

PERSONAL INCOME TAX WITHHOLDING — SUPPLEMENTAL WAGE PAYMENTS, MOVING EXPENSE REIMBURSEMENT — WARN ACT PAYMENTS

Supplemental Wage Payments

When supplemental wages (bonuses, commissions, overtime pay, sales awards, back pay - including retroactive wage increases, reimbursement for nondeductible moving expenses, etc.) are paid at the same time as regular wages, the Personal Income Tax (PIT) to be withheld shall be computed on the total of the supplemental and regular wages and shall be determined as if the total of the supplemental wages and the regular wages constituted a single wage payment for the regular payroll period.

When supplemental wages are not paid at the same time the employee's regular wages are paid, you may choose one of two methods for determining the amount of PIT to withhold:

- Compute the amount of PIT to withhold based on the total of the supplemental wages and the employee's current or most recent regular (gross) wage payment. The computed tax minus the tax already withheld from the regular wages is the tax to be withheld from the supplemental wages, or
- Withhold at a flat rate without allowing for any withholding exemptions claimed on the employee's withholding allowance certificate. For stock options and bonuses that were paid on or after November 1, 2009, the flat rate is 10.23 percent. For other types of supplemental wage payments made on or after November 1, 2009, the flat rate is 6.6 percent. (Note: Supplemental wage payments made prior to November 1, 2009, were subject to rates of 9.3 and 6 percent respectively.)

If vacation pay is paid in addition to regular wages for the vacation period, such vacation pay is to be treated as a supplemental wage payment.

Moving Expense Reimbursement

A moving expense reimbursement in connection with a move out of California is considered compensation for future services. The reimbursement would not be included as California income because the individual is no longer considered a resident of California. The reimbursement is not subject to California PIT withholding.

If an employee receives reimbursement in connection with a move to or within California, the reimbursement is considered compensation paid to a California resident for future services. Whether the compensation is considered wages for PIT purposes depends on whether the reimbursement was for qualified expenses.

- Reimbursement for qualified expenses is not subject to PIT withholding and not reportable as PIT wages on the *Quarterly Contribution Return and Report of Wages (Continuation)* (DE 9C). Qualified expenses are those which, at the time of payment, it was reasonable to believe would be deductible by the employee under Section 217 of the Internal Revenue Code (IRC).
- Reimbursement for nonqualified expenses is subject to PIT withholding and reportable as PIT wages on the DE 9C. Nonqualified expenses are those which, at the time of the payment, it was not reasonable to believe would be deductible by the employee under Section 217 of the IRC. Compensation for nondeductible expenses (for example, loss on the sale of a home, househunting expenses, meal expenses while traveling to the new location, etc.) - including any payment made under a non-accountable plan - would be considered reimbursement for nonqualified expenses.

WARN Act Payments

Employers subject to Federal and/or California Worker Adjustment and Retraining Notification (WARN) legislation are required to provide a 60-day notice to their employees prior to a plant closure or mass layoff. Failure to comply with the notification requirements may result in the employer being liable for back pay to each impacted employee for each day of violation. Although not subject to Unemployment Insurance, Employment Training Tax, or State Disability Insurance,* these payments are subject to PIT withholding and should be reported as PIT wages on the DE 9C.

- If the back pay award is paid to the employee using the employee's regular pay periods, compute the tax as if the payments were regular wages, taking into consideration the employee's withholding allowances as shown on the employee's withholding allowance certificate.
- If the back pay award is paid to the employee in a single lump sum, withhold at a flat rate of 6.6 percent without allowing for any withholding exemptions claimed on the employee's withholding allowance certificate. (Note: Back pay awards made prior to November 1, 2009, were subject to a flat rate of 6 percent.)

*Includes Paid Family Leave (PFL).

For more detailed information regarding WARN legislation and relevant legal citations, refer to the *California Employer's Guide* (DE 44).

Additional Information

For further assistance, please contact the Taxpayer Assistance Center at (888) 745-3886 or visit the nearest Employment Tax Office listed in the DE 44 or access the Employment Development Department's Web site at www.edd.ca.gov/Payroll_Taxes/.

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 (888) 745-3886 (voice) or TTY (800) 547-9565.

This information sheet is provided as a public service, and is intended to provide non-technical assistance. Every attempt has been made to provide information that is consistent with the appropriate statutes, rules, and administrative and court decisions. Any information that is inconsistent with the law, regulations, and administrative and court decisions is not binding on either the Employment Development Department or the taxpayer. Any information provided is not intended to be legal, accounting, tax, investment or other professional advice.