

## WAIVER OF PENALTY POLICY

A request for waiver of a penalty requires an evaluation of the facts presented in writing by the employer. For the Employment Development Department (EDD) to waive the penalty, the employer must establish that good cause or reasonable cause exists, based on the facts involved in the actual case. Good cause or reasonable cause are issues when an employer fails to comply in a timely manner with certain requirements of the [California Unemployment Insurance Code \(CUIC\)](#) or title 22, [California Code of Regulations](#).

Provisions for waiver of penalty for good cause are in sections 803, 991, 1088.5, 1088.8, 1111, 1112, 1112.5, 1114, 1116, 1117, and 13057 of the CUIC. Provisions for waiver of penalty for reasonable cause are in section 13052 of the CUIC. Good cause and reasonable cause have been interpreted by the [California Unemployment Insurance Appeals Board \(CUIAB\)](#) to have virtually the same meaning.

Penalties charged under sections 1126 and 1135 of the CUIC, or any other CUIC section that does not specifically indicate provisions for waiver of penalty, cannot be waived.

### Waiver of Penalty

A waiver of penalty request will not be considered until the employer submits a request through e-Services for Business or in writing that explains why good cause exists and the reason(s) for the untimeliness. Billing will continue while the request is reviewed. To avoid the accrual of interest and 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 to any outstanding liability.

### Existence of Good Cause

Good cause exists where the circumstances causing the delay are clearly beyond the control of the employer or where the delay is due to a mistake or inadvertence under circumstances not reasonably foreseeable by the employer. In other words, the delay is not attributable to the employer's fault.

Employers are expected to discharge their basic employer responsibilities and, therefore, must establish all of the following:

1. They acted in good faith (demonstrated history of timely payment and reporting).
2. They acted in a diligent, timely, and prudent manner.
3. The circumstances could not have been reasonably foreseen.

A good cause determination must always take into account the total time period taken by the employer or his/her representative to comply with the EDD's requirements.

### Precedent Tax Decisions

The EDD is required to follow the guidelines set forth in precedent tax decisions issued by the CUIAB when determining whether good cause exists.

According to Precedent Tax Decision P-T-23, good cause must be more than a mere excuse. It must be a substantial reason which affords a legal excuse accompanied by that degree of diligence which men of ordinary prudence would have used under similar circumstances. Good cause will depend largely upon the facts and circumstances of each case.

Precedent Tax Decision P-T-449 addresses good cause in the case of a delayed remittance. In the decision, the CUIAB stated that the employer had established a system for filing returns/reports and remittances that it had reason to believe was adequate and the belief was grounded in prior experience and not mere speculation. Therefore, an isolated instance of inadvertence not reasonably foreseeable by the employer constitutes a substantial reason which affords a legal excuse. In this case, the prior history of the petitioner was considered, showing strong evidence that the petitioner had reason to believe its system was adequate.

In addition, the CUIAB stated in P-T-449 that when an employer is aware that its procedures for reporting and paying its tax obligations are inadequate and that employer does not meet the time limits for filing the proper forms or making the proper payments to the EDD, it will be at fault and will not have good cause for the delay.

**NOTE:** Unforeseen financial hardship is not grounds for good cause. In Precedent Tax Decision P-T-449, the CUIAB stipulated that "lack of funds to pay the amount owing on a return does not constitute good cause."

## Examples Where Good Cause Does Exist

- The employer's return and remittance for California was inadvertently placed in the wrong envelope and mailed timely to the Commonwealth of Virginia. The CUIAB determined the employer's late filing was due to an isolated instance of inadvertence not reasonably foreseeable by the petitioner and not attributable to any fault of the petitioner (P-T-449).
- An employer failed to affix proper postage to an envelope with a timely remittance enclosed. The CUIAB determined the employer made a good faith effort to file on time and believed it had done so. All other payments and filings were made timely to the EDD and this was an exception to that practice. In this case, good cause existed.
- Good cause existed where the employer, under the distress of the sudden illness of the employer's father, was unable to file and pay the contributions due timely.
- Catastrophic occurrences, such as fire or earthquake, or delays attributable to the postal service, would clearly give the employer good cause (P-T-449). The catastrophic occurrences would be subject to when the calamity actually took place in relation to the time when the taxes were due.

## Examples Where Good Cause Does Not Exist

- The CUIAB held that an employer's reliance upon another to perform acts does not constitute good cause since he or she may not complain of his or her voluntary delegation of authority and, as principal, is bound by the action or inaction of his or her agent.
- The employer contracted with an accountant to handle its tax obligations. The accountant failed to file reports while assuring the employer that all deadlines were being met. The employer had a duty to select a responsible accountant but did not do so. The employer also failed to specify what assurances were given by the accountant. Therefore, the employer failed to establish it acted with the degree of diligence a person of ordinary prudence would have used under the same or similar circumstance. In this case, good cause did not exist.
- An employer's public accountant prepared the return, but no one was available to draw the check. The accountant mailed the employer's return unaccompanied by payment. The CUIAB found the cause for failure to be the accountant's lack of knowledge of the law coupled with the employer's failure to have a responsible agent with the authority to draw checks on its behalf to properly discharge its responsibility to make contributions. Good cause did not exist because there was no element beyond the control of the employer.
- The mere fact that one partner may have been defrauded does not constitute good cause for the partnership not filing and paying returns in a timely manner. The partner had knowledge of the "credentials" or lack thereof possessed by the other partners. The partner's conduct in entrusting the total business to them did not demonstrate the use of prudence or diligence.

The above-mentioned cases may not encompass the entire set of factors used by the CUIAB in establishing the existence or lack of good cause, and are presented here as examples only. The EDD and the CUIAB will determine good cause on a case-by-case basis.

### ADDITIONAL INFORMATION

For further information, please contact the Taxpayer Assistance Center at 1-888-745-3886, or visit the nearest Employment Tax Office listed in the *California Employer's Guide*, DE 44, and on the EDD website at [www.edd.ca.gov/Office\\_Locator/](http://www.edd.ca.gov/Office_Locator/).

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 1-888-745-3886 (voice) or TTY 1-800-547-9565.

This information sheet is provided as a public service and is intended to provide nontechnical 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.