

RESIDENTIAL CARE FACILITIES

Residential care facilities include facilities for residential care for the elderly, adult residential facilities, group homes for children, and small family homes for children. These establishments are licensed as community care facilities by the State Department of Social Services and provide 24-hour care, meals, support, and maintenance services to the mentally ill, the developmentally disabled, children, and the elderly.

WHEN IS A FACILITY AN EMPLOYER?

Under Section 675 of the California Unemployment Insurance Code (CUIC), a business becomes an employer when it employs one or more employees and pays wages in excess of \$100 during any calendar quarter. Wages are compensation for personal services performed, including, but not limited to, cash payments, commissions, bonuses, and the reasonable cash value of nonmonetary payments for services, such as meals and lodging.

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].)

Whether an individual is an employee for the purpose of Section 621(b) of the 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 be taken into consideration are:

- 1) Whether or not the person 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.

Types of employee services that are typical in the residential care industry include, but are not limited to:

Administrators	Cooks	Drivers
Caregivers	Housekeepers	Helpers
Relief Personnel	Office Staff	

WHAT ARE WAGES?

Wages are all payments made to employees for personal services, whether paid by check, cash, or the reasonable cash value of noncash payments, such as meals and lodging. (Refer to the chart for the values of meals and lodging.)

Employer-provided meals and lodging are subject to Unemployment Insurance, Employment Training Tax, and State Disability Insurance.* Also, lodging is subject to California Personal Income Tax (PIT) for withholding and wage reporting purposes unless furnished on the employer's premises, for the employer's convenience, and as a condition of employment. Meals are subject to PIT withholding and reportable as PIT wages unless furnished for the employer's convenience and on the employer's premises. Refer to Information Sheet: *Personal Income Tax Wages Reported on the Quarterly Contribution Return and Report of Wages (Continuation) (DE 9C) (DE 231PIT)* to explain the reporting of wages.

If more than half of the employees receive meals which are for the convenience of the employer, then all meals furnished by the employer are considered furnished for the employer's convenience and are, therefore, not subject to PIT withholding. If fewer than half of the employees receive meals which are for the convenience of the employer, then only those meals actually provided for the employer's convenience would be exempt from the PIT withholding requirement.

TAXABLE VALUE OF MEALS AND LODGING

The taxable values of meals and lodging should not be less than the reasonable estimated values stipulated by the contract of employment or in a union agreement. If the cash values are not stipulated in the hiring or union agreement, the taxable values are established by regulation. The taxable value of lodging is 66 2/3 percent of the ordinary rental value to the public up to a maximum value per month and not less than a minimum value per week.

The taxable values of meals and lodging are listed below:

VALUE OF MEALS						VALUE OF LODGING	
YEAR	DAY	BR.	LU.	DI.	UNID.	MAX PER MONTH	MIN PER WEEK
2012	10.55	2.30	3.20	5.05	3.65	\$1,206	\$39.10
2011	10.30	2.25	3.15	4.90	3.60	\$1,193	\$38.70
2010	10.35	2.25	3.15	4.95	3.60	\$1,190	\$38.60
2009	10.00	2.20	3.00	4.80	3.50	\$1,145	\$37.20
2008	9.60	2.10	2.90	4.60	3.35	\$1,092	\$35.40

NOTE: These values apply to nonmaritime employees only.
Lodging: 66 2/3 percent of ordinary rental value.

*Includes Paid Family Leave (PFL).

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.

The cash values of meals and lodging are subject to change each calendar year. This information is published in the Employment Development Department's (EDD) quarterly newsletter, the *California Employer*, which is mailed to all registered employers, and available on the EDD's website at www.edd.ca.gov/Payroll_Taxes/California_Employer_Newsletter.htm.

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 the EDD's website at www.edd.ca.gov/Office_Locator/. Additional information is also available through the EDD's no-fee payroll tax seminars and online courses. View the in-person and online course offerings on the EDD's website at 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 the EDD's website at 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 submitted to the EDD, a written determination will be issued by the EDD stating whether the workers are employees or independent contractors based on the facts provided. To obtain this form, access the EDD's website at 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.