**Section 2765.64 Consequences When an Employee Leasing Company Has Erroneously Reported Wages and Paid Contributions When the Wages Should Have Been Reported and Contributions Paid by Its Client**

a) When wages should have been reported and contributions paid by a client, but the wages were erroneously reported and the contributions paid by an employee leasing company, the Director shall, upon the joint request of the client and the employee leasing company, on a form available from the Director, transfer the contributions from the account of the employee leasing company to the account of the client, effective as of the dates that the report was submitted and the contributions paid by the employee leasing company, respectively. As a result, interest shall be due only to the extent that the amount due from the client exceeds the amount paid by the employee leasing company.

EXAMPLE: Employee Leasing Company X erroneously reports the wages of certain workers on its Wage Report and pays the contributions due on these wages. It is determined that the wages should have been reported instead by its client, Company Y. The Director shall, upon the joint request of Employee Leasing Company X and Company Y, transfer the payment made by Employee Leasing Company X to the credit of Company Y. The wages reported by the leasing company for Company Y's workers will also be credited to Company Y. As a result, Company Y will only owe additional contributions due, if any, to the extent that the amount due from it exceeds the amount paid by the employee leasing firm. To the extent that the payment by the employee leasing company was untimely or not sufficient to cover the amount due, interest shall accrue. If the amount paid by the employee leasing company exceeds the amount due from Company Y, Company Y may file a request for an adjustment or a refund of the overpayment to the extent and within the time allowed by Section 2201 of the Act.

b) Upon proper application of the client, on a form available from the Director, when wages should have been reported and contributions paid by a client, but the wages were erroneously reported and the contributions paid by an employee leasing company and the client presents evidence that the employee leasing company is no longer in business in Illinois and that the client was unable to obtain the assistance of the employee leasing company in complying with the requirements of subsection (a), the Director shall transfer available contributions from the account of the employee leasing company to the account of the client, effective as of the dates that the report was submitted and the contributions paid by the employee leasing company, respectively. As a result, interest shall be due only to the extent that the amount due from the client exceeds the amount paid by the employee leasing company and transferred to the client. For purposes of determining the amount of wages that should have been reported and contributions that should have been paid by the client, the Department shall use the amounts stated in any determination and assessment that has become final for the relevant quarters or, if none, the amount stated in an audit completed by the Department for the relevant quarters or, if none, the amounts stated in an amended wage report filed by the client. The Department shall use the total wages and wages subject to the payment of contributions stated in the determination and assessment, audit or amended wage report to adjust the employee leasing company's total wages and wages subject to the payment of contributions for each erroneously reported individual. For purposes of this subsection, available contributions, with respect to a quarter, means the product of the contribution rate used to calculate the amount of contributions that the employee leasing company paid for the quarter, multiplied by the wages on which the client should have paid contributions for the quarter, except as otherwise provided in this subsection. The amount of available contributions with respect to a quarter shall not exceed the amount of any credit standing to the employee leasing company's account for the quarter, as of the time of the application, based on the adjustment pursuant to this subsection with respect to the wages on which the client should have reported contributions. Before making a transfer pursuant to this subsection, the Department shall notify the employee leasing company, by certified mail at its last known address, of its intention to make a transfer of contributions pursuant to this subsection. The Department shall transfer the contributions unless the employee leasing company responds with information that contradicts the information provided by the client within 20 days after the date of mailing of the notice. If the employee leasing company timely responds with information that contradicts the information provided by the client, contributions shall not be transferred unless the parties submit a joint request under subsection (a). The notice shall not be necessary if the matter has been adjudicated as described in 56 Ill. Adm. Code 2725, and the employee leasing company was added as a necessary party under Section 2725.237 of that Part and given proper notice. The total amount of contributions transferred from an employee leasing company's account to a client's account pursuant to this subsection shall not exceed $1,000,000.

EXAMPLE 1: Employee Leasing Company X erroneously reports the wages of certain workers on its wage report and pays the contributions due on these wages. It is determined that the wages should have been reported instead by its client, Company Y. Y presents evidence that X is no longer in business and that there is no one who could agree to the joint transfer of contributions. The Director shall transfer any available contributions. If the amount of contributions available in the account of X is insufficient to cover the amount of contributions owed by Y, Y must pay the unpaid contribution balance, with interest, itself.

EXAMPLE 2: Employee Leasing Company X erroneously reports the wages of certain workers on its wage report and pays the contributions due on these wages. At the time, X's contribution rate was 1%, which resulted in $100 in contributions owed. It is determined that the wages should have been reported instead by its client, Company Y. Y presents evidence that X is no longer in business and that there is no one who could agree to the joint transfer of contributions. Y's contribution rate for the year was 6%, which will result in $600 in contributions owed by Y. Upon proper application of Y, the Director shall transfer the $100 in available contributions from the account of X to the account of Y. Y must pay the $500 in unpaid contributions, with interest, itself.

EXAMPLE 3: Employee Leasing Company A had agreements with Employers B, C and D for A to assume responsibility for personnel management of workers leased to each of B, C and D during the year 2016. Company A reported the identity of its clients B and C to the Department, as required by 56 Ill. Adm. Code 2732.306, but failed to report the identity of its client D. B, C and D each had one leased worker performing services for them; each leased worker was paid $10,000 in the first quarter of 2016. A's contribution rate for 2016 was 5%. Company A timely reported to the Department the wages of the leased workers providing services to B, C and D. According to the report submitted by A, A owed a total of $1,500 in contributions for the first quarter of 2016. However, A made payments to the Department totaling only $1,200. For 2016, B, C and D each had a contribution rate of 3.75%. In 2017, it is discovered that A failed to report D's identity to the Department and, therefore, D remained liable for the payment of contributions regarding its leased worker. D presents evidence that A is no longer in business in Illinois and that there is no one who could agree to the joint transfer of contributions. Under subsection (b), the amount of contributions available for transfer to D's account cannot exceed the amount of the credit standing to A's account for the quarter, as of the time of the application, based on the adjustment with respect to the wages on which D should have reported contributions due. The amount necessary to pay the contributions owed by A for the first quarter of 2016 is $1,000 (5% x $20,000). So even though D owes a total of $375 in contributions for 2016 (3.75% x $10,000), there is only $200 in available contributions to transfer to D's account ($1,200 - $1,000). D must pay the additional $175, plus interest, itself.

c) When multiple applications have been submitted under subsection (b), the applications shall be processed in the order in which the applications were received.

d) When multiple applications have been submitted under subsection (b), available contributions shall be transferred, as they become available, to the account that submitted the application that created the available contributions.

EXAMPLE: Employee Leasing Company A had agreements with Employers B, C and D for A to assume responsibility for personnel management of workers leased to each of B, C and D during the year 2016. Company A did not report the identity of B, C or D to the Department, as required by 56 Ill. Adm. Code 2732.306. B, C and D each had one leased worker performing services for them; each leased worker was paid $10,000 in the first quarter of 2016. A's contribution rate for 2016 was 5%. Company A timely reported to the Department the wages of the leased workers providing services to B, C and D. According to the report submitted by A, A owed a total of $1,500 in contributions. However, A made payments to the Department totaling only $500. For 2016, B, C and D also had contribution rates of 5%. In 2017, it is discovered that A failed to report D's identity to the Department and, therefore, D remained liable for the payment of contributions regarding its leased worker. D presents evidence that A is no longer in business in Illinois and that there is no one who could agree to the joint transfer of contributions. Under subsection (b), the amount of contributions available for transfer to D's account cannot exceed the amount of the credit standing to A's account for the quarter, as of the time of the application, based on the adjustment with respect to the wages on which D should have reported contributions due. At the time of D's application, the Department was not aware of A's relationship to B and C, or A's failure to report its relationship with B and C, and there was no credit standing to A's account. At the time of D's application, it appeared that the employee leasing company should have paid contributions of $1,000 for the first quarter of 2016. Since A paid only $500, there are no funds available to transfer to D. Subsequently, the Department discovers A's relationship with C, and the fact that the relationship was not properly reported to the Department, as required by 56 Ill. Adm. Code 2732.306. C's wages are removed from A's account, but still, there are no contributions available to transfer to C's account. At the time of C's application, it appears that A owes $500 in contributions for the first quarter of 2016. Since that is all A paid for the quarter, there is no credit standing to its account. Subsequently, the Department discovers A's relationship with B, and the fact that the relationship was not properly reported to the Department, as required by 56 Ill. Adm. Code 2732.306. B's wages are removed from A's account, which creates a credit balance of $500 in A's account. The available balance will transfer to the account of B.

(Source: Amended at 43 Ill. Reg. 1585, effective January 15, 2019)