

PAYROLL AND EMPLOYEE BENEFITS INFORMATION

Compliance with the legal and reporting requirements of payroll, payroll taxes, and employee benefits has become increasingly complex. The rules and regulations are strictly enforced by a variety of taxing and regulatory authorities. It is important you understand the requirements that apply to your specific business situation.

C&D llp has prepared the following information to remind you of some of the changes that have recently taken place. We are not Human Resource Specialists. It remains your responsibility to consult qualified counsel to obtain expert consultation in this area.

2021 CHANGES

MINIMUM WAGE

As of January 1, 2021, California's minimum wage will increase to \$14.00 per hour for employers with 26 or more employees and \$13.00 per hour for employers with 25 employees or less. Check your local jurisdiction for ordinances that may mandate a higher minimum wage rate.

WAGE AND HOUR

On January 1, 2019 agricultural employers under Wage Order 14 with 26 or more employees saw the first in a series of overtime changes. Agricultural workers had historically received time and a half after 10 hours per day or 60 hours per week. As of January 1, 2021, these workers will be entitled to overtime after 8.5 hours per day or 45 hours per week. Agricultural employers with 25 or fewer employees will begin phased-in overtime changes in 2022.

2021 WITHHOLDING RATES AND LIMITATIONS

A table of the new payroll tax rates and limitations for 2021 is enclosed. As in the past, withholding tables for income taxes have been adjusted for inflation and should be updated after your final payroll of 2020 and before your first payroll of 2021.

2021 STATE DISABILITY INSURANCE

The State Disability Insurance rate is increasing to 1.2% (.012) for 2021 and subject wages are increasing to \$128,298 per employee per calendar year. The maximum withheld from an employee's paycheck should be \$1,539.57.

COVID-19-RELATED LAWS: PAID SICK LEAVE

In addition to the FFCRA, that mandated paid sick leave for employers with fewer than 500 employees, AB 1867 took effect 9/9/2020 and expanded the FFCRA to employers with 500 or more employees nationwide, as well as health care providers and first responders. Employees who work for these covered employers can take COVID-19 supplemental paid sick leave if the worker is:

- Subject to a federal, state or local quarantine or isolation order related to COVID-19,
- Advised by a health care provider to self-quarantine due to concerns related to COVID-19, or
- Prohibited from working by the employer due to health concerns related to the potential transmission of COVID-19.

The FFCRA is set to expire 12/31/20 unless extended.

COVID-19 RELATED LAWS: WORKPLACE SAFETY

Beginning 1/1/2021, stringent COVID-19 recording and reporting requirements must be followed. Employers must provide notices to all employees at a worksite within 1 business day of receiving notice of a potential COVID-19 exposure. Employers must also notify their local public health agency within 48 hours of a COVID-19 outbreak, which is defined as 3 or more laboratory confirmed cases with two weeks in employees in separate households.

COVID-19 RELATED LAWS: WORKERS' COMPENSATION

SB 1159 addresses employees who contract COVID-19 on or after July 6, 2020 and requires employers with 5 or more employees to report certain information to their workers' compensation carrier in writing within 3 business days of learning an employee has tested positive for COVID-19.

LEAVES OF ABSENCE

SB 1383 significantly expands the California Family Rights Act (CFRA) beginning 1/1/2021. Currently, the CFRA applies to employers with 50 or more employees, while a separate law, the New Parent Leave Act (NPLA) requires employers with 20 or more employees to provide parental leave (baby-bonding leave). SB 1383 expands CFRA's coverage to include all employers with 5 or more employees - effectively eliminating the NPLA and rolling its requirements into the expanded CFRA. All employers need to become familiar with the law's details and be prepared to revise or implement compliant policies by 1/1/2021.

WORKER CLASSIFICATION

It was only last year that the biggest labor law development was AB5, the worker classification law that codified the California Supreme Court's *Dynamex* ruling and adopted the ABC test to determine if a worker is an employee or independent contractor. AB 2257, effective 9/4/2020, made revisions and clarifications to some existing exceptions and added new ones. Proposition 22 also passed in November to address the status of so called "gig" workers. Employers should consult with employment law counsel to ensure they are properly classifying their workers.

PAY DATA

SB 973 requires employers with 100 or more employees to submit a pay data report to the Department of Fair Employment and Housing that contains data regarding their employees' race, ethnicity and gender in various job categories on or before March 31, 2021.

REMINDERS

ABC TEST TO DEFINE INDEPENDENT CONTRACTOR STATUS (AB 5)

In *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, the California Supreme Court adopted the ABC test to determine whether an individual is an employee or an independent contractor for purposes of California's Wage Orders. Assembly Bill 5 codified this test and expanded its application to the Labor and Unemployment Insurance Codes. Under the ABC test, an individual is presumed to be an employee, unless the employer can prove all of the following:

- That the worker is free from control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- That the worker performs work that is outside the usual course of the hiring entity's business; and
- That the worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed.

If the hiring entity fails to show that the worker satisfies each of the three criteria, the worker is treated as an employee, not an independent contractor. AB 5 carves out numerous exceptions to the ABC test. If an exception applies, the more flexible Borello test applies. Employers should consult with legal counsel and re-evaluate whether workers currently classified as independent contractors should be reclassified as employees based on the ABC test.

ARBITRATION

AB 51 prohibits mandatory arbitration agreements. This applies to agreements entered into, modified or extended on or after January 1, 2020. In addition, employers may not use opt out provisions in arbitration agreements.

HARASSMENT PREVENTION TRAINING

By January 1, 2021, all employers with five or more employees will be required to provide two hours of sexual harassment training to supervisors and one hour to nonsupervisory employees within six months of hire or promotion, and every two years after that.

HAIRSTYLE DISCRIMINATION (SENATE BILL 188)

SB 188 prohibits discrimination based on a protected characteristic such as a natural hairstyle. Employers should review their workplace dress codes and grooming policies to ensure they abide by this amendment.

LACTATION ACCOMMODATION

SB 142 clarifies that an employer must provide a location, other than a bathroom, for an employee to express milk in private. It details the circumstances under which an employer may provide a temporary lactation location and how agricultural employers may comply. The law provides an undue hardship exemption under limited circumstances for employers with fewer than 50 employees. Employers must adopt written policies regarding lactation accommodation.

PAID FAMILY LEAVE

Paid Family Leave (PFL) is included in the State Disability Insurance (SDI) rate you withhold from your employees' wages. Beginning July 1, 2020, the maximum duration of PFL will be extended from six to eight weeks of benefits for individuals who must take time off to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling or domestic partner, or to bond with a new child. You may require employees to use up to two weeks of vacation leave prior to receiving PFL benefits.

You are required to provide notice to your employees of their rights and benefits under the PFL program. The *Paid Family Leave* (DE 2511) brochure should be given to each employee you hire.

SALARY HISTORY QUESTIONS BANNED

Prior law has been amended to clarify that employers can ask about an applicant's salary expectations for the position applied for, only external applications are entitled to a pay scale upon request and only after completing an initial interview, and the pay scale provided only needs to include salary or hourly wage ranges. In addition, when making internal salary decisions regarding current employees, an employer may base compensation decisions on the current employees' salary history.

MANDATORY EDD E-FILE AND E-PAY FOR ALL EMPLOYERS (ASSEMBLY BILL 1245)

Requires employers with 10 or more employees to electronically submit their employment tax returns, wage reports, and payroll tax deposits.

BAN THE BOX LAW

Employers with 5 or more employees are prohibited from asking about criminal history on job applications and from inquiring about or considering criminal history prior to extending a conditional offer of employment. There are a few limited exceptions, such as positions requiring a criminal background check by federal, state or local law. Once a conditional offer of employment is made, an employer may seek certain criminal history information. However, before denying employment based on a criminal conviction, the employer must follow specific steps outlined in the law.

CURRENT I-9 FORM

A new I-9 Form was released on October 21, 2019. You can download fillable pdf or paper copies at <https://www.uscis.gov/i-9>.

EMPLOYER W-2/1099-MISC DEADLINE EARLIER STARTING IN TAX YEAR 2016

In an effort to reduce fraud, Congress changed the filing deadline for employer copies of Forms W-2 and certain Forms 1099-MISC containing nonemployee compensation (Box 7). The deadline for filing Forms W-2 with the Social Security Administration and Forms 1099-MISC with the Internal Revenue Service is now January 31st. This is for both paper and electronic returns.

CALIFORNIA'S EQUAL PAY LAW

The California Fair Pay Act significantly modifies the existing equal pay statute, making it more difficult for employers to demonstrate that wage differences are justified. SB 1063 expands the Fair Pay Act to prohibit an employer from paying any employees wages that are less than rates paid to employees of another race or ethnicity. Employers should audit their salary structure and policies to ensure compliance with the law.

FORM W-4

Although, in general, Form W-4 does not expire each year, a new W-4 must be filed if an employee claims exemption from Federal withholding. This exemption must be renewed each year with a new W-4. If a new W-4 is not received by February 15th, employers should withhold at Single-0 rates beginning February 16th. The current W-4 can be obtained at www.irs.gov.

0.9% ADDITIONAL MEDICARE TAX ON EARNED INCOME

Beginning in 2013, individuals paid an additional 0.9% Medicare Hospital Insurance tax on wages and self-employment income on amounts earned above certain threshold amounts. This additional withholding is based on wages subject to Medicare tax. Employers must begin withholding the additional Medicare tax in the pay period in which it pays wages to the employee exceeding the threshold which varies based on filing status, and not earlier.

EMPLOYER REPORTING REQUIREMENTS

The Affordable Care Act states that for calendar year 2015 and after, large employers [defined as those with 50 or more full-time employees (100 or more for 2017)], are required to report coverage information both to the employee and the IRS.

The IRS created a new form, Form 1095-C, to report coverage to full-time employees and the IRS. The new form is separate from the required Form W-2 and must be furnished annually to full-time employees no later than January 31, 2021, and to the IRS no later than February 28, 2021 for paper filing or March 31, 2021 if filing electronically, for the 2018 tax year.

The information required to be reported is:

- Name, address, and TIN of employer;
- Certification as to whether the employer offers its full-time employees (and dependents) the opportunity to enroll in minimum essential coverage under an employer-sponsored plan;
- Length of any waiting period, months coverage was available, and monthly premiums for the lowest cost option;
- Name, address, and TIN of the primary insured, and name and TIN of each other individual covered under the policy;
- Dates such individuals were covered during the year; and
- Any other information the IRS may require.

ELECTRONIC FUND TRANSFER PAYMENT SYSTEM (EFTPS)

You are required to make all Federal Tax Deposits electronically. Otherwise, you may be charged a 10% penalty for each non-electronic deposit.

For a quick and convenient way to make timely electronic deposits, we encourage you to use the EFTPS (Electronic Federal Tax Payment System). This system is a free and secure service available from the US Department of the Treasury.

With EFTPS, you have two interchangeable payment methods, the internet and phone. You can use both of these methods to pay your personal or business Federal taxes 24 hours a day, 7 days a week. Because you enter all the information via the internet or phone, you can check the accuracy of the information you report. Plus, you will receive an EFT Acknowledgement Number as a receipt for your payment.

No one has access to your account except you. The combination of the Taxpayer Identification Number (EIN or SS#) and a Personal Identification Number (PIN) gives you the security you need. And with EFTPS payments online, you have the added security of an internet password.

To use EFTPS you must first enroll. To enroll, visit the EFTPS website at www.eftps.gov, or to receive an enrollment form, call EFTPS Customer Service at 1-800-555-4477 (for business payments) or 1-800-316-6541 (for individual payments).

HOUSEHOLD EMPLOYEES

If you are an employer of household employees, such as maids, cooks, gardeners, nannies, housekeepers, etc., you must register with the EDD by submitting a *Registration Form for Employers of Household Workers (DE1 HW)* **within 15 days** after you pay \$750 or more, in total cash wages in any calendar quarter. Register online using e-Services for Business. You may elect to include household wages on Federal Form 941 or Form 943; if you file these Forms for your trade or business. If not, you are required to report household wages annually on Schedule H (Form 1040), Household Employment Taxes. File Schedule H for 2016 with your individual income tax return.

California employment taxes for household employees, including withheld taxes and unemployment taxes, must be reported and paid at least quarterly. If you will be paying less than \$20,000 in annual household wages, you may elect to pay your state employment taxes annually. However, you will still be required to report wages quarterly.

The California Domestic Worker Bill of Rights, (AB241) that became effective January 1, 2014, extends overtime pay rights to personal attendants working in the home who were not previously entitled to overtime pay under Wage Order 15. The law requires household employers to follow additional overtime rules over and above what the FLSA requires at the federal level. Below are the highlights of the requirements that California household employers must follow:

Overtime Basics

- No limit is placed on the total number of hours worked in a 7-day work week, as long as the employee is compensated appropriately.
- Overtime is not required for holidays worked.

Personal Attendants – Someone who spends at least 80% of their time caring for someone else.

- Live-Out – Overtime (1.5 times the regular rate of pay) is required for work over 9 hours in a day and/or 40 hours in a 7-day work week. (The 40-hour rule comes into play as the FLSA requires OT for all work over 40 hours in a week. Where state and federal law conflict, the law that is most beneficial to the employee prevails. Majority of the time it is California law.)
- Live-In – Overtime is required for work over 9 hours in a day and/or 45 hours in a 7-day work week. (At the federal level, live-in employees are exempt from OT pay.)
- There are no additional OT requirements on day 6 or 7 in the work week, or after 12 hours in a day.

All Other Household Employees – Such as housekeepers, personal assistants, gardeners, etc.

- Live-Out – Overtime must be paid for all work over 8 hours in a day and/or 40 hours in a 7-day work week. Double time comes into play after 12 work hours in a day and after 8 hours on day 7.
- Live-In – Overtime is required for work over 9 hours in a day. There are additional requirements that could trigger an overtime situation, such as having less than 12 consecutive hours off-duty during each workday of 24 hours, and working on day 6 and 7 of a work week. Double time would come into play after 9 work hours on day 6 and 7.

Please contact C&D llp if you have any questions regarding your household employment status and reporting requirements.

\$2,500 FEDERAL DEPOSIT THRESHOLD – FORM 943

The deposit threshold of Form 943 employment taxes is \$2,500. This means that if your net employment tax liability for the year is less than \$2,500, you may pay the balance with Form 943 and a 943-V (voucher), rather than deposit the taxes without penalty. If your employment taxes for the year are \$2,500 or more, monthly deposits are still required using EFTPS (Electronic Funds Transfer Payment Services).

FEDERAL PAYROLL TAX DEPOSIT REQUIREMENTS

There are two deposit schedules – monthly and semiweekly-for determining when you deposit Social Security and Medicare taxes and withheld federal income tax. If you are unsure of your deposit schedule, we recommend you contact the IRS at (800) 829-1040. Be sure to provide them with your correct Federal Employer ID Number. Penalties for late employment tax deposits are expensive and will be assessed even if you did not receive a notification of a change. IRS Publication 15 explains the lookback period and how to determine the frequency of your tax deposits.

Some situations may change your deposit schedule. For example, if at any time within your deposit schedule, your accumulated employment taxes reach \$100,000 or more, you must make your deposit on the next banking day. From then on, you must make your deposits on a semi-weekly, rather than monthly schedule.

When paying your federal employment taxes, be certain to indicate the correct quarter and type of taxes being paid. As a reminder, the correct quarter is when the liability was incurred, not when the deposit is being paid.

FEDERAL UNEMPLOYMENT TAXES

Unless specifically exempt, employers pay federal unemployment taxes on the first \$7,000 of each employee's earnings. The federal unemployment net tax rate is 0.6% (.006). Deposits are required quarterly if the undeposited liability is greater than \$500.

The "actual" FUTA tax rate is 6.0% and is offset with a credit of 5.4% allowed if all required state unemployment taxes have been paid for the year. The 5.4% credit applies even if your company's state unemployment experience rate is less than 5.4%. If all state unemployment taxes are **not** paid by the due date of Form 940, January 31st, the full FUTA tax will be assessed with only a 90% credit for state unemployment taxes actually paid. The EDD certifies to the IRS what each employer has deposited into California's unemployment fund.

California is not subject to a 2020 credit reduction as of this printing.

STATE UNEMPLOYMENT TAXES

By December 31st, all California employers should have received a notice of their new year unemployment insurance rate — "Notice of Contribution Rates and Statement of UI Reserve Account." If you have not received the notice, you can access this information from the internet at <https://eddservices.edd.ca.gov/tap/open/rateinquiry/#1>. You will need your California Employer Identification Number.

These unemployment and training tax rates are in effect for the entire calendar year in determining state payroll taxes. Each employee's first \$7,000 in wages is subject to unemployment taxes. The taxes must be deposited quarterly on or before the last day of the month following the end of the quarter.

DEPOSITING CALIFORNIA WITHHELD TAXES

Withheld state payroll taxes, state income tax and state disability tax, are generally due at the same time federal tax liability deposits are made. The Personal Income Tax (PIT) deposit threshold for 2020 is \$350. This threshold means that if you have accumulated \$350 or more in undeposited withheld PIT, you must deposit all withheld state payroll taxes by your federal deposit schedule, either semi-weekly or monthly. If you have not accumulated this much in PIT, your deposit is not yet due. However, most of our clients find that depositing state withheld taxes at the same time as their federal payroll taxes minimizes any chance of delinquent deposit penalties. The PIT threshold for employers who deposit quarterly is also \$350.

PAID SICK LEAVE

Effective July 1, 2015, Assembly Bill 1522 (AB 1522) requires all employers to provide paid sick leave to California employees who work at least 30 days from the commencement of employment. Employers who already have a paid sick leave or paid time off policy that meets this Bill's minimum requirements do not have to provide additional paid sick leave. The law was also amended to allow "grandfathered" leave banks existing as of 01/01/2015.

The mandate also does **not** apply to:

- Employees, including construction workers, covered by certain collective bargaining agreements;
- In-home supportive service workers; and
- Certain flight deck and cabin crew employees of air carriers.

The paid sick time accrues at the rate of one hour of sick time for every 30 hours worked. An employer may limit an employee's use of paid sick days to 24 hours or 3 days in each year of employment. Employees can start using the sick time beginning on the 90th day of employment. The leave may be used for taking care of a child, parent, spouse or registered domestic partner, sibling, or grandparent. Children or parents do not have to be blood or even "legal" relatives. It also may be used for victims of domestic violence, sexual assault, or stalking, or to attend to nonmedical issues.

IMPORTANT PIECE RATE LEGISLATION

Employers using piece-rate compensation should consult legal counsel regarding AB 1513 which may require immediate action to comply with the new law and its safe harbor provision.

EMPLOYEE REGISTRY

All California employers are required to report new employees within twenty days of hire. Penalties may be imposed for non-compliance. Use Form DE 34, "Report of New Employees," and mail to the address on the Form or FAX to (916) 319-4400. Information required is the employee's first name, middle initial, and last name; Social Security Number; home address; and start-to-work date.

INDEPENDENT CONTRACTORS

The law requires businesses and government entities that are required to file a Federal Form 1099-NEC for services performed by an independent contractor to report specific information to EDD. Form DE 542 must be filed with EDD within 20 days of either entering into contract with an independent contractor for \$600 or more; or making payments totaling \$600 or more to an independent contractor in any calendar year, whichever is earlier. This law (Senate Bill 542, Burton) is in addition to the current new hire reporting requirements for employers. These laws help child support enforcement agencies identify parents who are delinquent with child support payments.

The EDD may assess a penalty for each failure to comply with the required timeframes. In addition, if there is conspiracy between the business and the independent contractor not to provide the required reporting, the penalty goes up significantly.

For additional information you may contact the EDD Hotline at (916) 657-0529 or refer to the EDD website at <http://www.edd.ca.gov>. A copy of Form 542 and instructions is enclosed.

CALIFORNIA OVERTIME

Assembly Bill 60 (AB 60), "The Eight Hour Day Restoration and Workplace Flexibility Act of 1999," restored the daily overtime standard for hours worked in excess of eight hours per day for most California employees.

This legislation reinstates the payment of time and a half for hours worked in excess of eight hours in a day, over forty hours in a week, and for the first eight hours on the seventh day of work. Additionally, double time is re-established for hours worked in excess of twelve in a single day and in excess of eight on the seventh day of work. Required meal periods of at least thirty minutes are also re-established if employees work more than five hours per day with a second meal period required after ten hours work. This second meal period can be waived if the first one is not. *No provision has been made in the legislation for “on duty” meal periods.*

Alternative work weeks, such as 4-day 10-hour shifts, may be established but only if approved by a two-thirds secret ballot of the employees affected. Specific procedures must be followed to implement or continue these alternative schedules.

The legislation includes provisions for “make-up” time, allowing employees to work up to eleven hours in a day without overtime compensation *during the same work week* to make up work time lost as a result of personal time off. The employee must make a signed, written request *each occasion* that they wish to make up lost time in this manner. Employers are specifically prohibited from encouraging an employee’s election for “make-up” time. AB 60 gives the Industrial Welfare Commission (IWC) broad authority to review and revise the overtime requirements for all Wage Orders. Employers not only need to review their payroll procedures for compliance at January 1, but also to be alert to subsequent changes during the year as the IWC issues revised wage orders. Employers should be aware that the overall intent of the legislation is to limit overtime exemptions.

The bill also provides for civil penalties. Employers should request a new Wage Order Notice from the State Labor Commissioner (phone: 805-568-1222) to update their posting requirements. The applicable Wage Order should be prominently displayed in an area frequented by employees where it can be read during the workday. An “unofficial” copy of the Wage Orders can be downloaded at www.dir.ca.gov.

SALARIED AND EXEMPT EMPLOYEES

A review of employees considered exempt from overtime should be conducted by all employers — a surprisingly large liability can develop if overtime pay is not paid as required. Additionally, as discussed above, civil penalties may be imposed under AB 60 for overtime violations.

A common misconception is that all “salaried” employees are exempt from overtime. Although all exempt employees must be paid a salary, the reverse is not true. Exemption from overtime is based on the facts and circumstances of the job duties performed and not whether a set salary amount is paid each payroll. Another common misconception is that the title of “Manager” or other executive designation automatically exempts the employee from overtime. Again, the facts and circumstances of the actual job performed will determine the exemption, not the title given to the position. Personnel considered managers must supervise at least two employees. Employers should also be aware that exemption from overtime is not a choice of either the employee or the employer. Even if both parties agree to an exemption, overtime can still be owed.

In general, administrative, professional, and executive employees, the “white collar” positions, will be exempt from overtime if certain criteria are met including a minimum monthly salary of at least two times the minimum wage. Additionally, *most* (i.e., over 50%) of an employee’s time must be spent in exempt work in order for any overtime exemption to be applicable. Exempt work is defined as “primarily intellectual, managerial, or creative” and must also include the “exercise of discretion and independent judgment.” One of the significant changes in the AB 60 legislation is that it ties an exempt position’s salary requirement to the minimum wage — if minimum wage increases in the future, so will the minimum salary requirements for all exempt personnel.

The “white collar” exemptions provided under the current and proposed wage orders are open to interpretation in some instances. If you have positions considered exempt in your organization, we recommend a careful analysis and documentation of the criteria used for the exemption. This analysis may require legal counsel from an attorney who specializes in employment law.

If, as a result of your analysis, it appears an unpaid overtime obligation may exist, we strongly recommend consulting an attorney. Although the issue may go unchallenged for years, it only requires a single, disgruntled employee to bring the issue to the attention of enforcement authorities.

YEAR END REMINDERS

ANNUAL WAGE RECONCILIATION

Form W-2, Wage and Tax Statement, is due to employees on or before **January 31**. Filing copies of the W-2s and W-3, Annual Transmittal Form, must be mailed to the Social Security Administration on or before **January 31**.

California employers do not submit copies of W-2s to EDD. The IRS transmits the information to EDD electronically. To avoid penalties for filing incorrect reports, employers should carefully reconcile Forms W-3 and W-2s to the Forms 941, Form 943 and/or Form 944 filed during the year. The total amount of Social Security and Medicare wages reported on Form W-3 **must** equal the total Social Security and Medicare wages reported on Forms 941, 943, and 944 during the year. Federal income tax withheld must also equal the total amounts reported on Forms 941, 943, and 944 for the year. If a discrepancy is discovered, find the error and make adjustments as required, either on the W-2s/W-3 or on Form 941X (Adjusted Employer’s Quarterly Federal Tax Return or Claim for Refund).

Total wages reported on Form W-3 may or may not equal the amounts reported on Forms 941, 943, and 944 depending on the tax treatment of certain employee benefits. You should, however, identify any differences and determine whether they are appropriate.

The IRS will impose penalties on employers who file Forms W-2 using incorrect name and Social Security Number combinations. The penalties vary depending on when the corrected W-2 is filed.

EARNED INCOME TAX CREDIT NOTIFICATION

Employers must notify all employees (irrespective of income) that they may be eligible for the Earned Income Tax Credit within one week before or after, or at the same time, that the employer provides a Form W-2 to the employee. Employers must notify employees by either handing directly to the employee or mailing to the employee’s last known address instructions on how to obtain any notices available from the IRS for the earned income credit. Most Form W-2s have this information printed on the back side of the employee copy.

Another option is to provide a notice as follows with each Form W-2:

“Based on your annual earnings, you may be eligible to receive the Earned Income Tax Credit from the Federal government. The Earned Income Tax Credit is a refundable Federal income tax credit for low-income working individuals and families. In most cases, Earned Income Tax Credit payments will not be used to determine eligibility for Medicaid, supplemental security income, food stamps, low-income housing or most Temporary Assistance for Needy Families payments. Even if you do not owe Federal taxes, you must file a tax return to receive the Earned Income Tax Credit. Be sure to fill out the Earned Income Tax Credit form in the Federal income tax return booklet. For information regarding your eligibility to receive the Earned Income Tax Credit, including information on how to obtain the IRS Notice 797 or Form W-5, or any other necessary forms and instructions, contact the Internal Revenue Service by calling 1-800-829-3676 or through its website at www.irs.gov.”

1099 INFORMATION RETURNS

Certain payments made in the course of a trade or business or by trusts require the payer to file federal information returns—Forms 1099. Examples include certain payments for rent, interest, and non-employee services. Forms 1099 must be furnished to the recipient and Forms 1099-NEC (and related Form 1096) containing nonemployee compensation (Box 7) must be filed with the Internal Revenue Service by **January 31**. All other Payer copies of Forms 1099 and Form 1098, reporting other than nonemployee compensation, must be mailed to the IRS on or before February 28.

Due to an increase in requests for this information from the IRS, we are recommending that all individual owners of rental properties file Forms 1099 and 1098 annually.

Forms 1099 are required to include the phone number of the issuer. Penalties can be assessed for missing payee tax identification numbers and addresses. We recommend obtaining W-9s, “Request for Taxpayer Identification Number,” throughout the year for vendors and persons that are potential recipients of information returns. A copy of Form W-9 is enclosed and may be duplicated as needed. It is considerably easier to obtain the required information when payments are being issued rather than in January of the following year.

Federal information returns are not required to be submitted to the Franchise Tax Board. The IRS forwards the information electronically.

If you need assistance preparing the Forms 1099 for your business or other year-end reports, please call C&D llp.