

## 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 giving clear and consistent focus on protecting the rights of the taxpayer.

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 help with 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: 1-916-449-9498  
Email: [TaxTSDTAO@edd.ca.gov](mailto:TaxTSDTAO@edd.ca.gov)

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

### Confidentiality

Information maintained by us is confidential and cannot be published or made available for public review. However, in some cases, the law requires this information to be shared with other governmental agencies. When this happens, we follow the law to protect your rights.

### Accurate Advice and Assistance

You have the right to call the EDD for information, help, and questions you have.

- Employment Tax Offices (ETO) are available to help when you need information. Find your local ETO in the [California Employer's Guide \(DE 44\) \(PDF\)](http://edd.ca.gov/siteassets/files/pdf_pub_ctr/de44.pdf) ([edd.ca.gov/siteassets/files/pdf\\_pub\\_ctr/de44.pdf](http://edd.ca.gov/siteassets/files/pdf_pub_ctr/de44.pdf)) or by visiting the [Office Locator](http://edd.ca.gov/Office_Locator) ([edd.ca.gov/Office\\_Locator](http://edd.ca.gov/Office_Locator)). You can also call the Taxpayer Assistance Center at 1-888-745-3886.
- The DE 44 also includes information about employer reporting requirements, Unemployment Insurance and State Disability Insurance benefits, California Personal Income Tax, and other EDD programs and services. This guide is updated annually and available to all employers. Copies can be found [online](http://edd.ca.gov/forms) ([edd.ca.gov/forms](http://edd.ca.gov/forms)). Select **Keyword(s) or Form Number** and enter DE 44.
- If you are not sure your workers are employees or independent contractors, the [Employment Determination Guide \(DE 38\) \(PDF\)](http://edd.ca.gov/siteassets/files/pdf_pub_ctr/de38.pdf) ([edd.ca.gov/siteassets/files/pdf\\_pub\\_ctr/de38.pdf](http://edd.ca.gov/siteassets/files/pdf_pub_ctr/de38.pdf)) can help you. We are available to help with employee or independent contractor issues and provide information sheets on various classes of employment. You can 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 \(DE 1870\) \(PDF\)](http://edd.ca.gov/siteassets/files/pdf_pub_ctr/de1870.pdf) ([edd.ca.gov/siteassets/files/pdf\\_pub\\_ctr/de1870.pdf](http://edd.ca.gov/siteassets/files/pdf_pub_ctr/de1870.pdf)). Copies can be found [online](http://edd.ca.gov/forms) ([edd.ca.gov/forms](http://edd.ca.gov/forms)). Select **Keyword(s) or Form Number** and enter the DE 38 or DE 1870.
- Information on seminar dates, times, locations, and subjects is available on [Payroll Tax Seminars](http://edd.ca.gov/Payroll_Tax_Seminars) ([edd.ca.gov/Payroll\\_Tax\\_Seminars](http://edd.ca.gov/Payroll_Tax_Seminars)).
- For questions or more information, you can call our Taxpayer Assistance Center at 1-888-745-3886 or visit your local ETO.

### 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 be reflected in the statement. If you have questions or believe the statement contains any errors, we encourage you to contact us at the address or phone number on the statement.

## 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 Request an Extension to File Returns or Pay Taxes

The California Unemployment Insurance Code grants extensions 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](http://edd.ca.gov/eServices) (edd.ca.gov/eServices) or in writing that explains the reason for the delay. 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.

The request must include a detailed explanation showing good cause for the delay and penalties may be waived when:

- 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 is Good Cause?

Good cause is when the situation causing the delay is beyond the control of the employer, or the delay is because of a mistake or oversight not seen.

### Employers must establish:

- They acted in good faith and have shown a history of timely payment and reporting.
- They acted in a diligent, timely, and sensible manner.
- The circumstances could not have been foreseen.

## Your Right to an Appeal

You have the right to appeal. If you disagree with our decision, you can discuss the issues with an EDD representative, supervisor, and office manager.

You may also appeal 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 we take an action that can be appealed, you will be notified by mail. To file an appeal, you must file a petition. The notice we mail to you will explain your petition rights and responsibilities. Read all the EDD notices carefully because there are different time frames to file 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 installment agreements, if immediate and full payment of payroll taxes creates a financial hardship, an installment agreement can be requested. Installment agreements will not be granted in cases where a commercial loan or other means are available to pay the liability. For more information on installment agreements, review the [Information Sheet: Installment Agreement \(DE 631P\) \(PDF\)](http://edd.ca.gov/siteassets/files/pdf_pub_ctr/de631p.pdf) (edd.ca.gov/siteassets/files/pdf\_pub\_ctr/de631p.pdf).

When an installment agreement is approved, it is important to follow the terms of the agreement and to submit all future returns and payments timely. Failure to meet the terms of the installment agreement may result in involuntary collection actions, including levies, liens, seizure, and sale of assets.

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 financial information was withheld.

Even if the installment agreement is approved, offsets of any state refunds and federal income tax refunds will be enforced during the payment term. Any payments received from these sources will be in addition to the installment payments.

## 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 enough funds and 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 OIC 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, by 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, we 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. You have the right to file a claim of exemption if you believe that your funds should be exempt from levy. You may have the right to an automatic exemption or have an exemption claim filed by a third-party. For instructions on how to file a claim of exemption, review the *Employee Instructions* (WG-003).
- Issuing a warrant to seize and sell business and personal assets. 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.

If you have any questions about these collection activities, contact the Tax Collection Section at 1-888-435-4990.

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