

CLIENT ALERT

New Tax Notice Requirement for California Employers

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On October 13, 2007, Governor Schwarzenegger signed the Earned Income Tax Credit Information Act (“the Act”), which becomes effective on January 1, 2008. The Act requires California employers to provide information relating to the Federal Earned Income Tax Credit (“EITC”) to their employees in connection with the distribution of annual wage summaries, such as Form W-2. The purpose of the Act is to provide California residents with information on qualifying for and receiving the EITC.

The Act requires employers who are subject to, and are required to provide, California unemployment insurance to their employees, to provide specified information to any employee they cover. This information must be provided to employees within one week before or after, or at the same time as, any annual wage summary, including Form W-2 or Form 1099. Although the Act references Form 1099, which is usually provided to independent contractors, nothing in the Act or its legislative history indicates that the disclosure requirement applies to independent contractors.

The Act specifies that the required information must contain either of following:

1. Instructions on how to obtain any notices available from the IRS that provide information on the availability of the EITC. This includes, but is not limited to IRS Notice 797 (which lists the basic requirements for qualifying for the EITC) and Form W-5 (the form required to receive advance payment of the EITC).
2. Notice substantially similar to the following language provided in the Act:

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 BY CALLING 1-800-829-3676 OR THROUGH ITS WEB SITE AT WWW.IRS.GOV.

The Act provides that the employer may create its own notice. It is advisable to include the statutory language in any such notice. It may also be advisable to include language clearly indicating that the notice is not tax advice from the employer and to clarify that the employer is not advising the employee that the EITC would be available in his or her circumstances. Such additional disclosure could read, “The following notice is being provided to you pursuant to California law. Your eligibility for the

Earned Income Tax Credit depends on your personal circumstances and annual earnings. This notice is not intended to be tax advice.”

The required information must be delivered by handing it directly to the employee or mailing it to the employee’s last known address. Other delivery mechanisms, such as interoffice mail, e-mail, or public posting are insufficient. Employers should be aware that this Act becomes effective January 1, 2008. This means that any employee covered by the Act must receive the required information along with any wage summary or Form W-2 sent in 2008, even if the W-2 relates to wages earned in 2007.

[IRS Notice 797 \[PDF\]](#)

[Text of the Earned Income Tax Credit Information Act \[PDF\]](#)

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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