

Employer Determinations – Multiple Entities

Determining the correct employer in a relationship involving multiple entities is a two-step process. First, the worker must be a subject employee. If the worker is determined to be a subject employee, then the employer must be identified.

When multiple entities are involved in an employment relationship, sections 606 and 606.5 of the [California Unemployment Insurance Code \(CUIC\)](http://leginfo.ca.gov/faces/codes.xhtml) ([leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.ca.gov/faces/codes.xhtml)) are applied to determine the employer in the following instances:

- Employees/helpers of workers found to be employees.
- Temporary services agencies and employee leasing agencies.
- Agent of the employer.
- Loan of an employee from one employer to another employer.

Employees/Helpers of Workers Found to Be Employees

Under section 606 of the CUIC, if an employing unit has actual or constructive knowledge of an employee/helper of a worker determined to be an employee of that employing unit, whether or not the employing unit hired or paid the employee/helper, the employing unit is the employer of the employee/helper.

Example

In the motor carrier industry, some truck drivers who own a truck, referred to as *first-seat drivers*, retain the services of a second driver, referred to as *second-seat drivers*, to take turns driving the truck or another truck owned by a first-seat driver. The motor carrier trucking company has constructive knowledge that there are two drivers as the nature of the work is not possible to be completed by one driver. If the first-seat driver is found to be an employee of the motor carrier trucking company, by applying section 606 of the CUIC, then the motor carrier trucking company would also be the employer of the second-seat driver. In many instances, the second-seat drivers sign contracts directly with the motor carrier trucking company.

Temporary Services Agencies and Employee Leasing Agencies

A temporary services employer and an employee leasing employer are employing units that contract with clients

or customers to supply workers to perform services for the client or customer and perform **all** of the following functions as listed in section 606.5(b) of the CUIC:

1. Negotiates with clients or customers for matters such as time, place, type of work, working conditions, quality, and price of the services.
2. Determines assignments or reassignment of workers, even though workers retain the right to refuse specific assignments.
3. Retains the authority to assign or reassign a worker to other clients or customers when a worker is determined unacceptable by a specific client or customer.
4. Assigns or reassigns the worker to perform services for a client or customer.
5. Sets the rate of pay of the worker, whether or not through negotiation.
6. Pays the worker from their own account or accounts.
7. Retains the right to hire and terminate workers.

If an individual or entity contracts to supply workers to perform services for a customer or client and all of the above seven functions are met, pursuant to section 606.5(c) of the CUIC, the individual or entity is the employer of the employees who perform the services. As the employer, the individual or entity is responsible for reporting wages paid to the employees and paying Unemployment Insurance (UI) and Employment Training Tax (ETT) on those wages. Additionally, the individual or entity is required to withhold and remit State Disability Insurance (SDI)* and California Personal Income Tax (PIT) due on the wages paid.

Example

A temporary services company provided employees as data processors for their client. The temporary services company performed all seven criteria listed above. Pursuant to section 606.5(c) of the CUIC, the temporary services company is the employer of the data processors.

Agent of the Employer

If an individual or entity contracts to supply an employee to perform services for a client or customer and the seven functions above are not met, the individual or entity is not a leasing employer or a temporary services employer.

*Includes Paid Family Leave (PFL)

Pursuant to section 606.5(c) of the CUIIC, the employer is the client or customer and the individual or entity pays the wages as the agent of the client or customer.

Example

The owner of an automotive repair garage required its mechanics to establish limited liability companies (LLCs). The owner of the garage paid the mechanics for the costs of forming the LLCs and required the LLCs to contract with the automotive repair garage to provide services for the automotive repair garage. The mechanics were not in business for themselves and only performed services for the owner of the automotive repair garage. The owner of the garage controlled the manner and means of the services and provided all necessary large equipment and facilities. The mechanics were not permitted to work elsewhere and the owner of the garage could terminate the mechanics' services at any time. The owner of the garage set the rate of pay and paid the mechanics' LLCs directly. The mechanics then received their pay from their LLCs. The LLCs did not meet all the conditions under section 606.5(b) of the CUIIC and were not a temporary services or leasing employer. By applying 606.5(c) of the CUIIC, the LLCs pays the wages as the agent of the owner of the automotive repair garage. The owner of the automotive repair garage is the employer for payroll tax reporting purposes.

Loan of an Employee from One Employer to Another Employer

In circumstances where an employee is loaned by one employer to another employer, the loaning employer remains the employer responsible for payroll tax reporting purposes if the loaning employer continues to pay remuneration to the employee, whether or not reimbursed by the other employer. However, if the employer to whom the employee is loaned pays remuneration directly to the employee for services performed, that employer shall be considered the responsible employer for payroll tax reporting purposes for any remuneration paid to the employee by such employer. This is true regardless of whether the loaning employer also pays remuneration to the employee. Refer to section 606.5(d) of the CUIIC.

Example

A construction company is required by city ordinance to retain the services of off-duty police officers to direct traffic when any construction job impacts traffic on a city street. To retain the off-duty police officer's services,

the construction company has a contract with the city police department to loan the off-duty police officers from the city police department to the construction company. When the off-duty police officers are providing services for the construction company, they work under the direction and control of the construction company but still must follow the laws established by the city. The city police will bill the construction company for the off-duty police officers' services and the city police department will then issue supplemental pay checks to the off-duty police officers. In this example, since the city police department is paying the workers directly, the city police department, not the construction company, is the employer pursuant to section 606.5(d) of the CUIIC.

Additional Information

For further assistance, please contact the Taxpayer Assistance Center at 1-888-745-3886 or visit the nearest Employment Tax Office listed in the [California Employer's Guide \(DE 44\) \(PDF, 2.4 MB\)](https://edd.ca.gov/pdf_pub_ctr/de44.pdf) (edd.ca.gov/pdf_pub_ctr/de44.pdf) and on the [EDD](https://edd.ca.gov) (edd.ca.gov) website. Additional information is also available through the EDD's no-fee [payroll tax seminars](https://seminars.edd.ca.gov/payroll_tax_seminars) (seminars.edd.ca.gov/payroll_tax_seminars).

The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Requests for services, aids, and/or alternate formats need to be made by calling 1-888-745-3886 (voice) or TTY 1-800-547-9565.

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