



Arnold Schwarzenegger
Governor

A Report to the California Legislature

Assembly Bill 1643 (Chapter 828, 2004) Unemployment and Disability Insurance Benefit Determinations Involving Small Businesses

Prepared by: Employment Development Department
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Background

On September 28, 2004, the Governor signed Assembly Bill (AB) 1643. This bill amended the Unemployment Insurance Code (UIC) Section 1231 to require the Employment Development Department (EDD) to work in cooperation with the small business community to develop small business educational events and materials that explain EDD's process of determining whether an individual is an employee or an independent contractor.

AB 1643 also required the EDD to collect data and submit a report for the period from January 1, 2005 to December 1, 2005, on EDD determinations involving small business owners in the course of processing claims for unemployment insurance or disability insurance benefits and the length of time that the department took to make a final determination in each case. The bill required the department to report its findings and recommendations to the Legislature by July 1, 2006.

Outreach and Education

In 2005, EDD participated in ten Taxpayer Service Days/Small Business Fairs that drew over 3,000 participants. These seminars included participation by the EDD, the Franchise Tax Board, the Board of Equalization, and local government entities. They provided one-on-one assistance and numerous workshops covering a variety of topics, including the factors used to determine the status of a worker and the relationship between the worker and the service recipient at both the state and federal level.

In addition, during 2005, EDD's education and outreach program offered 80 state payroll tax seminars on worker employment status in a variety of locations throughout California. Total attendance at these seminars was 2,743 individuals. State payroll tax seminars are customized to benefit everyone -- established businesses, those just getting started, individuals anticipating going into business, payroll agents, and small business employers.

In early 2005, EDD and the Internal Revenue Service (IRS) developed a CD-ROM entitled "Employment Status (ES) Course." The self-paced ES Course provides an opportunity for employers to learn the basics of common law employment. The course covers the IRS' three categories of evidence and illustrates how the categories match EDD's one primary and eleven secondary employment factors. The ES Course was adapted from a joint Employment Status PowerPoint presentation that is provided by IRS and EDD representatives during employer seminars held throughout California. To date, EDD has distributed over 2,500 copies of the CD-ROM to various tax professionals and small business organizations and owners.

Additionally, letters were sent to eight key business organizations who were sponsors of AB 1643 to see if they were interested in working with EDD to:

1. Assist in marketing our worker employment status seminars, and
2. Sponsor worker employment status seminars for their members.

One of the eight organizations sponsored an event in the San Francisco area and one other indicated a willingness to sponsor a seminar on worker employment status for their members. Three others indicated a willingness to assist in marketing our seminars. For those that were not interested in sponsoring and/or marketing our seminars, we provided them with copies of the ES Module and advised them how to get additional copies.

Finally, EDD is working to make the ES Module on worker status available on our Internet site by December of 2006. We will be advising the small business community about this tool.

Worker Benefit Claims Data Collection

Overview:

AB 1643 required that for the period January 1, 2005 to December 1, 2005, the EDD collect data on the following, taken from a random sampling of 20 percent of the total amount of claims for Unemployment (UI) or Disability Insurance (DI) benefits submitted by owners of small businesses.

(1) The total number of times, in the course of processing a claim for UI or DI benefits, that an owner of a small business objected to the department's determination that a worker was an employee.

(2) The total number of times, in the course of processing a claim for UI or DI benefits, that an owner of a small business was determined by the department not to be the employer of a worker.

(3) The length of time that the department took to make a final determination in each case described in paragraphs (1) or (2).

Methodology:

For the methodology and results discussed below, please refer to attached "Methodology and Results" chart.

The UI and DI benefit claims that cannot be processed are referred to as "obstructed claims," for example: missing employee wages that may not have been reported due to an employer's assertion that the individual was an independent contractor, not an employee. The EDD collected the data and assembled it into a group of claims associated with "small business," which is defined as:

"Small business" means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and that, together with affiliates, has 100 or fewer employees, and average annual gross receipts of 10 million dollars (\$10,000,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 100 or fewer employees. (Government Code Section 14837 (d))

From this group of claims, a sample of 20 percent was drawn. Specifically, the sample was developed by retrieving obstructed worker claim information from EDD's Single Client Database which contains the records of all worker claims for benefits.

For the period January through November 2005, total worker claims for benefits filed were 1,984,959 of which 6,888 were classified as obstructed claims. This data was filtered for "small businesses," resulting in a total of 3,993 obstructed claims from which to develop the final sample.

From the 3,993 obstructed claims, an unbiased sample of 821 was identified using a random sample generated by Excel. This sample represented 20.5 percent of the adjusted population.

Results:

From the sample of 821 small business obstructed claims, 726 (88 percent) involved a status issue determination by the auditor working the claim; 557 (77 percent) resulted in a common law employee determination by the Department. Of the 557 employee determinations, 199 (36 percent) resulted in non-concurrence from the business owner. Nineteen (3 percent) resulted in non-concurrence from the worker-claimant (See Chart 1).

From the 726 claims involving status issues, 169 (23 percent) resulted in an independent contractor determination by the Department (See Chart 2). Of the 169 independent contractor determinations, 19 (11 percent) resulted in non-concurrence from the claimant. One determination (1 percent) resulted in non-concurrence from the business owner.

From the 238 claims that resulted in non-concurrence from the business owner or the claimant, 76 resulted in a formal appeal. The 76 appeals represent 10 percent of the 726 claims involving status. Business owners protesting the common law employee determination by the Department filed 65 (86 percent) of the appeals. Claimants protesting the common law determination by the Department filed 4 (5 percent) of the appeals. No business owners protested the independent contractor determination by the Department. Claimants protesting

the independent contractor determination by the Department filed 7 (9 percent) of the appeals.

The length of time it takes for the EDD to make a final determination on an obstructed claim was also examined. From the sample of 821 small business obstructed claims, the average number of calendar days from when the investigation was requested to the re-computation date (the date the worker's claim benefit amount is determined and claimant is notified) was 21 calendar days. The EDD allows 30 days to complete an obstructed claim investigation for the purpose of meeting Department of Labor timeliness guidelines of processing unemployment insurance claims for benefits.

Conclusion

The three questions raised in AB 1643 and EDD's response are as follows:

Question #1. What was the total number of times, in the course of processing a claim for unemployment insurance or disability insurance benefits that an owner of a small business objected to the Department's determination that a worker was an employee?

Response: From the 557 claims in the sample when the claimant was determined to be an employee, 199 times (36 percent) the small business owner objected to the Department's determination.

Question #2. What was the total number of times, in the course of processing a claim for unemployment insurance or disability insurance benefits, that an owner of a small business was determined by the Department not to be the employer of a worker?

Response: From the 726 claims in the sample that involved a status determination, 169 times (23 percent) the small business owner was determined by the Department not to be the employer of the worker.

Question #3. What was the length of time that the Department took to make a final determination in Question Number 1 or 2 above?

Response: 21 days for the average claim to be investigated before final resolution. This does not consider the time for the California Unemployment Insurance Appeals Board to make determinations for those claims that were appealed (See Chart 3).

Recommendation

The EDD does not have any recommendations.

METHODOLOGY AND RESULTS

CATEGORY	NUMBER	%
Total Claims Filed	1,984,959	
Total Obstructed Claims	6,888	0.3%
Small Business Obstructed Claims (filtered from "Total Obstructed Claims")	3,993	
Sampled Obstructed Claims (random generated from "Small Business Obstructed Claims")	821	20.5%
Status Involved	726	
Employee Determinations	557	77%
Independent Contractor Determinations	169	23%
Employee Determinations	557	
Business Owner Objected	199	36%
Claimant Objected	19	3%
No Objections	339	61%
Independent Contractor Determinations	169	
Business Owner Objected	1	1%
Claimant Objected	19	11%
No Objections	149	88%

Appendix: Charts

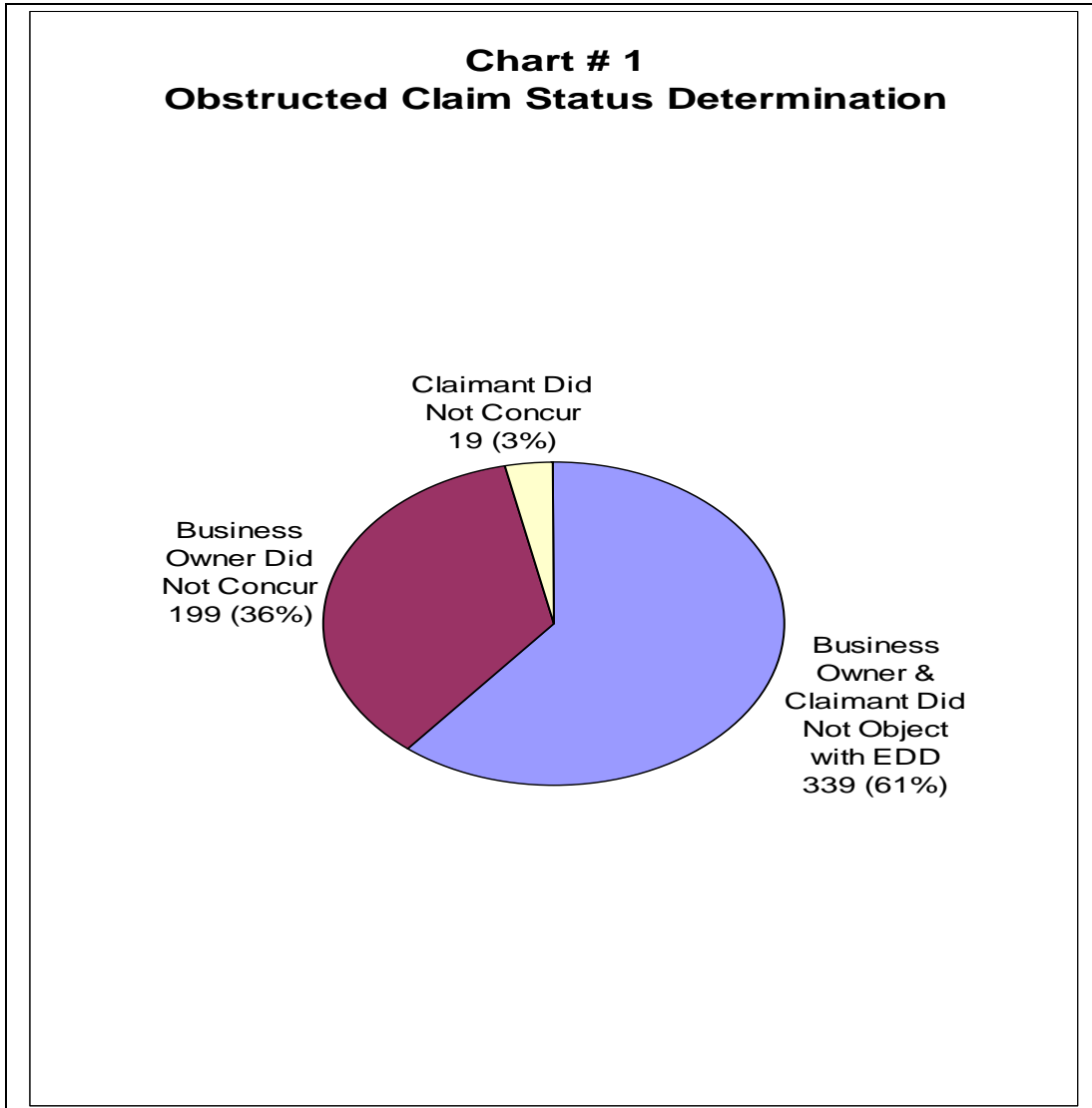
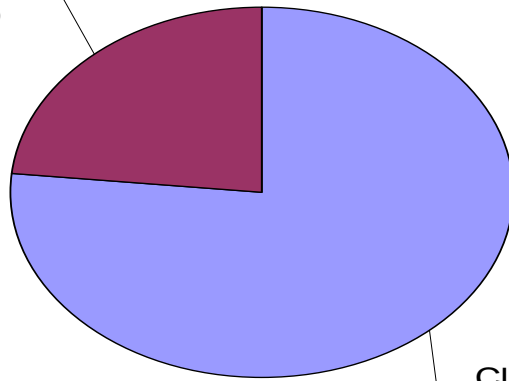


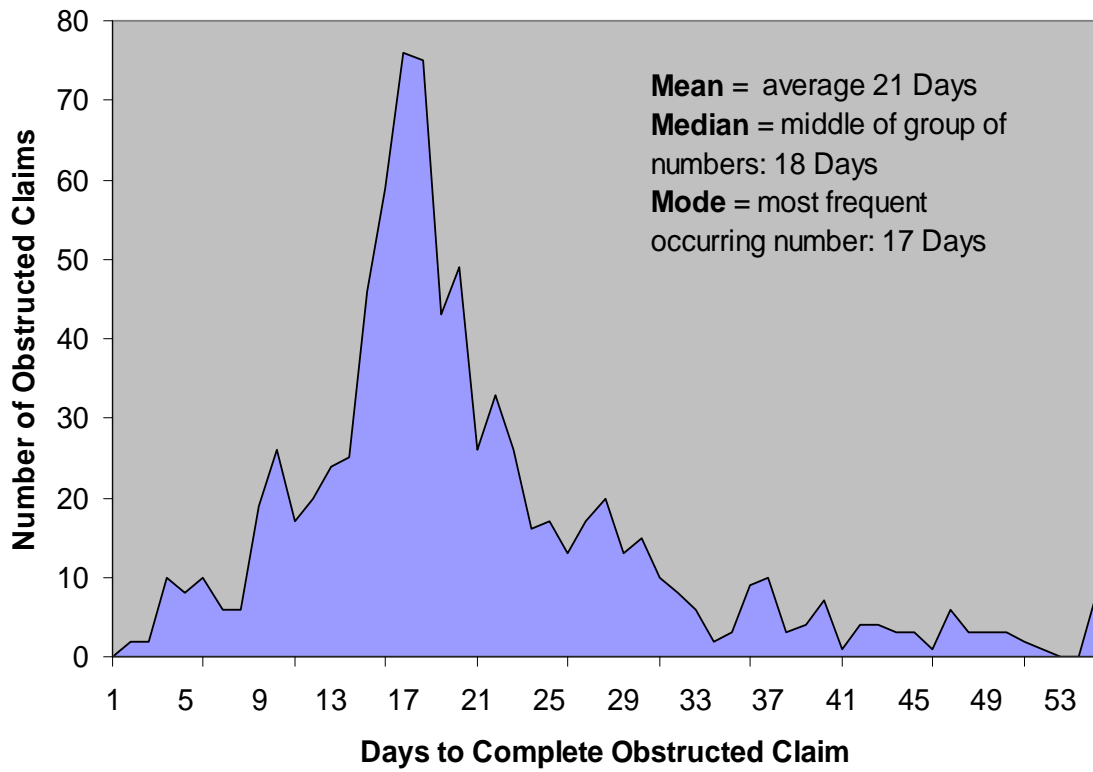
Chart # 2
Claimant Status Determination Made by
EDD

Claimants
Held to be
Independent
Contractors
169 (23%)



Claimants
Held to be
Employees
557 (77%)

Chart # 3
Distribution of Obstructed Claims by Number of Days to Process





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For more information, please call (916) 657-1149.

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