

FOREIGN EMPLOYMENT AND EMPLOYMENT ON AMERICAN VESSELS OR AIRCRAFT

FOREIGN EMPLOYMENT BY A UNITED STATES CITIZEN

Unemployment Insurance (UI), Employment Training Tax (ETT), and State Disability Insurance* (SDI)

In accordance with Section 610 of the California Unemployment Insurance Code (CUIC), for purposes of UI, ETT, and SDI, a citizen of the United States performing services outside the United States and Canada for an American employer is covered by California law if:

1. The American employer's principal place of business in the United States is in California, or
2. The American employer has no place of business in the United States, but:
 - The employer is an individual who is a resident of California, or
 - The employer is a corporation or limited liability company (LLC) that is organized under California laws, or
 - The employer is a partnership or trust and the number of partners or trustees who are California residents exceeds the number who are residents of any other state.
3. If neither #1 nor #2 applies, then the worker is covered by California law if the American employer has elected coverage in California. If the employer has not elected coverage in California or any other state, the worker is covered by California law if the worker has filed a benefit claim in California.

Under Section 125.4 of the CUIC, an "American employer" means any of the following:

- (a) An individual who is a resident of the United States.
- (b) A partnership, if two-thirds or more of the partners are residents of the United States.
- (c) A trust, if all the trustees are residents of the United States.
- (d) A corporation organized under the laws of the United States or of any state.

- (e) An LLC organized under the laws of the United States or of any state.
- (f) Any Indian tribe as described by subsection (u) of Section 3306 of Title 26 of the United States Code.

Personal Income Tax (PIT) Wages and Withholding

Wages paid to a California resident for services performed outside the United States are reportable as PIT wages and subject to California PIT withholding when they are paid by an employer who pays wages to employees for services performed within California AND does business in California, derives income from sources within California, or in any manner is subject to the laws of California. (Refer to Sections 13004, 13005, 13009, and 13009.5[d] of the CUIC.)

Example

XYZ Company, a Delaware corporation, maintains its principal place of business in California but has branch offices in London, England, and Paris, France. XYZ hired John Jones, a U.S. citizen, to manage the London operations, and John and his family have moved their residence to England. John's services are subject to UI, ETT, and SDI in California because he is a U.S. citizen performing services outside the United States for an American employer that maintains its principal place of business in California. John's wages are not subject to California PIT withholding because he is not a California resident and he performed no services in California.

NONRESIDENT ALIENS WORKING IN CALIFORNIA

Residents of countries other than the United States who are not United States citizens are also subject to California law for most services performed in this State. For example:

Mr. X, a foreign citizen and president of a corporation in his country, comes to California two weeks every year to visit a subsidiary corporation operating in California. He is paid wages by the subsidiary for management services while visiting in California. At the end of two weeks he returns to his home country. Since the services were performed in California and are not specifically exempted by statute, the wages paid to Mr. X by the subsidiary are subject to all California payroll taxes (UI, ETT, SDI, and PIT) even though Mr. X is neither a citizen of the United States nor a resident of California.

* Includes Paid Family Leave (PFL).

EMPLOYMENT ON AN AMERICAN VESSEL OR AIRCRAFT — WITHIN OR WITHIN AND WITHOUT THE UNITED STATES

Unemployment Insurance (UI), Employment Training Tax (ETT), and State Disability Insurance (SDI)

In accordance with Section 609 of the CUIIC, for purposes of UI, ETT, and SDI, service performed for an employing unit on or in connection with an American vessel operating on navigable waters within or within and without the United States or on or in connection with an American aircraft operating within or within and without the United States is reportable to California if:

- The employing unit maintains in California an operating office from which the operations of the American vessel or aircraft are ordinarily and regularly supervised, managed, directed, and controlled, and
- Such services are included in “employment” under the Federal Unemployment Tax Act (FUTA).

Under Section 125.3 of the CUIIC, “American aircraft” means an aircraft registered under the laws of the United States.

Under Section 125.5 of the CUIIC, “American vessel” means any vessel documented or numbered under the laws of the United States, and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

Example

ABC Company sails cruise ships from San Francisco to Alaska with a stop at a port in the State of Washington. ABC’s ships are all documented under the laws of the United States, and ABC regularly supervises, manages, directs, and controls its ships from its office in San Francisco. Wages paid to ABC’s crew members are reportable to California because (1) the services were performed on an American vessel operating on navigable waters within and without the United States, (2) the employer directs the vessel from its operating office in San Francisco, and (3) the services are included in “employment” under FUTA.

Workers performing services on or in connection with a vessel or aircraft that is not an American vessel or American aircraft are not in covered employment if the worker is employed on or in connection with such vessel or aircraft when outside the United States.

PIT Wages and Withholding

Wages paid to a master, officer, or any other seaman who is a member of a crew for services on an American vessel engaged in foreign, coastwise, intercoastal, interstate, or noncontiguous trade are not reportable as PIT wages or subject to PIT withholding. (Refer to Sections 13009[j] and 13009.5 of the CUIIC.)

Wages paid to a California resident for services performed on an American aircraft are reportable as California PIT wages and subject to PIT withholding. In addition, a California resident may be subject to another state’s income tax laws if over 50 percent of the California resident’s scheduled flight time during the calendar year is in that other state. Similarly, a nonresident of California may be subject to California PIT wages and withholding (as well as withholding for the nonresident’s home state) if over 50 percent of the nonresident’s scheduled flight time for the calendar year is in California. (Refer to Sections 13009 and 13009.5 of the CUIIC and Section 40116[f] of Title 49, United States Code.)

Examples

A flight attendant for Acme Air lives in San Diego, California, and flies a regular round trip from San Diego, California, to Albuquerque, New Mexico, with an intermediate stop in Phoenix, Arizona. This regular route consists of 20 percent scheduled flight time in California, 60 percent scheduled flight time in Arizona, and 20 percent scheduled flight time in New Mexico. The flight attendant’s wages are subject to the personal income tax laws of California (the worker’s state of residence) and Arizona (the state in which the worker spends over 50 percent of scheduled flight time).

A pilot for A-OK Skyway Express lives in Ashland, Oregon, and flies a regular route between Medford, Oregon, and San Francisco, California. This route consists of 10 percent scheduled flight time in Oregon and 90 percent scheduled flight time in California. The pilot’s wages are subject to the personal income tax laws of Oregon (the worker’s state of residence) and California (the state in which the worker spends over 50 percent of scheduled flight time.)

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) or on the EDD’s Web site at www.edd.ca.gov/Office_Locator/.

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.