

Employers Must Notify Employees about the Earned Income Tax Credit

by

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A new law requires employers in California to notify their employees about the federal earned income tax credit (EITC), also known as the earned income credit. It also requires employers to process, upon an employee's request and in accordance with federal law, Internal Revenue Service (IRS) Form W-5 for advance payments of the EITC.

Enacted under Assembly Bill 650 (Lieu), the law covers every employer required to provide unemployment insurance (UI) to its employees. A covered employer must give the notice to all of its employees who are covered by UI; even employees whose earnings are far above the EITC eligibility limit must get the notice.

A saving grace is that there is no enforcement mechanism or penalty for failing to give the notice. Despite that, it is still the law, so employers need to comply with it. Plus, given our litigious society, prudence dictates compliance so as to avoid or defend against claims by current or former employees that they were injured (i.e., they did not claim and therefore did not get the EITC refund) because their employer had failed to give them the notice.

An employer must notify an employee that the employee may be eligible for the EITC within one week before or after, or at the same time, that the employer gives the employee an annual wage summary, such as an IRS Form W-2 or Form 1099.

The employer must either hand the notice to the employee or mail it to the employee's last-known address. Posting a notice on an employee bulletin board or sending it through office mail does not suffice.

The employer may choose between two notices:

Notice 1. This rather lengthy notice, which is specified in the statute:

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. The earned income tax credit has no effect on certain welfare benefits. 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 at 1-800-829-3676 or through its Web site at www.irs.gov.

Unfortunately, that notice will likely confuse and/or make many employees who do not qualify for the EITC question their employer's competency because it begins:

Based on your annual earnings, you may be eligible to receive the earned income tax credit. . . .

The italicized clause makes it sound as though the employer evaluated the employee's earnings and determined there is a reasonable prospect that the employee qualifies for the EITC, when in fact no evaluation was made and the employee may be nowhere close to being eligible for the EITC. In light of that undesirable outcome and because of its length, an employer might prefer not to give that notice but instead give Notice 2.

Notice 2. A notice containing instructions on how to obtain forms and notices available from the IRS for the purpose of claiming the EITC, including IRS Notice 797 and Form W-5, or any successor notice or form. The last sentence of the statutory notice states those instructions.

Accordingly, a shorter version of the statutory notice containing (1) similar instructions, (2) a statement of the employee's possible eligibility for the EITC, and (3) a brief description of the EITC will suffice. A sufficient notice reads:

You may be eligible for the earned income tax credit, a refundable federal income tax credit for low-income working individuals and families.

For information on your eligibility to receive the earned income tax credit, including information on how to obtain Internal Revenue Service (IRS) Notice 797, IRS Form W-5, or any other pertinent form or instructions, contact the IRS by calling 1-800-829-3676 or through its Web site at www.irs.gov.

Here is that notice in Spanish:

Usted puede ser elegible para el crédito de impuestos de ingresos ganados, un crédito de impuestos de ingresos federales reembolsables para trabajadores y familias de bajos ingresos.

Para información sobre su elegibilidad para recibir el crédito de impuestos de ganancias ganadas, incluyendo información sobre cómo obtener el Aviso 797, Forma W-5, del Servicio de Impuestos Interno (IRS por sus siglas en inglés), o cualquier otra forma pertinente o instrucciones, comuníquese con el IRS, llamando al 1-800-829-3676 o a través de su sitio de la Web al www.irs.gov.