employee a number of weeks that includes the number of calendar weeks within the quarter in which services were performed, plus the number of calendar weeks within the quarter in which no services were performed but to which remuneration, other than wages, was allocated. This rule does not impose additional requirements beyond those found in ORC Section 4141.20.

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Rule 4141-9-07

As stated earlier, ORC Section 4141.20 identifies the information that employers shall provide including a quarterly contribution report and a quarterly report of wages, the due dates of these quarterly findings and explains the amount of the forfeiture penalties if the quarterly filings are not made by the due dates.

Rule 4141-9-07 states that every employer shall submit quarterly reports of wages and weeks. The total number of weeks that must be reported for each employee must equal the number of calendar weeks within the quarter in which the employee performed services, plus the number of calendar weeks within the quarter in which no services were performed but to which remuneration was allocated.

The number of weeks reported shall not exceed the number of calendar weeks in the quarter. This rule does not impose additional requirements beyond those found in ORC Section 4141.20

Rule 4141-9-08

ORC Section 4141.01(H)(1) and (H)(2) define the terms "remuneration" and "cash remuneration" and was explained in detail earlier.

ORC Section 4141.31 states, in part, that Unemployment Benefits otherwise payable for any week shall be reduced by the amount of remuneration or other payments a claimant receives with respect to such week as follows:

(1) Remuneration in lieu of notice; (2) Compensation for wage loss under division (B) of section 4123.56 of the Revised Code or a similar provision under the workers' compensation law of any state or the United States; (3) Payments in the form of retirement, or pension allowances as provided under section 4141.312 of the Revised Code; (4) Except as otherwise provided in division (D) of this section, remuneration in the form of separation or termination pay paid to an employee at the time of the employee's separation from employment; (5) Vacation pay or allowance payable under the law, terms of a labor- management contract or agreement, or other contract of hire, which payments are allocated to designated weeks; (6) The determinable value of cost savings days.

Rule 4141-9-08 defines "remuneration in lieu of notice" as a continuation of wages for a designated period after termination of employment. Remuneration in lieu of notice constitutes wages for the designated payment period, is subject to contributions, and shall be deemed to be remuneration for the purposes of establishing a qualifying week and a benefit year.

Therefore, Unemployment Benefits otherwise payable for any week shall be reduced by the amount of remuneration or other payments a claimant receives with respect to such

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week in which there is remuneration in lieu of notice pursuant to Section 4141.31 of the ORC.

There is no adverse impact to the regulated business community relating to Rule 4141-9-08 because there is no license, permit, or any other prior authorization required to engage in or operate a line of business. This rule does not impose a criminal penalty, a civil penalty, or another sanction, and does not create a cause of action for failure to comply. This rule does not require specific expenditures or the report of information as a condition of compliance. This rule is being included in this Business Impact Analysis due to the potential appearance of an adverse impact to the regulated business community found in other rules in Chapter 4141-9 of the Ohio Administrative Code.

Rule 4141-9-12

The potential adverse impact of this rule to the regulated business community relates to the need for the travel expenses to be detailed in current documentation maintained by the employer and employees, so that such documentation is available for inspection, to determine if there was a reasonable basis upon which to exclude from or include amounts paid as remuneration. However, such documentation would still need to be kept for other purposes such as for federal tax return purposes. This rule is necessary to facilitate the proper administration of Ohio Unemployment Compensation Law under Chapter 4141, and the federal regulatory requirements of the Department of Labor. The reason for this rule is to determine whether to include or exclude amounts paid as remuneration for unemployment tax or unemployment benefits purposes.

Rule 4141-32-01

Explains what is needed in a seasonal employer application and defines "Seasonal employer", "Seasonal industry", and "Seasonal employment" pursuant to Section 4141.33 of the ORC. There is no adverse impact to the regulated business community relating to Rule 4141-32-01 because there is no license, permit, or any other prior authorization required to engage in or operate a line of business. This rule does not impose a criminal penalty, a civil penalty, or another sanction, and does not create a cause of action for failure to comply. This rule does not require specific expenditures or the report of information as a condition of compliance. This rule is being included in this Business Impact Analysis due to the potential appearance of an adverse impact to the regulated business community because an employer that desires to be a seasonal employer must apply for seasonal employer status as found in Section 4141.33(B) of the Ohio Revised Code.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Rule 4141-9-01: To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.13, 4141.20, 4141.23, 4141.241, and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

Rule 4141-9-02: To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.01, 4141.13, and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

Rule 4141-9-04: To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.01, 4141.13, and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

Rule 4141-9-06: To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.01, 4141.13, 4141.20, 4141.29, and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

Rule 4141-9-07: To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.13, 4141.20, and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

Rule 4141-9-08: To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.01, 4141.13, 4141.31, and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

Rule 4141-9-12: To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.01, 4141.13, and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

Rule 4141-32-01: To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.13, 4141.33 and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

Regulatory Flexibility

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16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain. No, the intent of the unemployment compensation rules is to treat all Ohio employers equally. The Federal Department of Labor and the Ohio General Assembly structured these rules in such a manner so that the Agency does not have discretionary authority to allow different standards, based upon size, for the various employers paying into the Unemployment Trust Fund.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation? The Agency allows for a waiver of fines (interest) and penalties for paperwork violations and first-time offenders by request. The request may be made in writing, online, or by phone.

18. What resources are available to assist small businesses with compliance of the regulation? The Agency provides an online website located at <http://jfs.ohio.gov/ouc/uctax/index.stm> as well as telephone assistance at (614) 466-2319 where small businesses may contact the unemployment tax contribution division in Columbus. Small businesses may also contact the unemployment tax compliance division in Columbus or in 13 local compliance divisions throughout Ohio to speak to or meet with a local compliance auditor. Finally, employers may ask questions through the Employer Resource Information Center (ERIC) by telephone at 614-466-2319 extension 22484 or by electronic mail at AskERIC@jfs.ohio.gov