

## AUTOMOTIVE REPAIR INDUSTRY

The automotive repair industry consists of businesses engaged in the service and repair of motor vehicles. Motor vehicles include, but are not limited to, automobiles, trucks, vans, recreational vehicles, limousines, and hearses. This industry generally includes the following types of businesses:

- Top, Body, & Upholstery Repair Shops
- Automotive Paint Shops
- Automotive Exhaust System Repair Shops
- Tire Retreading & Repair Shops
- Automotive Glass Replacement Shops
- Automotive Transmission Repair Shops
- Diesel Engine Repair Shops
- Automotive Tune-Up Shops
- Automotive Brake System Repair Shops
- Automotive Radiator Repair Shops
- Automotive Wheel Alignment Shops
- Automotive Oil Change & Lube Shops
- General Automotive Repair Shops

### WHO IS AN EMPLOYEE?

An "employee" includes all of the following:

- Any officer of a corporation.
- Any worker who is an employee under the usual common law rules.
- Any worker whose services are specifically covered by law. (Refer to Information Sheet: Statutory Employees [[DE 231SE](#)].)

An employee may perform services on a less than full-time or permanent basis. The law does not exclude services from employment that are commonly referred to as day labor, part-time help, casual labor, temporary help, probationary, or outside labor.

### Who Is a Common Law Employee?

Whether an individual is an employee for the purpose of [Section 621\(b\)](#) of the California Unemployment Insurance Code (CUIC) will be determined by the usual common law rules applicable in determining an employer-employee relationship. To determine whether one performs services for another as an employee, the most important factor is the right of the principal to control the manner and means of accomplishing a desired result. The right to control, whether or not exercised, is the most important factor in determining the relationship. The right to discharge a worker at will and

without cause is strong evidence of the right to control. Other factors to take into consideration are:

1. Whether or not the one performing the services is engaged in a separately established occupation or business.
2. The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of a principal without supervision.
3. The skill required in performing the services and accomplishing the desired result.
4. Whether the principal or the person providing the services supplies the instrumentalities, tools, and the place of work for the person doing the work.
5. The length of time for which the services are performed to determine whether the performance is an isolated event or continuous in nature.
6. The method of payment, whether by the time, a piece rate, or by the job.
7. Whether or not the work is part of the regular business of the principal, or whether the work is not within the regular business of the principal.
8. Whether or not the parties believe they are creating the relationship of employer and employee.
9. The extent of actual control exercised by the principal over the manner and means of performing the services.
10. Whether the principal is or is not engaged in a business enterprise or whether the services being performed are for the benefit or convenience of the principal as an individual.

Another consideration relative to employment is whether or not the worker can make business decisions that would enable him or her to earn a profit or incur a financial loss. Investment of the worker's time does not show a risk of loss.

The numbered factors above are evidence of the right to control. These factors are described more fully in [Section 4304-1](#) of Title 22, California Code of Regulations. A determination of whether an individual is an employee will depend upon a grouping of factors that are significant in relation to the service being performed, rather than depending on a single controlling factor.

The courts and the California Unemployment Insurance Appeals Board (CUIAB) have held that the existence of a written contract is not, by itself, a determining factor. The actual practices of the parties in a relationship are more important than the wording of a contract in determining whether a worker is an employee or independent contractor.

### Examples

The CUIAB has previously considered the status of auto repair workers. The CUIAB has generally held that auto mechanics and repair workers are employees and not independent contractors in cases where they work under some or all of the following circumstances:

- The services are performed on the employer's premises.
- The services are an integral part of the employer's business.
- The employer provides major equipment and the basic supplies and materials. (However, mechanics frequently own tools of a substantial value. This is typically not an indication that the mechanic is an independent contractor.)
- The employer sets the hours and assigns the work.
- The services are continuous in nature and not for a definite period of time.
- The employer collects all receipts and bears the risk of loss for bad debts.
- Services can be terminated at will.

The CUIAB has held that auto mechanics and repair workers are independent contractors in cases where they work under some or all of the following circumstances:

- The work is performed off the principal's premises.
- The work is performed after business hours.
- The worker has a business license and his/her own established business.
- The worker shares the risk of loss as to unpaid billings and bad checks.
- The worker bids the job and is responsible to complete the job for the bid amount.
- The worker hires and pays his/her own helpers.

- The worker deals with the customers directly and is responsible to them for the work performed.

The above-mentioned cases may not encompass the entire set of factors used by the CUIAB in establishing an employee or independent contractor status and are presented here as examples only. The Employment Development Department (EDD) and the CUIAB will determine status on a case-by-case basis by applying the applicable CUIC sections to the specific facts existing in a particular working relationship.

### ADDITIONAL INFORMATION

For further assistance, please contact the Taxpayer Assistance Center at (888) 745-3886 or visit the nearest Employment Tax Office listed in the *California Employer's Guide* (DE 44) and on EDD's Web site at [www.edd.ca.gov/Office\\_Locator/](http://www.edd.ca.gov/Office_Locator/). Additional information is also available through EDD's no-fee payroll tax seminars and online courses. View the in-person and online course offerings on EDD's Web site at [www.edd.ca.gov/Payroll\\_Tax\\_Seminars/](http://www.edd.ca.gov/Payroll_Tax_Seminars/).

The following EDD resources are also available to help determine the correct classification of the workers.

#### ***Employment Determination Guide (DE 38)***

The guide asks a series of "Yes" or "No" questions regarding the treatment of workers to help determine if a worker is most likely an employee or an independent contractor and whether you need to seek additional guidance. To obtain this guide, access EDD's Web site at [www.edd.ca.gov/pdf\\_pub\\_ctr/de38.pdf](http://www.edd.ca.gov/pdf_pub_ctr/de38.pdf).

#### ***Determination of Employment Work Status for Purposes of California Employment Taxes and Personal Income Tax Withholding (DE 1870)***

The form provides a series of questions regarding the working relationship between the principal and the workers. After the form has been completed and returned, EDD will issue a written determination stating whether the workers are employees or independent contractors based on the facts provided. To obtain this form, access EDD's Web site at [www.edd.ca.gov/pdf\\_pub\\_ctr/de1870.pdf](http://www.edd.ca.gov/pdf_pub_ctr/de1870.pdf).

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 (888) 745-3886 (voice) or TTY (800) 547-9565.

This information sheet is provided as a public service and is intended to provide nontechnical assistance. Every attempt has been made to provide information that is consistent with the appropriate statutes, rules, and administrative and court decisions. Any information that is inconsistent with the law, regulations, and administrative and court decisions is not binding on either the Employment Development Department or the taxpayer. Any information provided is not intended to be legal, accounting, tax, investment or other professional advice.