

Amend Unemployment Insurance Code Section 1095 to authorize the Board to admit the Employment Development Department's confidential employment tax information into evidence at the Board's administrative hearings for feepayer appeals and to submit such information into evidence in court proceedings.

Source: Environmental Fees Division

Existing Law

Under existing Unemployment Insurance Code (UIC) Section 1094, unless specifically provided, the information obtained by the Employment Development Department (EDD) in the administration of the UIC is confidential, not open to the public, and shall be for the exclusive use and information of the director of EDD in discharge of his or her duties. The EDD's release of its confidential information to state, local, and federal government agencies, and to certain other entities/persons, must be statutorily authorized in the UIC and is subject to a confidentiality requirement.

Subdivision (b) of Section 1094 states that information released to authorized entities pursuant to other provisions of the code shall not be admissible in evidence in any action or special proceeding, other than one arising out of the provisions of the UIC or as permitted in Section 1095, which describes the specific situations in which other federal, state, and local governmental agencies may use the information for the purposes specified. The Board is such an "authorized entity" since it is statutorily authorized to receive EDD's employment tax information.

As an authorized receiver, the Board uses the EDD's confidential information to verify a feepayer's reported number of employees for both the environmental fee and the occupational lead poisoning prevention fee. The applicability and amount of the fee for both programs is based, in part, on the size of a feepayer's employee workforce. The Board also uses EDD's information to discover unregistered feepayers and underreported taxes and/or fees, and to verify refunds. In addition, the EDD's information is useful for collection purposes and as a basis for claims in bankruptcy. Consequently, the EDD's information is critical to arriving at the correct resolution of a fee dispute heard by the Board in an administrative hearing or litigated in a court proceeding.

Background

Beginning January, 1, 2007, Assembly Bill 1803 (Ch. 77, Stats. 2006) expanded the environmental fee to include general partnerships, limited partnerships, limited liability partnerships, limited liability companies and sole proprietorships, as well as corporations. The expansion of the fee was intended to address the erosion in the annual environmental fee base, which was occurring in part because fewer businesses were being classified as corporations. The implementation of this legislation resulted in an increase in the number of registrants by approximately 7,700. Thus there was a corresponding increase in revenue and an increase in appealed assessments, thereby placing greater pressure on limited audit resources to review payroll records in spite of the fact that the program only received one audit position to manage the increased workload.

Moreover, in the past, the Board has relied upon an interagency agreement with the EDD in which the Board believed that the EDD information could be used in “any action or special proceeding,” as long as it was presented in summary form. Recently, the EDD reiterated to Board staff that Section 1094 provisions specify that the confidential information released to authorized entities cannot be admitted in evidence in “any action or special proceeding” unless specifically authorized by Section 1094 or 1095, or some other statutory provision in the UIC.

The most recent information sharing agreement with EDD, which covers the period November 1, 2008 through June 30, 2011, specifies that the EDD will provide access to its confidential information, provided the Board “maintains confidentiality of the information as required by UIC Section 1094.” There is no ambiguity in the most recent agreement, which has prompted the Board to change its practices in using the information, and in the case of both the environmental fee and the occupational lead poisoning prevention fee, ensures that the Board would need to audit an employer’s actual payroll records. However, even examination of the actual payroll records does not eliminate the need for the Board to access and compare actual payroll to that reported to EDD, which still results in the potential for a Board assessment to be based on EDD payroll records. Auditing actual payroll records is intrusive to the feepayer, costly to the state, and inefficient, when this same information is readily available to the Board by directly accessing EDD information.

This Proposal

This proposal would amend UIC Section 1095 to specifically authorize the Board to admit into evidence EDD’s confidential employment tax information in Board hearings and court proceedings to resolve disputes regarding the Board’s administration of a fee or tax law, the amount owed by a tax or feepayer, or the amount to be refunded.

The use of this information to sustain a taxpayer liability, or verify a refund, is consistent with the use of other confidential information obtained by the Board. This proposal would also ease the compliance burden on employers, as the use of EDD information is less burdensome than providing access to their payroll records. This proposal clarifies in statute that the Board may efficiently and effectively use the information it currently obtains from the EDD to enforce the tax and fee laws it administers.

Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes and may require reimbursement for all direct costs incurred in providing any and all information specified in this section, except information specified in subdivisions (a) to (e), inclusive:

- (a) To enable the director or his or her representative to carry out his or her responsibilities under this code.
- (b) To properly present a claim for benefits.
- (c) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(d) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000).

(e) To enable an employer to receive a reduction in contribution rate.

(f) To enable federal, state, or local government departments or agencies, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, or Part A of Title IV of the Social Security Act, where the verification or determination is directly connected with, and limited to, the administration of public social services.

(g) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(h) To enable state or local governmental departments or agencies to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or to enable the collection of expenditures for medical assistance services pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.

(i) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code, or by any federal law enforcement officer to whom the Attorney General has delegated authority to enforce federal search warrants, as defined under Sections 60.2 and 60.3 of Title 28 of the Code of Federal Regulations, as amended, and when the requesting officer has been designated by the head of the law enforcement agency and requests this information in the course of and as a part of an investigation into the commission of a crime when there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency.

(1) This subdivision shall not be construed to authorize the release to any law enforcement agency of a general list identifying individuals applying for or receiving benefits.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(j) To provide public employee retirement systems in California with information relating to the earnings of any person who has applied for or is receiving a disability income, disability allowance, or disability retirement allowance, from a public employee retirement system. The earnings information shall be released only upon written request from the governing board specifying that the person has applied for or is receiving a disability allowance or disability retirement allowance from its retirement system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(k) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code.

(l) To enable federal, state, or local governmental departments or agencies to administer child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(m) To provide federal, state, or local governmental departments or agencies with wage and claim information in its possession that will assist those departments and agencies in the administration of the Victims of Crime Program or in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been or can be recovered.

(n) To provide federal, state, or local governmental departments or agencies with information concerning any individuals who are or have been:

(1) Directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law.

(2) Delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by those agencies. The information released by the director for the purposes of this paragraph shall not include unemployment insurance benefit information.

(o) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations. For the purposes of this subdivision, "authorized governmental agency" means the district attorney of any county, the office of the

Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body.

(p) To enable the Director of the Bureau for Private Postsecondary and Vocational Education, or his or her representatives, to access unemployment insurance quarterly wage data on a case-by-case basis to verify information on school administrators, school staff, and students provided by those schools who are being investigated for possible violations of Chapter 7 (commencing with Section 94700) of Part 59 of the Education Code.

(q) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists. For purposes of this subdivision, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information that is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

(r) To enable city and county planning agencies to develop economic forecasts for planning purposes. The information shall be limited to businesses within the jurisdiction of the city or county whose planning agency is requesting the information, and shall not include information regarding individual employees.

(s) To provide the State Department of Developmental Services with wage and employer information that will assist in the collection of moneys owed by the recipient, parent, or any other legally liable individual for services and supports provided pursuant to Chapter 9 (commencing with Section 4775) of Division 4.5 of, and Chapter 2 (commencing with Section 7200) and Chapter 3 (commencing with Section 7500) of Division 7 of, the Welfare and Institutions Code.

(t) To provide the California State Board of Equalization with employment tax information that will assist in the administration of tax programs. The information shall be limited to the exchange of employment tax information essential for tax administration purposes to the extent permitted by federal law and regulations.

~~(tu)~~ Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

~~(uv)~~ The disclosure of the name and address of an individual or business entity that was issued an assessment that included penalties under Section 1128 or 1128.1 shall not be in violation of Section 1094 if the assessment is final. The disclosure may also include any of the following:

- (1) The total amount of the assessment.

(2) The amount of the penalty imposed under Section 1128 or 1128.1 that is included in the assessment.

(3) The facts that resulted in the charging of the penalty under Section 1128 or 1128.1.

(~~v~~w) To enable the Contractors' State License Board to verify the employment history of an individual applying for licensure pursuant to Section 7068 of the Business and Professions Code.

(~~w~~x) To provide any peace officer with the Division of Investigation in the Department of Consumer Affairs information pursuant to subdivision (i) when the requesting peace officer has been designated by the Chief of the Division of Investigation and requests this information in the course of and as part of an investigation into the commission of a crime or other unlawful act when there is reasonable suspicion to believe that the crime or act may be connected to the information requested and would lead to relevant information regarding the crime or unlawful act.

(~~x~~y) To enable the Labor Commissioner of the Division of Labor Standards Enforcement in the Department of Industrial Relations to identify, pursuant to Section 90.3 of the Labor Code, unlawfully uninsured employers. The information shall be provided to the extent permitted by federal law and regulations.

(~~y~~z) To enable the Chancellor of the California Community Colleges, in accordance with the requirements of Section 84754.5 of the Education Code, to obtain quarterly wage data, commencing January 1, 1993, on students who have attended one or more community colleges, to assess the impact of education on the employment and earnings of students, to conduct the annual evaluation of district-level and individual college performance in achieving priority educational outcomes, and to submit the required reports to the Legislature and the Governor. The information shall be provided to the extent permitted by federal statutes and regulations.

(~~z~~aa) To enable the Public Employees' Retirement System to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, benefits provided under Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code.