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How to Properly Obtain Jurisdiction Over an Uninsured Employer In Workers' Compensation Cases

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Introduction

One of the most frustrating types of workers' compensation cases are those that include the Uninsured Employers Fund ("UEF"). This article is an attempt to put the requirement for proper identification of the employer and proper service in a larger, legal context. It is the authors' hope that the rules set down seventeen years ago, and now mandated by statute, will make more sense and aid practitioners in obtaining proper jurisdiction over uninsured employers. We hope this will encourage more practitioners to represent the injured workers of uninsured employers. Essentially, UEF cases are a marriage of traditional workers' compensation and civil lawsuits. Because of this overlay, these cases become more complex than most. This article will place the complexity of these cases in the context of Board and appellate interpretations of the Labor Code.

The Historical Context for Suing Uninsured Employers

> [T]here is a need to identify the correct employer as a prelude to proper service.... [I]t is not unreasonable to require the applicant to (1) name the employer in a proper manner and (2) effect service in the manner required by the Code of Civil Procedure for a default judgment.
>
> ***
>
> Although we agree that the applicant must identify the uninsured employer and effect proper service, the UEF should do what it can to facilitate the proceedings.[1]

Seventeen years ago this spring, an *en banc* panel of the Workers' Compensation Appeals Board proclaimed that truism. It has been the mantra of attorneys representing the Uninsured Employers Fund since.[2]

Without first knowing the legal identity of the correct employer, it is impossible to identify who may receive service of process and to determine the method of service to use. Unless service of process is done properly, the Board lacks personal jurisdiction to hear a claim for benefits or join UEF.[3] Just as in any civil case filed in Municipal or Superior Court, when it comes to uninsured employers the

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How to Properly Obtain Jurisdiction Over an Uninsured Employer in Workers' Compensation Cases

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Board must have personal jurisdiction over the employer in order to issue a judgment that is binding.

Prior to March 4, 1972, an injured employee of an uninsured employer had only one remedy: an action at law for damages.[4] As in any civil case, the Municipal or Superior Court acquires personal jurisdiction over the defendant uninsured employer when the employer makes a general appearance or is served with a summons and complaint after being properly identified.[5] For those familiar with civil practice, these requirements must be strictly adhered to if the defendant fails to respond (i.e., defaults). The liberal amendment and discovery rules make identifying employers far easier in cases where the defendant answers or generally appears.

One of the hallmarks of workers' compensation statutes throughout the country has been the delivery of lower benefits more quickly in a no-fault system.[6] The California Legislature, however, determined that this trade-off was not sufficient when an employer was illegally uninsured.[7] Instead, the Legislature gave the injured worker the advantages of a no-fault system with the availability of higher tort damages.[8] There was, however, another far less favorable trade-off the Legislature created under this system. Workers injured by illegally operating employers might get bigger judgments, but they did not necessarily collect any money. In short, injured workers of uninsured employers were in as precarious a situation as any tort victim of an uninsured defendant: namely, winning is easier than collecting. In this context, the creation of the Uninsured Employers Fund was an attempt to make the injured worker better able to collect the benefits due.

With the advent of the Uninsured Employers Fund, the injured employee was, in most instances, given an additional remedy: file an Application with the Board for compensation.[9] The addition of the Board as an alternate forum in cases where the defendant employer was uninsured, however, did not mean a concomitant lessening of, or alteration to, traditional civil court jurisdictional requirements. The uninsured employer continued to remain directly liable as it was in the civil arena. The Legislature transplanted the right to file a civil suit (with a resulting diminution of damages) against the uninsured employer into the theoretically faster WCAB procedures.[10] While the Uninsured Employers Fund was established to quickly pay injured workers, the compensation awarded to them from uninsured employers that went unpaid, its liability was made derivative of the uninsured employers.[11]

In essence, UEF was created to pay injured workers quickly and later collect the Applicant's judgment from the illegally uninsured employer defendant. The Applicant would not have to wait for the UEF to collect the award from the employer before receiving payment; the state took over that responsibility. The system was designed in theory to be virtually self-supporting.[12]

Although the Applicant no longer had to collect the judgment, the Legislature did not relieve her of the responsibility of ensuring that the Board had jurisdiction over the employer since the employer continued to be personally liable. Additionally, the acquisition of jurisdiction was necessary because UEF was also charged with the function of obtaining restitution of any public money expended and was given extraordinary enforcement powers.[13]

The Uninsured Employers Fund's Dual Obligation to Protect Injured Workers and the State Treasury

The UEF has dual obligations under the Labor Code: to pay injured workers as if they were employed by insured employers and to collect its expenditures from the illegally operating employers. Labor Code Section 3715 places an obligation on the UEF to ensure that injured workers are compensated for their injuries. This is the responsibility that most concerns applicants and their attorney. At the same time, the Legislature has insisted that payments made by the UEF be recoverable from the uninsured employer whether by entry of judgment or by imposition of property liens.[14] This means the UEF, as a matter of law, must ensure both that the applicant's right to benefits is vindicated and that the employer's due process rights are protected.[15] In that way, the UEF can collect as much as possible from illegally operating employers.[16]

The UEF has dual obligations under the Labor Code: to pay injured workers as if they were employed by insured employers and to collect its expenditures from the illegally operating employers.

UEF's collection activities serve as a deterrent to illegally uninsured employers believing that they can escape liability for their wrongdoing. Operating without insurance is an unfair business practice,[17] subjecting the employer to multiple penalties by the Department of Industrial Relations.[18] In the Department's experience, aggressive collection efforts against illegally operating employers is one piece of the enforcement system to stop employers operating without insurance. By making sure illegally operating employers know they will end up paying for the injuries to their employees, the Department seeks to remove the economic incentive to go without insurance. This, in turn, means that injured workers receive benefits more quickly and effectively and that businesses compete on a "level playing field."

Preserving the Uninsured Employers Fund's Collection Rights: *Yant v. Snyder and Dickenson* and Labor Code § 3716(d)

To preserve UEF's collection rights, the Board in *Yant* ruled that uninsured employers must either generally appear or receive the Application for Adjudication of Claim through service in conformity with the Code of Civil Procedure.[19] Since money paid by the UEF became a judgment against the uninsured employer, compliance with the due process notice requirements in the Code of Civil Procedure was necessary. The *Yant* Board declared due process was satisfied with the service of the Application.

While *Yant* required service of the Application, no document was required to ensure the uninsured employer understood the gravity of the matter pending against her. In 1990, the Legislature turned its attention to that problem left open in *Yant*. As part of the movement to "clean up" the major overhaul from the year before, the Legislature added Labor Code § 3716(d). Section 3716(d) precludes joinder and payment by the UEF until proper service on the employer of the Application and Special Notice of Lawsuit (to be developed by the Board). The Legislature placed upon the applicant the responsibility for identifying "a legal person or entity as the employer named in the special notice of lawsuit."[20] The Special Notice of Lawsuit ("SNOL") was required because

> Due process required that uninsured employers be given adequate notice and warning of the pendency of workers' compensation actions against them and of the possible consequences of these actions. The Legislature has determined that the service of the special notice of lawsuit shall give adequate notice and warning.[21]

One of those "possible consequences" was the ability of UEF to use summary collection proceedings against uninsured employers once personal jurisdiction had been established over the employers through proper service of process.[22] The SNOL was developed to contain specific warning of that eventuality.[23] Thus, just as in a civil court case, the Board acquired personal jurisdiction over the defendant uninsured employer when the employer was served with process or made a general appearance. This system of having to comply with the requirements of both civil procedure and workers' compensation is what makes UEF cases different.

What follows is a description of the technical rules governing proper service and personal jurisdiction. These rules are not unique to UEF cases nor were they created by UEF. What follows essentially is the "black letter" civil procedure mandated by the Board and the Legislature.

What Constitutes a General Appearance

An uninsured employer makes a general appearance by filing an answer, filing a request to transfer venue, giving written notice of appearance, or serving a discovery demand.[24] Indeed, any attempt to defend the claim on the merits will be construed as a general appearance.[25] If the employer has not made a general appearance, service of an application and a special notice of lawsuit is required.[26]

Process in an Uninsured Employer Claim Before the Board

While the Board does not use the terms "summons" and "complaint" to describe its process, it has their equivalents. In a claim involving an uninsured employer, the summons is a Special Notice of Lawsuit.[27] and the complaint is an Application For Adjudication of Claim.[28] Just as in a civil court arena, practitioners must follow certain formalities and use a designated form of "summons" with specified contents when preparing to serve process:

While the Board does not use the terms "summons" and "complaint" to describe its process, it has their equivalents. In a claim involving an uninsured employer, the summons is a Special Notice of Lawsuit.

> The special notice of lawsuit shall be in a form to be prescribed by the appeals board, and it shall contain at least the information and warnings required by the Code of Civil Procedure to be contained in the summons issued in a civil action....The applicant shall identify a legal person or entity as the employer named in the Special Notice of Lawsuit[29]

Because the Special Notice of Lawsuit is the summons, the name or names of the legal person or entity identified as the employer in the Special Notice of Lawsuit must match *exactly* the name or names of the employer that appear on the application.[30] The application, the Special Notice of Lawsuit and any proof of service filed to justify UEF's joinder all must contain the same employer's name.[31] That is, if there are several employers who were uninsured, there need to be several Special Notices, and several proofs of service.[32] If the parties discover the employer was originally misnamed and the name is corrected, the employer needs to be served with an application naming the employer correctly.

The Prelude to Proper Service: Identification of Employer

It follows from the above discussion that practitioners must treat a claim against an uninsured employer as if they were prosecuting a case in civil court to a default judgment. This is consistent with the historical origins of UEF, which are rooted not in workers' compensation but in civil law.

Because there is no insurance carrier to step into the shoes of the employer, it is critical to correctly identify the legal status of the employer and provide its proper name. Generally, the Code of Civil Procedure sets forth the types of legal entities that can be served as follows[33]: an individual,[34] a corporation,[35] a defunct corporation,[36] a joint stock company or association,[37] and an unincorporated association or partnership.[38] In addition, those code sections identify the individuals who may receive service on behalf of the legal entity.[39]

Employers, however, often do business under a fictitious business or trade name. It is imperative that the true name of the legal entity appear on the SNOL and application or else service will be defective.[40] If an employer uses a fictitious business name, the employer must first register the name with the clerk of the county in which the registrant has his principal place of business.[41] A fictitious business name statement ("FBNS") may be obtained from the county clerk's office. The statement will list the true identity of the legal entity operating the business.[42]

If the employer is a corporation, it must be registered with the Secretary of State. The Secretary of State's office maintains a copy of the articles of incorporation filed with it, and can provide counsel with the correct legal name of the corporation.[43] In addition, the Secretary of State's office should have on file a Statement of Domestic Stock Corporation or a Statement of Foreign Stock Corporation. The Statement lists the names and addresses of the officers, directors, and designated agent for service of process.[44]

Serving the Employer

After the legal status of the entity to be served has been determined and an individual who may receive service on behalf of the entity identified, the method of service to employ can be easily determined by turning to the Code of Civil Procedure[45] There are basically six methods of serving process. More than one method may need to be employed to complete service: (1) personal service,[46] (2) substituted service on an individual,[47] (3) substituted service on an individual who is receiving process on behalf of a corporation, a defunct corporation, a joint stock company or association, or an unincorporated association or partnership,[48] (4) service by acknowledgement and receipt,[49] (5) service by mail in person outside the state,[50] and (6) publication.[51] It should be obvious at this point which method of service is appropriate and necessary in each case. But a few words of advice are needed.

- There is a hierarchy of order for service. Personal service is preferred over substituted service.[52]

- Personal service means exactly that. The person noted on the proof of service as "the person served" is identical to the person noted as "the party served." For a corporation or limited liability company, this identity is met by serving a person authorized by the Code of Civil Procedure. For a partnership, it is met by serving a named partner.[53]

- Substituted service means service on someone other than a party. This means someone authorized to accept service, not just anyone. For substituted service on an individual, due diligence to serve personally is required before substituted service is acceptable. Generally, this means at least three attempts to serve on different days at different times. Substituted service on a corporation is on an employee who is authorized by the corporation to accept service but is not an agent or officer.

- Service by mail with a Notice and Acknowledgement of Receipt is mailed to the defendant with a copy of the Judicial Council Form, which is then signed by the defendant and returned. Until the form is signed and returned, service is not complete. A return receipt is not the equivalent for service within the state of California. It is acceptable for out-of-state service.

- Service by publication is a last resort.[54] Generally, the moving party must show the exhaustion of all available information sources, including public records.[55] Meeting the appropriate threshold is very difficult in civil courts. It is equally difficult in UEF cases.

The Final Steps

The final step in establishing the Board's jurisdiction to issue a binding award is to file the proof of service.[56] As in any civil case, a copy of the SNOL which is the equivalent of the summons must be returned with the original proof of service.[57] When the Workers' Compensation Judge hearing the matter is satisfied that the employer has made a general appearance or has been correctly identified and properly served, she will issue an order joining the UEF.[58] At that point, both the injured worker and UEF will have enforceable awards.

Endnotes

1. *Yant v. Snyder & Dickenson*, 47 Cal.Comp.Cases 254, 259, 260(1982).
2. Attorneys from the Office of the Director–Legal Unit ("ODL") represent the Uninsured Employers Fund. ODL has offices in Los Angeles, Sacramento, and San Francisco. This article is part of UEF and ODL's ongoing attempts "to do what it can to facilitate the proceedings." *Id.*
3. Labor Code § 3716(d). Personal jurisdiction is different from subject matter jurisdiction. The former is the jurisdiction that exists over a particular defendant by a tribunal while the latter is the tribunal's inherent authority to determine a dispute (as in an interstate claim, for example).
4. Labor Code § 3706.
5. Code of Civil Procedure § 410.50.
6. See, for example, Sanford D. Herlick, *California Workers' Compensation Handbook*, viii-ix. (17th ed., 1998).
7. The Legislature has plenary authority to create a complete system for the payment of injured workers. Cal.Const., Art. XIV. § 4.
8. Labor Code § 3708.

9. Code § 3715. There are certain clas[illegible] employees who do not have the additional remedy of workers' compensation (see Labor Code 3715(a)) or who can proceed before the WCAB but not collect from the UEF. See Labor Code § 3715(b).

10. See, *Yant, supra*, at 256.

11. *DuBois v. WCAB* (1993) 5 Cal.4th 382, 390, 20 Cal.Rptr.2d 523, 58 Cal.Comp.Cases 286.

12. 1990 Stats., ch. 770, § 5. See, for example, Sanford Herlick, *California Workers' Compensation Law* (5th ed.), § 3.20. See also, *infra*, n. 17.

13. *Id.*

14. Labor Code §§ 3717, 3720.

15. See, for example, *Katzin v. WCAB* (1992) 5 Cal.App.4th 703, 7 Cal.Rptr.2d 66, 57 Cal.Comp.Cases 230 [employer not given notice of MSC, trial and intention to submit denied due process. Consequent Finding and Award invalid] and *Arias v. WCAB* (1983)146 Cal.App.3d 813. 194 Cal.Rptr. 640 (cases against all potential employers must be prosecuted at once).

16. In fiscal year 1997-1998, UEF collected approximately 27% of its expenditures.

17. See, for example, Labor Code §§ 59, 90.5.

18. Labor Code §§ 3710-3714 [enforced by the Labor Commissioner], 3722, 4554, 4555. It is rising each year.

19. *Yant*, 47 Cal.Comp.Cases at 259.

20. Labor Code § 3716(d).

21. Stats. 1990, ch. 770, § 5(e).

22. See Labor Code § 3717, 3720.

23. Labor Code § 3716(d) says in relevant part, "The special notice of lawsuit shall, in addition, contain a notice that a lien may be imposed upon the defendant's property without further hearing and before the issuance of an award."

24. See Code of Civil Procedure § 1014 and *Creed v. Shultz* (1983) 148 Cal.App.3d 733, 739, 196 Cal.Rptr. 252, 256.

25. *Creed, supra*, 148 Cal.App.3d at 739-740, 196 Cal.Rptr. at 256 and authorities cited. In the end, it is the Workers' Compensation Judge's decision if a general appearance has been made. If that decision is not made part of a Petition for Reconsideration, the issue is waived. Labor Code § 5904. Thereafter, the decision may have preclusive effect in any subsequent enforcement proceedings.

26. Labor Code § 3716(d).

27. *Id.* A copy of an SNOL is attached. The form was developed by OD-Legal but is not the official WCAB form. We believe the forms is complete and complies with the Code of Civil Procedure. Counsel are encouraged to use the attached form and may obtain a copy from ODL Los Angeles.

28. *Id.*; Labor Code § 3715(a). For window period claims, where the date of injury falls between January 1,1990 through December 31, 1993, the complaint may also be the claim form. See *Aubry v. WCAB* (Amores) 1977, 56 Cal.App.4th 1032, 65 Cal.Rptr.2d 856, 62 Cal.Comp.Cases 870.

29. Labor Code § 3716(d).

30. See Code of Civil Procedure § 412.20(a)(2).

31. As a practical matter (although not in the scope of this article), whatever proof from the Workers' Compensation Insurance Rating Bureau ("WCRIB") is presented to prove no insurance needs to contain the same name of the employer. Otherwise, there may be no proof of a lack of insurance.

32. The authors recommend naming all employers in the caption and naming the specific defendant served at the bottom of the SNOL in the space after "Notice to Person Served."

33. See Code of C[illegible] Procedure §§ 416.10 *et seq.*

34. CCP§ 416.90.

35. CCP§ 416.10.

36. CCP§ 416.20.

37. CCP§ 416.30.

38. CCP§ 416.40.

39. Service of process upon a limited liability company, which is a hybrid form of legal entity having characteristics of both a corporation and a partnership, is governed by Corporation Code § 17061.

40. Knowing the true name of the legal entity will also be of assistance in determining who to serve and what method of service to use. For example, the employer might use the name "Ron's Bicycle Shop" and that name may appear on the employee's payroll check and W-2. However, what is the legal identity of "Ron's Bicycle Shop"? Is the name a fictitious business name ("FBN") used by Ron Smith, an individual, or an FBN used by Ron Smith and Sally Smith, husband and wife, or an FBN used by Ron Smith and Ray Smith, individuals and co-partners, or finally, an FBN used by Smith, Inc., a California corporation?

41. Business and Professions Code § 17915.

42. For requirements regarding fictitious business names see Business and Professions Code §§ 17900 et seq.

43. See generally Corporations Code §§ 200 and 202. Limited liability companies must file "articles of organization" with the Secretary of State that contain the name of the company. Corporations Code §§ 17050 and 17052.

44. Corporations Code § 1502.

45. See CCP §§ 415.10 *et.seq.* One good reference on the various methods of service is *Handling Service of Process (Action Guide)*, CEB, (1996).

46. CCP § 415.10.

47. CCP § 415.20(b).

48. CCP § 415.20(a).

49. CCP § 415.30.

50. CCP § 415.40.

51. CCP § 415.50. There is a common misunderstanding that a corporation may be served by publication; it may not. Code of Civil Procedure § 416.10(d) and Corporations Code §§ 1702 and 2111 provide for substituted service on the Secretary of State.

52. See *Yant, supra*, for a good discussion of the hierarchy.

53. If the injured worker has named the partners and the partnership, a partner served on behalf of the partnership must be served with two sets of papers, one for her as an individual and one for the partnership.

54. It cannot be used for a corporation. *Supra*, n. 52.

55. The authors recommend that anyone considering this motion (and the consequent expense), contact ODL to see if it can provide assistance.

56. Labor Code § 3716(d).

57. See Code of Civil Procedure § 417.30(a).

58. A copy of part of an informal checklist used by some attorneys for ODL in southern California is attached to this article. While it is not an official form, it encompasses the most common defects discussed here.

UEF OBJECTION TO JOINDER

(Los Angeles WCAB only)

Case: _____ Case No: LAO _____

IDENTIFICATION OF EMPLOYER DEFENDANT

_____ Business name insufficient identification
_____ Misnaming or ambiguous naming defendant
_____ Not all defendants identified

FAILURE TO ESTABLISH NON INSURANCE

_____ WCIRB report on wrong employer
_____ WCIRB report does not refer to date of injury
_____ WCIRB report inadequate for CT
_____ WCIRB report missing
_____ Insurance Exists

DEFECT IN SERVICE DOCUMENTS

_____ Address of service not match Special Notice or Application
_____ No proof that location of service was current address (business or residence) of defendant
_____ No proof that person served was authorized to accept service
_____ No proof that location of service is office of agent
_____ Substitute service on defendant wrong type
_____ No declaration of due diligence
_____ No follow-up service by Mail (Substitute Service)
_____ Service by publication not in compliance with Judicial Council guidelines
_____ Other

DEFECTIVE RETURN OF SERVICE

_____ Not all necessary documents served
_____ Return not on Judicial Council forms or equivalent
_____ "Notice To Person Served" inadequate or missing
_____ Failure to serve multiple defendants separately

OTHER

_____ Additional Comments:

PLEASE NOTE: UEF DOES NOT WAIVE ANY JURISDICTIONAL DEFECT BY ITS POSSIBLE FAILURE TO NOTE IT HERE.

cc: Applicant's Attorney
Employer/Employer' s Attorney
served on _____, 199__ by _____

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

WORKERS' COMPENSATION APPEALS BOARD

SPECIAL NOTICE OF LAWSUIT

(Pursuant to Labor Code 3716 and Code of Civil Procedure Section 4120)

WCAB NO.:

To: **DEFENDANT, ILLEGALLY UNINSURED EMPLOYER:**

AVISO: A ud le estan demandando. Le corte puede expedir una decision que le afecte sin que se le escuche a menos que ud actue pronto. Lea la siguiente informacion.

Applicant.	Defendants.

NOTICES

1) A lawsuit, the Application for Adjudication of Claim, has been filed with the Workers' Compensation Appeals Board against you as the named defendant by the above-named applicant(s).

You may seek the advice of an attorney in any matter connected with this lawsuit and such attorney should be consulted promptly so that your response may be filed and entered in a timely fashion.

If you do not know an attorney, you may call an attorney reference service or a legal aid office (see telephone directory).

2) An Answer to the Application must be filed and served within six days of the service of the Application pursuant to Appeals Board rules; therefore, your written response must be filed with the Appeals Board promptly; a letter or phone call will not protect your interests.

3) You will be served with a Notice(s) of Hearing and must appear at all hearings or conferences. After such hearing, even absent your appearance, a decision may be made and an award of compensation benefits may issue against you. The award could result in the garnishment of your wages, taking of your money or property or other relief.

If the Appeals Board makes an award against you, your house or other dwelling or other property may be taken to satisfy that award in a non-judicial sale, with no exemptions from execution.

A lien may also be imposed upon your property without further hearing and before the issuance of an award.

4) You must notify the Appeals Board of the proper address for the service of official notices and papers and notify the Appeals Board of any changes in that address.

TAKE ACTION NOW TO PROTECT YOUR INTEREST!

Issued by: WORKERS' COMPENSATION APPEALS BOARD

Name and Address of Appeals Board: WORKERS' COMPENSATION APPEALS BOARD

Name and Address of Applicant's Attorney:

FORM COMPLETED BY:

Name:
Address:
Telephone No.:

NOTICE TO THE PERSON SERVED: You are served:

1. ( ) as an individual defendant
2. ( ) as the person sued under the fictitious name of (specify):
3. ( ) on behalf of (specify):

under:
[ ] CCP 416.10 (corporation)
[ ] CCP 416.20 (defunct corporation)
[ ] CCP 416.40 (association or partnership)
[ ] California Corporation Code Section 2011
[ ] CCP 416.60 (minor)
[ ] CCP 416.70 (conservatee)
[ ] CCP 416.90 (individual)

4. by personal delivery on (date):

PROOF OF SERVICE – SPECIAL NOTICE OF LAWSUIT

1) I served the
   a. ( ) Special Notice of Lawsuit
      ( ) Application for Adjudication of Claim and Claim Form
      ( ) Order Joining Party Defendant
      ( ) Notice of Intention
   b. on defendant (name):
      Other (name and title or relation to person served)
   c. by delivery at home at business
      (a) date
      (b) time
      (c) address
   d. by mailing
      (1) date
      (2) place

2) Manner of service (check proper box)

a. ( ) **Personal service.** By personally delivering copies (CCP 415.10)

b. ( ) **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first class mail, postage prepaid) copies to the person served at the place where the copies were left. [CCP 415.20(a)]

c. **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of above, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed on the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. [CCP 415.20(b)] ***(Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)***

d. **Mail and acknowledgment service.** By mailing (by first class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) ***(Attach completed acknowledgment of receipt.)***

e. **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) ***(Attach signed return receipt or other evidence of actual delivery to the person served.)***

f. Other (*specify code section*):
   additional page is attached.

3) The "Notice to the Person Served" (on the Notice) was completed as follows (CCP 412.30, 415.0 and 474):
   a. as an individual defendant.
   b. as the person sued under the fictitious name of *(specify)*:
   c. on behalf of (specify):
      under: CCP 416.10 (corporation) | CCP 416.60 (minor) | other:
      CCP 416.20 (defunct corporation) | CCP 416.70 (conservatee)
      CCP 416.40 (association or partnership) | CCP 416.90 (individual)
      California Corporation Code Section 2011

4) At the time of service I was at least 18 years of age and not a party to this action.

5) Fee for service: $

6) Person serving:
   a. California sheriff, marshall or constable.
   b. Registered California process server.
   c. Employee or independent contractor of a registered California process server.
   d. Not a registered California process server.
   e. Exempt from registration under Bus. & Prof. Code 22350(b).
   f. Name, address and telephone number, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(Signature)

(For California sheriff, marshall or constable use only)
I certify that the foregoing is true and correct.

Date:

(Signature)

PLEASE NOTE: UEF DOES NOT WAIVE ANY JURISDICTIONAL DEFECT BY ITS POSSIBLE FAILURE TO NOTE IT BELOW. THIS FORM IS FOR THE CONVENIENCE OF THE PARTIES ONLY.

IDENTIFICATION OF EMPLOYER DEFENDANT

_____ Business name insufficient identification
_____ Misnaming or ambiguous naming of defendant
_____ Not all employers identified

FAILURE TO ESTABLISH NON INSURANCE

_____ WCIRB report on wrong employer
_____ WCIRB report does not refer to date of injury
_____ WCIRB report inadequate for CT
_____ Insurance Exists

DEFECT IN SERVICE DOCUMENTS

_____ Application without identification number
_____ Name on Special Notice not match application
_____ Application not preceded by service of Notice of Claim (Post 1990)

DEFECTIVE SERVICE

_____ Address of service not match Special Notice or Application
_____ No proof that location of service was current address (business or residence) of defendant
_____ No proof that person served was authorized
_____ No proof that location of service is office of agent
_____ Improper use of service by mail to effect POPS in State
_____ Substitute service on defendant wrong type
_____ No declaration of due diligence
_____ No follow-up service by mail (Substitute Service)
_____ Service by publication not in compliance with Judicial Council guidelines

DEFECTIVE RETURN OF SERVICE

_____ Not all necessary documents served
_____ Return not on Judicial Council forms or equivalent
_____ "Notice To Person Served" inadequate or missing
_____ Failure to serve multiple defendants separately

DUE PROCESS FAILURES

_____ Failure to serve D/R on both employer and UEF
_____ Failure to serve in advance med reports and liens on both employer and UEF
_____ Failure to serve UEF in advance with proof of service on employer
_____ Failure to give employer notice of hearing at best available address

DISCOVERY

_____ Failure to respond to UEF letter requesting information, dated _____.
_____ UEF needs further discovery as follows for the following reason:

_____ OTHER

SOME USEFUL CONTACTS TO IDENTIFY EMPLOYERS

Trucking Firms

Department of Motor Vehicles
Motor Carrier Permit Branch
P O Box 932370 - MS G875
Sacramento CA 94232-8153
(916) 657-8153

Limousine Companies

Public Utilities Commission
License Section
505 Van Ness, #2104
San Francisco, CA 94102
(415) 703-2063

U S Department of Transportation database of registered motor carriers:

http://www.safersys.org

Liquor Stores, Restaurants, Bars

Clerk's Office – to obtain any FBNS filed. Letter needs to be sent to County Clerk.

Los Angeles County Clerk Recorder

Norwalk CA

Orange County Clerk Recorder
12 Civic Center Plaza
Santa Ana CA 92702

City Business License Office - All cities have one

Department of Alcoholic Beverage Control
District Offices
3204 N Roseman, El Monte 91731 (626) 927-1060
28 Civic Center Plaza, Room 369, Santa Ana, CA 92701 (714) 558-4101
1 Manchester Blvd., 6th Floor, Inglewood 90306 (310) 412-6311
3950 Paramount Blvd., Suite 250, Lakewood 90712 (562) 982-1337

6150 Van Nuys Blvd., Room 220, Van Nuys 91401 (818) 901-5017

Secretary of State to find out if employer is a corporation, or limited liability company
1500 Eleventh St., 3rd Floor
Sacramento CA 95814-5701
You need to send original and 2 copies.

Board of Equalization (Have information on Sales tax)
450 N Street
Sacramento CA 95814
(800) 400-7115

Department of Consumer Affairs (Licensing Agency. They license all professions except attorneys)

400 R Street
Sacramento CA 95814
(800) 952-5210

District office in Orange County is located at:
1561 E. Orangethorpe Avenue, #220
Fullerton CA 92631
(714) 680-7851

CONSTRUCTION

Contractors' State License Board
9835 Goethe Road
Sacramento CA 95814
You need to send subpoena to get copy of file

District Offices
6150 Van Nuys Blvd., Suite 300, Van Nuys 91401 (818) 901-5168
One Manchester Blvd., Suite 603, Inglewood 90301 (310) 412-6395
245 W. Broadway, Suite 145, Long Beach 90802 (562) 590-5331
729 N. Azusa, Suite 2-B, Azusa 91702 (626) 815-8468
28 Civic Center Plaza, Room 351, Santa Ana CA 92701 (714) 558-4086

City Building Permit

If city is independently incorporated, it will have its own city building department.
If not, check with county.

Hall of Administration (Property Check)
Each county has one.

Franchises
First thing is to contact Franchiser

ESTABLISHING INSURANCE COVERAGE

Workers Compensation Insurance Rating Bureau
525 Market St., Suite 800
San Francisco CA 94105-2761
You must use the **exact** name and address(-es).

SIGNIFICANT CASES UNIQUELY AFFECTING UEF

Dubois v. WCAB, 5 Cal.4th 382 (1993) -- UEF is a creature of statute and is not subject to penalties unless the Legislature says so.

Arias v. WCAB, 146 Cal.App.3d 813, 194 Cal.Rptr. 640 (1983) - Failure to join and litigate case against all employers at once where dual employment or multiple employers is an issue deprives uninsured employer of due process of law.

Katzin v. WCAB, 5 Cal.App.4th 703 (1992) -- Employer entitled to notice of all hearings and of intention to submit. Absent such proof, award against employer invalid.

Symmar v. WCAB, 135 Cal.App.3d 65 (1982) -- UEF a creature of statute and not liable for CT where part of the period covered by insurance (see also, Labor Code § 5500.5).

Yant v. Snyder, 47 CCC 254 (1982) -- Employer must be named and served according to the requirements of the Code of Civil Procedure (See also, Labor Code § 3716(d)).

Industrial Commission Of Arizona v. Camilli, 94 F.3d 1330 (9th Cir. 1996) -- Debts to Arizona equivalent of UEF not dischargeable debts under the Bankruptcy Code as an excise tax.

STATUTES AND REGULATIONS (State)

Labor Code Section 3710 - 3732

8 CCR §§ 15720-15732