

PERSONAL INCOME TAX WITHHOLDING — SUPPLEMENTAL WAGE PAYMENTS, MOVING EXPENSE REIMBURSEMENT — WARN ACT PAYMENTS

Supplemental Wage Payments

When supplemental wages (bonuses, commissions, overtime pay, sales awards, back pay - including retroactive wage increases, reimbursement for nondeductible moving expenses, etc.) are paid at the same time as regular wages, the Personal Income Tax (PIT) to be withheld shall be computed on the total of the supplemental and regular wages and shall be determined as if the total of the supplemental wages and the regular wages constituted a single wage payment for the regular payroll period.

When supplemental wages are not paid at the same time the employee's regular wages are paid, you may choose one of two methods for determining the amount of PIT to withhold:

- Compute the amount of PIT to withhold based on the total of the supplemental wages and the employee's current or most recent regular (gross) wage payment. The computed tax minus the tax already withheld from the regular wages is the tax to be withheld from the supplemental wages, or
- Withhold at a flat rate without allowing for any withholding exemptions claimed on the employee's withholding allowance certificate. For stock options and bonuses that were paid on or after November 1, 2009, the flat rate is 10.23 percent. For other types of supplemental wage payments made on or after November 1, 2009, the flat rate is 6.6 percent.

If vacation pay is paid in addition to regular wages for the vacation period, such vacation pay is to be treated as a supplemental wage payment.

Moving Expense Reimbursement

As defined in section 132 of the **Internal Revenue Code (IRC)** (law.cornell.edu/uscode/text/26), a "qualified moving expense reimbursement" is any amount received directly or indirectly by an individual from an employer as payment for (or a reimbursement of) expenses which would be deductible as moving expenses under section 217 of the IRC if such expenses were directly paid or incurred by the individual.

Qualified moving expenses to all employees were previously excluded from subject wages until the Tax Cuts and Jobs Act, Public Law 115-97 suspended the exclusion effective January 1, 2018. However, this suspension does not apply to members of the Armed Forces of the United States on active duty who move pursuant to a military order and incident to a permanent change of station.

Except for active military services, moving expenses are no longer excluded from wages pursuant to sections 937 and 13009(m) of the **California Unemployment Insurance Code (CUIC)** (leginfo.legislature.ca.gov/faces/codes.xhtml) for the period beginning January 1, 2018, through December 31, 2025. Moving expense payments to non-military employees are now subject wages pursuant to sections 926 and 13009 of the CUIC for the period stated.

- Reimbursement for qualified expenses is not subject to PIT withholding and not reportable as PIT wages on the *Quarterly Contribution Return and Report of Wages (Continuation)* (DE 9C). Qualified expenses are those which, at the time of payment, it was reasonable to believe would be deductible by the employee under section 217 of the IRC.

- Reimbursement for nonqualified expenses is subject to PIT withholding and reportable as PIT wages on the DE 9C. Nonqualified expenses are those which, at the time of the payment, it was not reasonable to believe would be deductible by the employee under section 217 of the IRC. Compensation for nondeductible expenses (for example, loss on the sale of a home, househunting expenses, meal expenses while traveling to the new location, etc.), including any payment made under a non-accountable plan, would be considered reimbursement for nonqualified expenses.

WARN Act Payments

Employers subject to federal and/or California Worker Adjustment and Retraining Notification (WARN) legislation are required to provide a 60-day notice to their employees prior to a plant closure or mass layoff. Failure to comply with the notification requirements may result in the employer being liable for back pay to each impacted employee for each day of violation. Although not subject to Unemployment Insurance, Employment Training Tax, or State Disability Insurance,* these payments are subject to PIT withholding and should be reported as PIT wages on the DE 9C.

- If the back pay award is paid to the employee using the employee's regular pay periods, compute the tax as if the payments were regular wages, taking into consideration the employee's withholding allowances as shown on the employee's withholding allowance certificate.
- If the back pay award is paid to the employee in a single lump sum, withhold at a flat rate of 6.6 percent without allowing for any withholding exemptions claimed on the employee's withholding allowance certificate.

*Includes Paid Family Leave (PFL).

For more detailed information regarding WARN legislation and relevant legal citations, refer to the [California Employer's Guide \(DE 44\) \(PDF, 2.5 MB\)](https://edd.ca.gov/pdf_pub_ctr/de44.pdf) (edd.ca.gov/pdf_pub_ctr/de44.pdf).

Additional Information

For further assistance, please contact the Taxpayer Assistance Center at 1-888-745-3886 or visit the nearest [Employment Tax Office](https://edd.ca.gov/office_locator/) (edd.ca.gov/office_locator/) listed in the DE 44 or on the [Employment Development Department](https://edd.ca.gov/) website (edd.ca.gov).

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.

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