

Benefit Charge and Tax Audit Issues

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Reemployment Assistance

Florida references Unemployment Compensation as Reemployment Assistance.

- Reemployment Assistance provides temporary partial wage replacement benefits to qualified individuals who are out of work through no fault of their own.

Reemployment Assistance Program Benefits

- An unemployed worker may qualify for benefits if the individual has worked in covered employment and earned a minimum of \$3,400 within the base period, in addition to other key qualifications.
- The Florida Department of Economic Opportunity's (DEO) Division of Workforce Services' Reemployment Assistance Program must determine the eligibility of each claim filed.
- Reemployment Assistance benefits are paid from the Florida Unemployment Compensation Trust Fund.

Benefit Charge Process



- A Reemployment Assistance claim is filed and determined monetarily eligible.
- The claimant requests and receives benefit payment(s).
- Charges are applied to any base period employer account that has *not* received a non-charge determination.
- The Florida Department of Revenue (DOR) mails the Notice of Benefits Paid (RT-1) and the Reimbursement Invoice (RT-29).

Protecting Tax Rates and Reimbursement Costs

Employers should:

- Respond timely to the *Notice of Claim Filed-UCB 412* or the *SIDES* request for separation information.
- Provide as much detail as possible.
- Thoroughly communicate with your Third-Party Administrator (TPA).
- Review and respond to all requests for information from Florida DEO.
- Review any adverse determinations.
- Elect to participate in *SIDES*.
- Report potential identity theft within the Reemployment Assistance Help Center.

Protecting Tax Rates and Reimbursement Costs

- Carefully examine:
 - Notice of Benefits Paid (RT-1).
 - Reimbursement Invoice (RT-29).
 - Tax Rate Notice (RT-20).
- Report accurate information to the National Directory of New Hires (NDNH).
- Review the *Employer's Quarterly Report (RT-6)* and ensure employee wages are properly reported.

Florida DOR Procedures Regarding Claims

Notification of claim received from Florida DEO.

- Wages reported by the employer.
- Wages *not* reported by the employer.

Wages Reported by the Employer

Florida DOR issues a Notice of Benefits Paid to the employer.

Employer agrees and the tax rate is adjusted accordingly.

Employer disagrees and files a protest with Florida DEO – Florida DEO then conducts a wage credit hearing.

Florida DEO's decision will determine the action taken on employer's account.

Wages *NOT* Reported by the Employer

Florida DOR creates Blocked Claim Case and has 14 days to review and decide.

Both parties are notified of the decision. If either party disagrees, Florida DOR will notify Florida DEO.

Claimant is identified as employee, so wages are added, and a bill is issued to employer.

Claimant is not identified as employee, so no action taken.

Wages *NOT* Reported by the Employer

Florida DEO conducts a hearing when either party disagrees with the determination.

Florida DEO ruling will determine action taken on employer's account.

Compliance Audits

Florida DOR conducts compliance audits of reemployment tax as required by the United States Department of Labor (USDOL).

- Enforce Florida tax laws uniformly.
- Deter tax evasion.
- Promote voluntary compliance.
- Educate taxpayers.

How is the Audit Population Selected?

- DOR required to audit 1% of registered contributory employers.
- 1% must be large employers.
- Federal data — IRS 1099-Gs.
- Taxpayer filing data and filing behavior (identification of anomalies).
- Statistical data on business industry, size, and location.
- Third party data referrals.
- Tax violations.

What Happens When a Business is Audited?

- Receive notice in the mail.
- Initial audit period is 1 year.
- May be conducted in person (field audit) or electronically (desk audit).
- Produce all records requested by auditor.
- Duration of field audit — average of 1 day (may take longer if large employer or records are not readily available).

Brochure: *What to Expect from a Florida Reemployment Tax Audit.*

Assignment of Standard Rate

- If records are not provided by the audit year, rates will increase to 5.4%.
- Once sufficient records are provided, an earned rate can be calculated for the quarter following the time frame that the records were provided.

0.1% Tax Rate

$$\begin{array}{r} \$ 350,000 \\ \times \quad 0.001 \\ \hline \$350 \end{array}$$

\$18,550
Difference

5.4% Tax Rate

$$\begin{array}{r} \$ 350,000 \\ \times \quad 0.054 \\ \hline \$18,900 \end{array}$$

What Happens After an Audit?

- If no changes were made to the quarterly reports, no documentation will be issued.
- If changes were made to the quarterly reports:
 - Receive audit findings (Notice of Intent to Make Audit Changes), including protest rights.
 - 30 days to respond (agree or disagree).
 - Notice of Proposed Assessment issued including protest rights.
 - Hearings of disputed cases are conducted by Florida DEO.

Common Issues

The most common issues encountered during audits are related to:

- Independent contractors.
- Casual labor.
- Misclassified workers.
- Officers of S-corporations.

Types of Employees

Statutory Employee

- Officer of a corporation — any officer performing services for the corporation.
- Member of an LLC — any member of an LLC performing services if the LLC is treated as a corporation for federal income tax.

Common Law Employee

- Provides services to the employer and is subject to the will and control of the employer.
- For employers subject to Reemployment Tax law, compensation paid to employees is reported to the federal and state governments.
- Employees receive a W2.



Independent Contractor

An individual performing services for the employer who is not under the will or control of the employer:

- Not an employee (compensation is not reported for reemployment tax).
- Business does not control method of service performed.
- Business is concerned with final product or results, not necessarily when, where, or how service was performed.
- Usually issued a 1099.

How is an independent contractor defined?

Common Law Rules

1. The extent of control the business may exercise over the details of the work.
2. Whether the worker is engaged in a distinct occupation or business.
3. Whether the work done in a certain locality is usually done under the direction of the employer or by a specialist without supervision.
4. The skill required in the particular occupation.
5. Whether the employer or the worker supplies the tools and the place of work.

Common Law Rules

6. The length of time the person is employed.
7. The method of payment, whether by time or by job.
8. Whether the parties believe they are creating the relationship of employer and employee.
9. Whether the work is a part of the employer's regular business.
10. Whether the hiring party is or is not a business.

Casual Labor

Defined as “not in the course of the employer’s regular trade or business.”

- Occasional, incidental, or irregular.
- Should not be confused with temporary or part-time employment.
- Casual labor is generally exempt unless provided to a corporation.

Misclassified Workers

USDOL defines a misclassified worker as *an employee discovered through an audit not previously reported to the state for unemployment insurance purposes* – occurs when employer incorrectly classifies a worker as a non-employee.

Misclassified Workers

1. Employee previously not reported by the employer to the state for reemployment tax.
 - Independent Contractor – 1099.
 - Officers.
 - Casual Labor.
2. An individual previously reported as an employee but subsequently reclassified by the employer as an independent contractor.

Corporate Offices

- Any officer performing services is considered an employee.
- Compensation is presumed to be payment for services performed.
- Department of Revenue may reclassify distributions as wages.
- Non-salary compensation may be reclassified as wages (e.g., house or car payment, personal insurance, or property tax).
- Loan repayments — not wages.

Basis in Law

- Chapter 443, Florida Statutes.
- Chapter 73B, Florida Administrative Rules.

Resources

- Website - FloridaRevenue.com.
 - Under Forms and Publications - RT-800063 What to Expect from a Florida Reemployment Tax Audit (Brochure).
 - Under General Tax/Reemployment Tax/Classification of Workers - 10 Determining Common Law Factors.
 - Under Tax Information Publications/year 2015/Reemployment Tax/ TIP#1573B-01 Gross Wages to Be Reported – Officer/Shareholder Compensation.

Q&A



Contact



Thank You

Please contact us with questions or comments.



Florida DOR
Main Line: 850-488-6800
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Florida DEO
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