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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 1@ Unemployment and Disability Compensation

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Part 1@ Unemployment Compensation

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Chapter 4@ CONTRIBUTIONS AND REPORTS

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Article 8@ ASSESSMENTS

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Section 1127-1@ Negligence or Intentional Disregard

1127-1 Negligence or Intentional Disregard

Negligence is the failure to exercise the degree of care which a reasonably prudent person under similar circumstances would exercise in the performance or observance of a duty. The failure to act may, but need not, be caused by carelessness or oversight. Negligence includes, but is not limited to, the following:

(1) An employer's failure to maintain records presenting an accurate and complete picture of wages paid, taxes withheld and taxes paid. (2) An employer's failure to make a status determination as to whether or not an individual who is providing services to that employer for payment is an independent contractor or an employee. (3) An employer's failure to maintain records substantiating deductions taken from wages. (4) An employer's failure to seek a ruling from the department when the status of an individual as an independent contractor or an employee is questionable. (5) An employer's failure to maintain records to substantiate a claim that unreported payments to employees are loan repayments.

(1)

An employer's failure to maintain records presenting an accurate and complete picture of wages paid, taxes withheld and taxes paid.

(2)

An employer's failure to make a status determination as to whether or not an individual

who is providing services to that employer for payment is an independent contractor or an employee.

(3)

An employer's failure to maintain records substantiating deductions taken from wages.

(4)

An employer's failure to seek a ruling from the department when the status of an individual as an independent contractor or an employee is questionable.

(5)

An employer's failure to maintain records to substantiate a claim that unreported payments to employees are loan repayments.

(b)

Intentional disregard means to purposely or deliberately pay little or no attention to a required action. Intentional disregard includes, but is not limited to, the following: (1) An employer's failure to report wages merely because it constitutes nuisance bookkeeping. (2) An employer's reporting of employees under the Federal Insurance Contributions Act (FICA), but failure to report those employees under the California Unemployment Insurance Code (Code) merely because the employees have only a remote possibility of obtaining benefits. (3) An employer's failure to seek a ruling on the status of the worker as an employee or independent contractor or to report the employee after being advised by an accountant to report. (4) An employer's failure to report the wages of an employee after being informed by the department of the worker's correct status as an employee. (5) An employer's failure to report the employee when the employer should have been aware or was aware of reporting requirements.

(1)

An employer's failure to report wages merely because it constitutes nuisance

bookkeeping.

(2)

An employer's reporting of employees under the Federal Insurance Contributions Act (FICA), but failure to report those employees under the California Unemployment Insurance Code (Code) merely because the employees have only a remote possibility of obtaining benefits.

(3)

An employer's failure to seek a ruling on the status of the worker as an employee or independent contractor or to report the employee after being advised by an accountant to report.

(4)

An employer's failure to report the wages of an employee after being informed by the department of the worker's correct status as an employee.

(5)

An employer's failure to report the employee when the employer should have been aware or was aware of reporting requirements.