



National Payroll Reporting Consortium

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February 15, 2018

Michele Sutton-Riggs
Division Chief
UI Division
California Employment Development Department
722 Capitol Mall, MIC 40
P.O. Box 826880, MIC 40
Sacramento, CA 94280-0001

via email

Dear Division Chief Sutton-Riggs:

We are writing to convey the concerns of our members, and the employers that they represent, concerning the policy used by the California Economic Development Department (EDD) to determine when it is permissible to provide a new employer a tax identification number to file and pay state income tax withholding and unemployment insurance taxes.

The National Payroll Reporting Consortium (“NPRC”) is a non-profit trade association whose member organizations provide payroll processing and related services to nearly two million U.S. employers, representing over 36% of the private sector workforce. Payroll service providers have long served an important role in our nation’s tax collection system as a conduit between employers and government authorities. Payroll service providers improve the efficiency of government tax collections and reporting through electronic payment and reporting programs, and improve employer compliance.

The issue at hand concerns the EDD policy to not issue new employers a state Employer Identification Number (EIN) until they have already paid at least \$100 in wages in a quarter. As a practical matter, new employers need to obtain their tax EIN in advance of tax payment due dates, which can literally be the day after the first pay date for large employers, but more typically within two to five days of the payment of wages. This is even more important now that employers are generally required to remit all state taxes electronically, because the employer must take time to set up the electronic remittance system, which of course requires an EDD-issued EIN.

In general, state revenue (income tax) agencies willingly provide employers their tax ID numbers when they are requested. In California, EDD will not issue an EIN to a new employer until it actually pays wages. Thus, even an employer that knows it will pay wages imminently may not qualify under EDD’s strict guidelines (for example, workers may have already been hired and have begun working but have not reached their first pay date). Consequently, under current systems, every new California employer faces a “catch-22” situation in which they

*Automatic Data Processing ★ BenefitMall/CompuPay ★ Ceridian
Fidelity Employer Services Company LLC ★ Gusto ★ Intuit ★ Paychex ★ Paycor
Paycom ★ Paylocity ★ Payroll People ★ PrimePay ★ Ultimate Software*



cannot meet the state’s requirements for remitting withholding and SDI taxes with an assigned EIN by the first due date.

These strict rules for assigning new employer account numbers were likely put in place in response to the policies of the U.S. Department of Labor (USDOL), in which strict uniform definitions are required for states to report the number of active employer accounts on the quarterly ETA 581 – Contributions Operations report.

E. Definitions

1. Report Quarter. A calendar quarter (3 months) referenced on ETA reports covering a state's activities and transactions occurring within or existing as of the end of the quarter specified.
2. Active Employer. An "employer" (single or multi-unit) who has met a specific threshold or condition of liability contained in the state’s unemployment compensation law, is currently registered and required to file contribution and wage reports (CWRs), and (except for new employers establishing liability within the 581 report quarter) has reported wages during one or more of the eight consecutive calendar quarters immediately preceding the ETA 581 report quarter.

In order to promote uniform reporting for all state agencies, USDOL requires states to report only employers that have met the state’s threshold of liability. The reason for this strict definition is that each state’s number of active employer accounts is one of the factors that USDOL uses to determine the amount of federal administrative funding allocated to each state for administering its UI tax program.

**Attachment A - Summary of National Unemployment Insurance (UI) Tax Performance
Computed Measures (CM) for Calendar (CY) 2011 and CY 2010**

CM Number	National Summary Table Number on ETA Web Site ¹	CM Name	National CM Value for CY 2011 ²	National CM Value for CY 2010 ²
1	1	Status Determinations – Percent of new employers established within 90 days from last day of the quarter in which employers became liable	87.6%	86.5%

Additionally, the percentage of new status determinations made within 90 days from the last day of the quarter in which the employer became liable is a core GPRA measure for state tax performance measurement. We understand and appreciate the importance of this information and support USDOL continuing to enforce the integrity of this data.

However, none of these USDOL policies prohibit states from issuing state EINs to employers before they actually attain the state threshold of liability. States can issue account numbers as long as they do not count them as active employers on the ETA 581 report until they meet the state’s liability threshold. Our members would hope that most state UI tax systems would be sufficiently robust to ignore non-liable employers and identify only employers that meet the state’s liability threshold to be counted as an active employer on the federal ETA 581 report.

We also understand that state UI tax accounting and delinquency systems may need to account for quarterly tax returns for accounts that have been assigned account numbers in anticipation



of liability. States would likely expect employers to file no-wage returns for those quarters and we would comply with that requirement. Additionally, most EIN applications ask for the anticipated date of first wage payments, and return filing obligations are typically established based on the anticipated first wage payment date.

We hope that these recommendations are helpful to the Department. We offer to discuss these issues with you to answer any questions that you may have. Please contact me at (973) 840-1686 or Tom.Crowley@adp.com if we can be of service. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Thomas P. Crowley". The signature is written in a cursive style and is positioned over a light blue rectangular background.

Thomas P. Crowley
National Payroll Reporting Consortium, Inc.

CC Selvi Stanislaus, Executive Officer, California Franchise Tax Board
Jacob Roper, Public Affairs Officer, California Franchise Tax Board