

## OFFICE OF THE TAXPAYER RIGHTS ADVOCATE

The EDD's Tax Branch has established the Office of the Taxpayer Rights Advocate. The Taxpayer Rights Advocate is responsible for providing a clear, consistent focus on protecting the rights of the taxpayer.

Incorporated within the Office of the Taxpayer Rights Advocate is the Taxpayer Advocate Office, which is responsible for protecting the rights of taxpayers during all phases of the payroll tax administration, assessment, and collection process, while also protecting the interests of the state.

If you are unable to resolve a payroll tax problem with an EDD representative, supervisor, **and** office manager, you may contact the Taxpayer Advocate Office for assistance.

The Taxpayer Advocate Office will review the issues and facts of your case to ensure that your rights have been protected. The Taxpayer Advocate Office will also work to facilitate a resolution to your problem.

You may reach the Taxpayer Advocate Office at:

Employment Development Department  
Office of the Taxpayer Rights Advocate, MIC 93  
PO Box 826880  
Sacramento, CA 94280-0001

Toll-free: 1-866-594-4177  
Phone: 1-916-654-8957  
Fax: 1-916-654-6969

The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Requests for services, aids, and/or alternate formats need to be made by calling the Taxpayer Assistance Center at 1-888-745-3886 (voice), or TTY 1-800-547-9565.

# BILL OF RIGHTS

# EMPLOYERS'



# AS A CALIFORNIA EMPLOYER, YOU HAVE A RIGHT TO:

## COURTEOUS AND TIMELY SERVICE

You are always entitled to courteous and timely service from Employment Development Department (EDD) employees. If you believe you have been treated inappropriately, you should contact the employee's supervisor.

## CONFIDENTIALITY

Information maintained by the EDD is confidential and cannot be published or made available for public inspection. However, in certain instances, the law requires this information to be shared with other governmental agencies. When these instances occur, the EDD closely follows the law to protect your rights.

## ACCURATE ADVICE AND ASSISTANCE

You have the right to call upon the EDD for accurate information, assistance, and to have all your questions answered. The EDD's policy is not to penalize employers for failure to comply with the law if it can be substantiated that they acted on incorrect instructions from the EDD staff.

- **Employment Tax Offices (ETO)** are available to serve you when you need information or assistance. Your local ETO is listed in the [California Employer's Guide \(DE 44\)](#)(PDF) or by visiting the [Office Locator](#) (edd.ca.gov/Office\_Locator). You may also call the Taxpayer Assistance Center at 1-888-745-3886.
- **Answers to most questions** relating to employer reporting requirements, Unemployment Insurance and State Disability Insurance benefits, California Personal Income Tax, and various programs and services administered by the EDD are located in the [California Employer's Guide \(DE 44\)](#)(PDF). This guide is updated annually and available to all employers. Copies may be ordered online (edd.ca.gov/Forms/) or by calling 1-888-745-3886.
- **If you are not sure if your workers are employees or independent contractors under the law**, you may request a copy of the EDD's [Employment Determination Guide \(DE 38\)](#) (PDF) to help you make this determination. The EDD may also provide you with verbal guidance on employee or independent contractor issues and with general information sheets on various classes of employment. You can also request a written determination by using the [Determination of Employment Work Status for Purposes of State of California Employment Taxes and Personal Income Tax Withholding \(DE 1870\)](#)(PDF). Call the Taxpayer Assistance Center at 1-888-745-3886, visit your nearest ETO, or download the forms by visiting [Forms and Publications](#) (edd.ca.gov/Payroll\_Taxes/Forms\_and\_Publications.htm).
- **Information regarding seminar dates, times, locations, and subjects** is available on our [Payroll Tax Seminars](#) (edd.ca.gov/Payroll\_Tax\_Seminars/) or by calling 1-888-745-3886.

## CLEAR AND ACCURATE ACCOUNT STATEMENTS

If you owe taxes, you have the right to receive a clear and accurate account statement. Any adjustments made to your account will also be reflected in the statement. If you have questions or believe the statement contains an error, we encourage you to contact the EDD at the address or phone number provided on the statement.

## YOUR RIGHT TO REQUEST AN EXTENSION TO FILE RETURNS OR PAY TAXES

The California Unemployment Insurance Code provides that an extension may be granted for up to 60 days when **GOOD CAUSE** is shown for a delay.

Under an extension of time to pay, interest must be charged at the current annual rate and will accrue each day from the original delinquent date to the date of payment.

## YOUR RIGHT TO REQUEST A WAIVER OF PENALTY

If you are charged penalties for a late payroll tax return or payment, you may request that the penalties be waived. A waiver of penalty request will not be considered until the employer submits a

request on e-Services for Business or in writing that explains why good cause exists and the reason(s) for the untimeliness. Billing will continue while the request is being reviewed. To avoid accrual of interest and to stop the collection process, the amount due must be paid. If it is determined that the penalty should be waived and the penalty has already been paid, a refund will be issued or applied to any outstanding liability.

The request must include a detailed explanation showing **GOOD CAUSE** for the delay. Penalties may be waived when good cause is shown for a delay in:

- Filing and paying your *Payroll Tax Deposit* (DE 88) or filing your Electronic Funds Transfer.
- Filing and paying your *Quarterly Contribution Return and Report of Wages* (DE 9).
- Filing your *Quarterly Contribution Return and Report of Wages (Continuation)* (DE 9C).
- Filing and paying an adjustment on your *Quarterly Contribution and Wage Adjustment Form (DE 9ADJ)*(PDF).
- Filing and paying your *Employer of Household Worker(s) Annual Payroll Tax Return* (DE 3HW).
- Filing your *Employer of Household Worker(s) Quarterly Report of Wages and Withholdings* (DE 3BHW).

## WHAT CONSTITUTES GOOD CAUSE

*Good Cause exists where the circumstances causing the delay are clearly beyond the control of the employer or where the delay is due to a mistake or inadvertence under circumstances not reasonably foreseeable by the employer. Employers must establish that (1) they acted in good faith (demonstrated history of timely payment and reporting), (2) they acted in a diligent, timely, and prudent manner, and (3) the circumstances could not have been reasonably foreseen.*

## AN IMPARTIAL AUDIT

*If your business is selected for an audit, the EDD will attempt to schedule the audit at your convenience.*

*You have the right to an impartial audit and a full explanation of the audit findings.*

*You have the right to have someone, such as an attorney, enrolled agent, or accountant, present during the audit or to represent you in your absence.*

## YOUR RIGHT TO AN APPEAL

When you disagree with an action taken by the EDD, we encourage you to discuss the issues with an EDD representative, supervisor, **and** office manager.

You may also appeal certain actions to the California Unemployment Insurance Appeals Board (CUIAB). The CUIAB is a review board independent of the EDD. Actions that may be appealed to the CUIAB are:

- **An assessment** for payroll taxes including California Personal Income Tax and State Disability Insurance withholdings.
- **A denial of a request to transfer** an employer's Unemployment Insurance (UI) reserve account.
- **A denial of a protest to an unfavorable adjustment** to an employer's UI tax rate or the factors used to compute it.
- **A denial of a protest to the amount of UI benefits charged** to an employer's reserve account.
- **A denial of a claim for a credit or refund.**
- **A denial of a request to make a voluntary UI contribution** to reduce an employer's UI tax rate.

When the EDD takes an action that may be appealed, you will be notified by mail. To begin the appeal process, you must file a petition. The notice the EDD mails to you will explain your petition rights and responsibilities. Please read all the EDD notices carefully because strict time limits apply for filing appeals.

# TAX PAYMENT OPTIONS

Employers have a legal obligation to voluntarily report and pay payroll taxes and withholdings when due. California Personal Income Tax and State Disability Insurance are "trust fund taxes" that are withheld from employees' wages. You hold these funds "in trust" for the EDD.

## INSTALLMENT AGREEMENT

Although the California Unemployment Insurance Code does not provide for installment agreements, if immediate and full payment of payroll taxes creates a financial hardship, an installment agreement may be requested. Installment agreements will not be granted in cases where a commercial loan or other means are available to pay the liability. Contact your local ETO for information on installment plans or to request *Information Sheet: Installment Agreement (DE 631P)*(PDF).

When an installment agreement is approved, it is important to adhere to the terms of the agreement and to submit all future returns and payments timely. Failure to do so will initiate immediate collection action without further notice.

If, during the course of an approved installment agreement, it is discovered that you are able to pay the tax in full, the agreement may be canceled. The agreement may also be canceled if it is discovered that pertinent financial information was withheld.

In all instances of an approved installment agreement, the EDD will file a state tax lien. In addition, any refunds due to you by any other state agency will automatically be applied to the unpaid tax.

## OFFER IN COMPROMISE

In addition to payment plans, an Offer in Compromise (OIC) program has been established for accounts that are both inactive and out of business. **Qualified applicants** who do not have sufficient funds and/or assets to pay the liability within the foreseeable future may be able to eliminate their payroll tax liability at less than the full value. Contact the Offer in Compromise Group at 1-916-464-2739 for eligibility requirements.

## SETTLEMENTS PROGRAM

The EDD's Settlements Program allows an employer and the EDD to settle a disputed liability, thereby avoiding the risks and costs associated with litigating the disputed employment tax matter. Call the Settlements Office at 1-916-653-9130 for more information.

## COLLECTION ACTIVITIES

If you do not pay your payroll taxes, interest, and penalties, the EDD may begin to collect the money you owe using the following collection activities:

- **Filing a Notice of State Tax Lien (DE 2181) against your real or personal property.** Recorded liens will be released when the tax has been paid in full or if the lien was filed in error.
- **Issuing a Notice of Levy (DE 8005)** to financial institutions or other parties.
- **Issuing a warrant to seize and sell business and/or personal assets.** As a matter of policy, the EDD will not seize or sell the primary residence of a tax debtor.
- **Issuing an Earnings Withholding Order for Taxes (DE 9400).** No more than 25 percent of your gross wages may be withheld. You have the right to protest this action if it causes a financial hardship. A hearing officer will determine if the withholding order should be upheld, modified, or released. Information concerning your right to a hearing is included in your copy of the withholding order.
- **Filing of criminal charges** for certain violations of the California Unemployment Insurance Code.

*This brochure is for general information only and does not have the force or effect of law, rule, or regulation.*