



M E M O R A N D U M

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Subject: **Mandatory Reporting under the Unemployment Insurance Code and Title 22**

BACKGROUND

Since the early 1930s, the State of California has collected data from employers via survey forms on behalf of the Bureau of Labor Statistics (BLS). The BLS 790 Report on Current Employment Statistics (CES) is one of five statistical programs operated by the Employment Development Department's (EDD) Labor Market Information Division (LMID) under an annual Cooperative Agreement with BLS.

FACTS

The BLS survey forms provide the following:

"Please note this report is mandatory in California, under Section 320.5 of the Unemployment Insurance Code and Section 320.5.1 through 320.5-28, Title 22 of the California State Administrative Code."

These sections mandate that employers to report certain required information to EDD and only EDD.

Budget cuts and technological advances have changed the relationship between BLS and LMID, in regards to the BLS 790 Report on CES. As of July 1, 2007, LMID will no longer be mailing this survey, nor directly receiving forms from employers. Currently, 90 percent of these functions are conducted by BLS. Prior to this upcoming change LMID did send out forms to employers, but data was collected by BLS. Under the new system LMID will continue to use the data to produce statewide and local employment and hours and earnings estimates.

ISSUES

Are employers mandated to report under Unemp. Ins. Code 320.5 and Cal. Code Regs., tit.22, §320.5-1 through 320.5-28 if EDD will no longer be collecting data or

mailing out forms to employers?

ANSWER

Unemp. Ins. Code § 320.5 and Cal. Code Regs., tit. 22, § 320.5-1 through § 320.5-28 require employers to report information only to EDD.

ANALYSIS

I. California Unemployment Insurance Code

Unemp. Ins. Code § 320.5 provides the following:

“The Director of the Employment Development may by authorized regulations prescribe the information required to be **reported to the department** by employing units under this division and employersin order to make reports required by the Secretary of Labor.... (emphasis added.)

“If the plain, commonsense meaning of a statute's words is unambiguous, the plain meaning controls.” (*Fitch v. Select Products, Co.* (2005) 36 Cal.4th 812, 818.) According to the plain language, Unemp. Ins. Code § 320.5 allows the Director to promulgate regulations that prescribe the information employers must report to the Department¹ in order to make various reports. Unemp. Ins. Code § 320.5 does not allow the Director to authorize regulations requiring employers to report information to any other person or entity, other than EDD.

II. Title 22 of the California Code of Regulations

Cal. Code Regs., tit. 22, § 320.5-1, sub. (a) reiterates that “..the director is authorized to prescribe by regulations the information required to be **reported to the department** by employing units and employers ...” The purpose for obtaining the information is for the Director to make monthly reports to the Secretary of Labor. Nevertheless, the Director can only promulgate regulations specifying the information required to be reported to EDD.

Cal. Code Regs., tit. 22, § 320.5-1, sub. (c) sets the general reporting requirements for monthly reports. Employers are required to report to EDD on a monthly report supplied by the Department. (*Id.*) As of July 1, 2007, BLS will be supplying and

¹ “Department” is defined as the Employment Development Department, which may be referred to as Department of Employment Development. (Unemp. Ins. Code § 133; 22 CCR 125-1.)

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mailing the form to employers and EDD will no longer be providing the form. The Director² may require employers to report additional information. (Cal. Code Regs., tit. 22, § 320.5-1, subd. (c)(9).) Nothing in Cal. Code Regs., tit. 22, § 320.5-1, subd. (c) provides that employers must report to any other entity, other than EDD. Consequently, employers will not be mandated to report to BLS under CCR § 320.5-1.

Moreover, EDD may demand from an employer any report the employer fails to submit or is unsatisfactory. Accordingly, EDD is the only entity that may demand reports and information from employers. (Cal. Code Regs., tit. 22, § 320.5-1, subd. (f) and (c).)

Lastly, 22 CCR § 320.5-2 sets the standards and requirements for information needed by the Director in an annual or less frequent report in order to report to the Secretary of Labor. 22 CCR § 320.5-2(b) provides:

“When requested by the department, every reporting employer shall report to the department the following information...on a form supplied by the department...”

Again, only EDD may request the information from employers on a form supplied by EDD. Since EDD will no longer be requesting the information nor providing the forms, 22 CCR § 320.5-2 is inapplicable.

CONCLUSION

Unemp. Ins. Code § 320.5 and Cal. Code Regs., tit. 22, § 320.5-1 through 320.5-28 mandates that employers report required information to EDD. Other governmental or public agencies cannot use Unemp. Ins. Code § 320.5 and Cal. Code Regs., tit. 22, § 320.5-1 through 320.5-28 to require employers to report information to it.



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² “Director” is defined as the Director of Employment Development. (Unemp. Ins. Code § 134; Cal. Code Regs., tit. 22, § 125-1.)