

# THE HAGAN LAW FIRM

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### REPORTING REQUIREMENTS FOR INDEPENDENT CONTRACTORS IN CALIFORNIA

by

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Since 1998, all employers in the State of California have been required to report new hires to the Employment Development Department as part of a New Employee Registry program. In 1999, Senate Bill 542 was signed by the Governor to expand reporting requirements to include independent contractors. Effective January 1, 2001, once a business has determined that it has hired an independent contractor, it must, in some circumstances but not in all, file an IC DE-542 report with the EDD.

#### 1. WHO MUST REPORT?

Any business or government entity that is required under the Internal Revenue Code to file a Federal Form 1099-MISC for services performed by an independent contractor must report the hire of such an independent contractor to the EDD. This program is designed to locate parents who are delinquent in their child support. Hiring entities subject to the law include: (1) Individuals, (2) Corporations, (3) Associations, (4) Partnerships, and (5) Agents of the above.

#### 2. WHO MUST BE REPORTED?

A) Any contractor which receives an IRS Form 1099-Misc.

B) Any contractor which is paid \$600 or more or who enters into a contract for

\$600 or more.

C) Any contractor conducting business as a sole proprietorship or individual.

### **3. WHO IS NOT REQUIRED TO BE REPORTED?**

**No reporting is required for independent contractors that are corporations, general partnerships, limited liability partnerships or companies.**

### **4. METHOD OF REPORTING?**

Reports must be made on the EDD's Form DE-542. DE 542 may be found on the EDD website or obtained by calling the EDD directly at:

P.O. Box 997350, MIC 99

Sacramento, CA 95899-7350

For Forms: (916) 322-2835

For Reporting Questions: (916) 657-0529

Fax: (916) 255-3211

[www.edd.ca.gov](http://www.edd.ca.gov)

### **5. WHEN MUST THE REPORT BE FILED?**

A DE-542 must be filed with the EDD within twenty (20) days of entering into a contract with an independent contractor where the level of services to be provided shall exceed \$600 in any one calendar year, or within twenty (20) days of making payments in excess of \$600 to a contractor in any one calendar year, whichever is earlier.

If the independent contractor is hired more than once during a calendar year, a report must be filed at such time as the compensation to the contractor meets or exceeds \$600. Only one report is required per calendar year.

### **6. PENALTY FOR FAILURE TO FILE REPORT.**

a) **Late Filing.** There is a \$24 late filing fee.

b) **Failure to File.** There is a \$24 failure to file fee.

c) **False of Incomplete Report.** If it is determined that the hiring party conspired with the contractor not to file, or to file a false or incomplete form, then the fee will be \$490.

Fees may be mitigated if the hiring party can show good cause as to why if filed late or not at all.

## 7. IMPLICATIONS OF REPORTING.

On September 28, 2000, Assembly Bill 1358 was signed by the Governor. This bill authorizes (1) the EDD to obtain the address of the independent contractor and (2) the EDD to use the information provided on the DE-542 form for the administration of the California Unemployment Insurance Code.

While not spelled out in black and white, the implications of the filing requirements are that the EDD will be able to identify abnormal or excessive filing of the DE-542 forms by a hiring agency which may trigger a payroll tax audit of the hiring agency.

## 8. CONFUSED ABOUT INDEPENDENT CONTRACTOR STATUS?

If an employer is uncertain as to whether a hire is an independent contractor or an employee, the employer may request a determination. Both the IRS and the EDD will provide employers with a written determination for tax withholding purposes. The IRS provides a form SS-8 and the EDD provides form DE-1870.

**Danger!!!! This is a trap for the unwary.** While an employer is well advised to use these forms for a *self-audit*, a written determination should *never* actually be requested. A majority of the time, the taxing agencies will find that an employment relationship exists. Worse yet, the employer may expose itself to an audit as a result of requesting determination. If an employer has any doubts about its classification of a hire, it should seek legal and/or accounting counsel.

*The information provided herein is not intended as legal advice and should not be acted upon. If you have additional questions about this subject matter or would like to consult with an attorney, please call Jennifer J. Hagan or James Hagan at The Hagan Law Firm (650) 322-8498.*

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