



# Corporate Officer Unemployment Insurance (UI) Coverage -or- Exemption from UI Coverage

## Frequently Asked Questions (FAQs)

### GENERAL

- 1. Are the wages of business owners/corporate officers subject to South Carolina state law on Unemployment Insurance (UI) for purposes of UI benefits and UI tax contributions?**

Yes.

For purposes of Unemployment Insurance (UI) coverage, the wages of corporate officer/owner who are actively engaged in the operations of a business in South Carolina are subject to UI wage reporting and tax contributions.

However, the statute that specifically addresses this matter changed in June 2015 allowing the business entity the option to exempt its corporate officers/owners for UI purposes. This means that if an exemption is not requested by the business, and approved by the S. C. Department of Employment and Workforce (DEW), then wages for corporate officers/owners must be included on quarterly wage and contribution reports filed with DEW.

The statute concerning this matter can be found at: [S.C. Code Ann. § 41-27-265\(A\)](#).

- 2. Is there any way to exempt corporate officers/owners from state UI coverage?**

Yes. Businesses that want to exempt corporate officers/owners from UI coverage must request an exemption in writing with DEW. Any exemption will remain in effect for at least two consecutive calendar years.

*Corporate Officers (including individuals owning 25% or more of the corporation)*

As of January 1, 2016, corporations may elect to exempt all of its corporate officers actively engaged in a business in South Carolina from UI coverage. See [S.C. Code Ann. § 41-27-265\(A\)](#) for more details.

*Owners of Business Entities other than Corporations (e.g., Limited Liability Companies (LLCs))*

As of January 1, 2016, a person who has an ownership interest of at least 25% in a business entity other than a corporation (such as an LLC) and actively engaged in the business in South Carolina, may elect to exempt himself/herself from UI coverage. See [S.C. Code Ann. § 41-27-265\(B\)](#) for more details.

**For additional information on exempting corporate officers/owners from UI coverage, see the FAQs in the “EXEMPTING COVERAGE” section below.**

**3. What does it mean for corporate officers and/or owners to be exempt from UI coverage?**

If corporate officers/owners are exempt from UI coverage, the employer does not report their wages on its quarterly wage reports or pay state UI taxes on these wages. As a result, corporate officers/owners who are exempt from UI coverage are not eligible for UI benefits if their unemployment is associated with that same employer where they work as a corporate officer/owner.

**For additional information on exempting corporate officers/owners from UI coverage, see the FAQs in the “EXEMPTING COVERAGE” section below.**

**CORPORATE OFFICERS**

**4. How are corporate officers defined?**

For UI purposes only, [S.C. Code Ann. § 41-27-265\(A\)](#) defines a “corporate officer” as, “a person appointed or otherwise serving as an officer for a corporation (as defined by law), a person who owns 25% or more of the shares of a corporation, or a person who otherwise exercises an ownership interest in a corporation.”

**5. If I am not a corporate officer but I own 25% or more of the corporate shares of a corporation, am I considered a corporate officer for state UI purposes?**

Yes.

**6. If I am an owner of an LLC, am I considered a corporate officer for state UI purposes?**

No. However, if you have an ownership interest of at least 25%, you may be covered by state UI or request an exemption from UI coverage.

**For additional information, refer to the “OWNERSHIP INTEREST” section below.**

**7. Does the corporate officer exemption law apply to board members?**

The law applies only to corporate officers (as defined by the law). It does not apply to board members -- unless they are also corporate officers and/or own 25% or more of the shares of the corporation.

**8. Can my business exempt some corporate officers and not others?**

No. By law, once the corporation exempts UI coverage for its corporate officers, the exemption extends to all corporate officers/owners as defined by the law for a minimum of two calendar years.

**9. Is the corporation responsible for notifying its corporate officers/owners that they are not covered for state UI?**

Yes. If a corporation chooses to exempt all its corporate officers from coverage, the employer must notify the corporate officers in writing that they are ineligible for state UI benefits. However, even if the employer fails to provide written notice, the corporate officers remain ineligible for UI benefits.

**WHO IS A BUSINESS OWNER?**

**10.** A business owner, by law, is anyone who has at least 25% ownership in a South Carolina business can elect to exempt himself or herself. Such exemption would apply only to that owner.

**STATE AND FEDERAL TAXES**

**11. How does exempting owners/officers from UI coverage affect state and federal unemployment taxes?**

If your owners/officers are not covered by state UI, you will lose your Federal Unemployment Tax Act (FUTA) tax credit for them. This means that you will be required to pay the maximum FUTA tax rate on your owners'/ officers' wages, which as of January 1, 2015, is 6% on the first \$7,000 of wages, a maximum of \$420 per employee per year. However, you will not be required to pay state UI taxes on these wages.

If you do not exempt your owners/officers from state UI coverage, you must include covered owners'/ officers' wages on the quarterly wage and contribution reports you file with DEW. You would pay state UI taxes on your covered owners/officers each quarter in the same manner as all other employees.

Your **total** UI tax liability for a tax year (state UI taxes plus FUTA taxes) may go up or down depending on several factors including your state UI tax rate, the federal UI tax rate, and the salaries paid to the corporate officers/owners.

Please consult your bookkeeper, accountant, or tax attorney about the potential impact of exempting vs. covering your corporate officers/owners for state and federal UI tax purposes. DEW cannot answer specific questions about the potential impact on your total UI tax bill.

**12. Does the owner/officer exemption law apply to a 501(c)(3) nonprofit corporation?**

Yes, but only if the nonprofit corporation is a contributory employer for unemployment purposes. If the nonprofit corporation is a reimbursable employer, the exemption does not apply. Click [here](#) to read more about non-profits and reimbursable employers. For those nonprofit corporations that are contributory employers, DEW will treat the exemption for nonprofit corporations' corporate officers the same as for private corporations.

Please consult your accountant or tax attorney for specific questions related to your organization.

**EXEMPTING COVERAGE**

**13. How does my business request an exemption from UI coverage for our owners/officers?**

If you want to exempt your owners/officers from UI coverage, you must submit the applicable form:

- [Application for Exemption of Corporate Officers from UI Coverage](#)
- [Application for Exemption of Owners from UI Coverage](#)

In order to exempt your owners/officers from UI coverage for tax year 2016, DEW must receive the applicable exemption request form no later than January 15, 2016.

**PLEASE NOTE:** If you mail a form, the postmark date will be considered the date of receipt.

If your request for exemption form is postmarked or faxed after January 15, 2016, the exemption will start January 1 of the following year (i.e. January 1, 2017) and remain in effect for at least two calendar years.

**14. My business did not submit an Application for Exemption from UI Coverage but did omit owners'/officers' wages and from its quarterly reports. Can that take the place of filing an Application for Exemption?**

No. Beginning January 1, 2016, the Application for Exemption form is the required method for exempting owners/officers from coverage. Therefore, if an employer failed to timely submit the form and omitted owners'/officers' wages from its quarterly reports, DEW will consider such wage reports incomplete, and this could subject your business to penalties and interest for unpaid UI contributions.

**15. If my business has owners/officers but no other employees, can we exempt our owners/officers?**

Yes. A business with no other employees may exempt their owners/officers from coverage.

**16. How long does the exemption from coverage for owners/ officers last?**

The exemption lasts at least two full, consecutive calendar years. After two calendar years of coverage, an employer may terminate the exemption beginning January 1, by filing a written request for termination of the exemption by January 15 of that same year.

**17. Is a calendar year the same as a “tax year”?**

Yes. A “tax year” runs from January 1 through December 31.

**18. My business exempted owner/officer coverage more than two years ago, and we’ve had the same owners/officers the whole time. Do we need to fill out another form or will the exemption automatically continue?**

The exemption will automatically continue. The law provides that unless the employer files with DEW a written notice requesting termination of the exemption, the exemption continues.

**19. Is there a form to request continuation of the UI coverage exemption for owners/officers after two years?**

No. After the end of the mandatory two-year coverage period, the exemption will continue for each subsequent year, unless the corporation files a written request for termination of the exemption by January 15 of the tax year it wants the exemption to be removed.

**20. Is the Application for Exemption form available online?**

Yes, the forms can be found here: <http://dew.sc.gov/forms.asp>  
The application must be printed and mailed, emailed, or faxed to:

**Mail:**  
SC DEW – Employer Status Unit  
P.O. Box 995  
Columbia, SC 29202

**Fax:** 803.737.2547

**Email:** [CorpOfficers@dew.sc.gov](mailto:CorpOfficers@dew.sc.gov)

**21. Will my business receive a written response from DEW if the choice is made to exempt owners/officers from UI coverage?**

Yes. If you have submitted the applicable Application for Exemption from UI Coverage form, you should receive a written response within approximately two weeks. If you submitted this form and did not receive a response, send an email to [CorpOfficers@dew.sc.gov](mailto:CorpOfficers@dew.sc.gov) or call 803-737-3080.

**22. What if my existing business requests exemption from UI coverage after January 15?**

If the request for exemption is received after January 15 it will not be effective for that tax year.

Under S.C. Code Ann. § 41-27-265, the exemption of owners/officers from UI coverage will be approved as of January 1 of any year only if an Application for Exemption form is filed by January 15 of that year. Any request received after January 15 will not become effective until January 1 of the following year.

As an example, if your request for exemption is postmarked or faxed after January 15, 2016, the exemption will start January 1 of the following year (i.e. January 1, 2017) and remain in effect for at least two calendar years.

**PLEASE NOTE:** The Employment and Workforce Law contains no provision which could be construed as authority for the approval of late or retroactive requests for exemptions from coverage. Therefore, if you miss the January 15 deadline, you must continue to report your owners'/officers' wages for the remainder of the calendar year.

**NEW EMPLOYERS**

**23. When can a new business elect to exempt its owner/officers from UI coverage?**

A newly formed business entity with qualifying owners/officers must request exemption with DEW within 30 calendar days after notice of becoming a liable employer subject to the Employment and Workforce Law. Applications for Exemption received and approved by DEW become effective on and after the date of approval and must remain in effect for at least two consecutive calendar years.

PLEASE NOTE: A newly formed business must submit the applicable Application for Exemption from UI Coverage form within 30 days of establishing a DEW UI account number. If a new employer fails to submit the applicable Request for Exemption form within this 30-day time period, the exemption will not take effect until January 1 of the following year and will remain in effect for at least two calendar years.

**24. If my business's owners/officers are out-of-state (i.e., they do not work in South Carolina and are subject to the UI laws of other states), can we elect to cover them?**

No. Typically, owners/officers who do not actively provide services in South Carolina would not have to be reported for unemployment purposes in South Carolina.

**QUARTERLY WAGE REPORTING**

**25. Does my business report exempted owners/officers on its quarterly UI Wage and Contribution Reports?**

No. You do not report the exempted owners/officers on your quarterly wage reports for at least two calendar years following approval of your request for exemption and until such time as you choose to terminate your exemption. However, you must accurately report their wages on your federal UI tax (FUTA) return.

**26. What if I have opted to exempt owners/officers from UI coverage, but my business's owners/officers change?**

For Corporations: Once a corporation elects to exempt its corporate officers, any new corporate officers also will be exempt and you will not report or pay taxes on their wages to DEW.

For Other Business Entities: Any new individual acquiring an ownership interest of 25% or more of business and who is actively engaged in the business in South Carolina must file a request for exemption form in order to be exempt from UI coverage.

**TAX YEAR 2015 ISSUES RELATED TO CORPORATE OFFICERS**

**27. Wasn't there a different law, effective January 1, 2015, that automatically exempted corporate officers from UI coverage, but allowed the business to elect coverage for UI?**

Yes. The previous law (passed and signed in 2014) stated that as of January 1, 2015, corporate officers were exempt from UI coverage, unless the corporation affirmatively elected state UI coverage for all its corporate officers.

**28. What if, based on the prior law, my business did not report or pay UI contributions on corporate officers' wages in 2015?**

If your business reported no corporate officer wages for the 2015 tax year, this exemption still applies and no additional reporting is required for tax year 2015.

**29. If the exemption from the prior law applies to my business in tax year 2015, will it automatically last two years or will I need to request the exemption under the new law by January 15, 2016?**

Because of the new law passed on June 8, 2015, DEW will require an affirmative written request for the corporate officer exemption starting in tax year 2016. Therefore, in order to continue the exemption for all your corporate officers, please consult your tax advisor to prepare for tax year 2016.

See also the FAQs above, in the “Exempting Coverage” section.

**30. What if, based on the prior law, my business did report, and pay UI contributions for corporate officers’ wages in 2015?**

If your business elected UI coverage for the first quarter of tax year 2015, either by affirmatively requesting coverage under the prior law and/or reporting corporate officer wages and paying contributions on those wages, this election of coverage applies for the entire tax year 2015.

**31. What if, based on the NOTICE received from DEW in September 2015, my business began to prepare, or actually filed, amended reports to include corporate officer wages?**

Based on the follow-up NOTICE sent by DEW on October 5, 2015, no additional reporting for corporate officers is permitted.

**32. What if I now want to elect coverage for corporate officers for tax year 2015?**

Because the applicable deadlines for electing coverage for corporate officers in tax year 2015 has passed, it is too late to elect state coverage for corporate officers for tax year 2015.

**33. My business closed its account because it employed only corporate officers. What happens now?**

If you closed your DEW account because corporate officers were the only employees of the business, the exemption for tax year 2015 still applies. For coverage or exemption status in tax year 2016, please refer to the FAQs above, in the “Exempting Coverage” section.