

## UNITY OF ENTERPRISE

The Employment Development Department (EDD) administers payroll reporting requirements for the Unemployment Insurance (UI), Employment Training Tax (ETT), State Disability Insurance\* (SDI), and Personal Income Tax (PIT) withholding programs in accordance with the California Unemployment Insurance Code (CUIC). Every commercial employer who hires one or more employees to perform services in California and pays accumulative wages exceeding \$100 during a calendar quarter becomes subject to the provisions of the CUIC. Each subject employer is then required to register with the EDD within 15 days of becoming subject or when there is a change in ownership. In addition, any changes in business status should be reported by logging onto the EDD's e-Services for Business website at [www.edd.ca.gov/e-Services\\_for\\_Business](http://www.edd.ca.gov/e-Services_for_Business) to manage account information or download and complete the appropriate [DE 1](#) registration form.

Whenever there is a change in the employer's legal entity or when two or more related businesses have a common ownership and purpose, the EDD must determine if the new legal entity constitutes a new and separate employing unit for UI experience rating\*\* purposes or if there is a single, continuing employing unit commonly referred as a Unity of Enterprise (UE). If it is determined that a UE does not exist, the new legal entity is considered a separate employing unit and will be issued a new employer payroll tax account number with its own UI reserve account. In contrast, if it is determined that the original and the new legal entities have a common ownership and purpose, the new legal entity will be required to report under the original entity's employer payroll tax account number and utilize its existing UI reserve account.

There are two types of UE, "Vertical" and "Horizontal." Sections 135.1 and 135.2 of the CUIC establish the criteria for UE determinations.

### What Is a Vertical Unity of Enterprise?

Section 135.1 of the CUIC defines a "Vertical" UE and states that, "A new employing unit shall **not** be created when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise." A continuity of control would exist if one or more persons or entities controlling

\*Includes Paid Family Leave (PFL).

\*\*Refer to *Information Sheet: California System of Experience Rating*, DE 231Z

a business enterprise remain in control of the business enterprise after a change in the form or organization of an existing entity.

If there is a change in entity or ownership with a continuity of control, the employing unit shall continue as one entity for California payroll reporting purposes.

Examples of changes that result in a Vertical UE include, but are not limited to:

- An individual proprietorship changes to a corporation, a partnership, an association, a limited liability company, or an estate and the original proprietor retains control over the new form of ownership.
- A general partnership adds, deletes, or changes partner(s) or changes to an individual proprietorship, a corporation, an association, a limited liability company, or an estate, as long as one or more of the original partners retains control over the organization.

Note: The sale of corporate stock does not change the corporate entity so there is no change in the employing unit.

### What Is a Horizontal Unity of Enterprise?

Section 135.2 of the CUIC defines a "Horizontal" UE and states, "If two or more business enterprises are **united by factors of control, operation, and use**, the director may determine that the business enterprises are one employing unit."

When several entities comprise one employing unit per Section 135.2 of the CUIC, the unit retains a single reserve account for UI purposes.

**Unity of control** exists when the majority interest in, or control of each organization, is held by one individual, an entity, an association, or some other organization.

Evidence of "control of a business enterprise" includes, but is not limited to:

- 1) Ownership of a majority interest in an organization.
- 2) Ownership of the assets used to conduct the business of the organization.
- 3) Security arrangements or lease arrangements regarding the assets used to conduct the business of the organization.

- 4) An agreement where the form of ownership, stated arrangements, or contract provide for or allow operation of the business enterprise.

**Unity of operation** is evidenced by central financing, accounting, and management of each business entity which includes, but is not limited to, common management, personnel policies, operating procedures, pricing, collections, and financing.

**Unity of use** exists when two or more business enterprises share a general system of operation and the enterprises are organized for common purposes, and each is coordinated with, or is a part of, the entire operation.

Examples of **unity of use** between business enterprises would be:

- One company that manufactures automobiles establishes two additional business entities that contribute to the production of the automobiles, one entity manufacturing large automotive parts and the other manufactures small automobile parts used to produce the automobile.
- Two businesses are established to complement each other. This would be when one company manufactures automobile parts and a second company produces automobiles, especially if the parts produced by one operation are used by the other operation in the manufacturing of the completed automobile.
- A parent corporation is established to coordinate and account for the manufacturing, sale, and service of a line of products where each function is run by a wholly-owned subsidiary of the parent corporation.

Two or more business enterprises are united when they share a general system of operation and control, the enterprises are organized for a common purpose or use, and each is coordinated with, or is a part of, the operation.

When a corporation is a wholly-owned subsidiary of another corporation, it is necessary to look at the day-to-day operations of the businesses to determine if there is unity of operation, control, and use between the subsidiary and the parent corporation. If so, the two corporations would be only one employing unit for California payroll tax purposes. If not, the corporations will be considered separate business enterprises for payroll reporting purposes.

Corporations that have virtually the same board of directors and officers (even if the officers have different

titles for each different corporation) will normally be considered one employing unit if there is also a **unity of operation and use**.

If an employing unit, which is determined to be a horizontal unity of enterprise, elects to consolidate several related entities under a single employer payroll tax account number or elects to register for additional account numbers, the election will be processed and will normally be effective for prospective periods.

If an experience rated employer is a horizontal UE, and obtains a new employer rate by electing to consolidate or by registering for additional employer payroll tax account numbers, the accounts will be subject to a reserve account transfer effective as of the commence date of the new account(s). This is due to the fact that the experience rate of the original account is the same for the additional account numbers acquired for the enterprise pursuant to Section 982(b) of the CUIC.

However, if an employing unit is determined not to be a horizontal UE, the employer may elect to consolidate several related entities under a single employer payroll tax account number for UI purposes when the employers are under common ownership, management, or control. The election will be processed and will be effective for prospective periods pursuant to Sections 1060 and 1061 of the CUIC.

Refer to *Information Sheet: California System of Experience Rating, DE 231Z*, and *Information Sheet: SUTA Dumping and Unemployment Insurance Rate Manipulation, DE 631SUTA*.

### **Additional Information**

Please note that UE is applicable to California employers per the CUIC and that federal law may differ.

For further assistance, 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/). Additional information is also available through the EDD's no-fee payroll tax seminars and online courses. View the in-person and online course offerings on the EDD website at [www.edd.ca.gov/Payroll\\_Tax\\_Seminars/](http://www.edd.ca.gov/Payroll_Tax_Seminars/).

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 non-technical 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.