

PHYSICAL THERAPY SERVICES

The purpose of this information sheet is to provide guidance to the physical therapy industry on properly classifying workers for California payroll taxes, which consist of Unemployment Insurance, Employment Training Tax, State Disability Insurance,* and Personal Income Tax unless otherwise stated.

Physical therapy means the art and science of physical or corrective rehabilitation or treatment of a person's bodily or mental condition by the use of the physical, chemical, or other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise. It includes physical therapy evaluation, treatment planning, instruction, and consultative services. It also includes the promotion and maintenance of physical fitness.

Physical therapy services performed in California are subject to the Physical Therapy Practice Act, Chapter 5.7 of Division 2 of the Business and Professions Code Sections 2600-2696.

WHO IS AN EMPLOYEE?

Under the California Unemployment Insurance Code (CUIC) Section 621(b), an employee is "any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee."

A common law employee is an individual who is hired by an employer to perform services and the employer has the right to exercise control over the manner and means by which the individual performs his or her services.

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. When those factors are considered, a determination of whether an individual is an employee will depend upon a grouping of factors that are significant in relationship to the service being performed, rather than depending on a single controlling factor.

WHO IS NOT AN EMPLOYEE?

Independent contractors are not employees. They are engaged in a separately established, bona fide business and are subject to profit or loss. They usually contract

*Includes Paid Family Leave (PFL)

to perform specific tasks and have the right to control the way the work is to be accomplished. They have a substantial investment in their business and customarily perform services for more than one business. Generally speaking, they are anyone who is not an employee under the common law rules unless they are statutory employees.

EMPLOYEES OR INDEPENDENT CONTRACTORS?

Tax decisions by the California Unemployment Insurance Appeals Board (CUIAB) provide some guidance as to whether the workers in the physical therapy industry will be classified as employees or independent contractors.

For example, in a case addressing physical therapists, workers were found to be employees when services were provided under the following conditions:

- The physical therapists were not closely supervised, but were subject to the same supervisory control as the employee physical therapists to whom they replaced or worked with.
- The physical therapists were paid by the hour. The physical therapists did not have a role in fixing the rate of compensation, which the principal received from the clients.
- The principal controlled the assignment of all the physical therapists and the physical therapists had the right to refuse the assignments.
- The principal had the right to end the relationship with the physical therapist at any time by not making any more assignments.

Conversely, in a different case, the physical therapists were held to be independent contractors when working under the following circumstances:

- The physical therapists were licensed with the State of California.
- The physical therapists set their own hours of work. If they were unable to keep their hours, the physical therapists arranged for their own substitute.
- The physical therapists performed services of a different nature for the principal and operated independently as professionals in the performance of their duties.
- The physical therapists and the patients agreed on follow-up visits without the principal's involvement.

- The physical therapists maintained their own charts on the patient's progress.
- The physical therapists held themselves out as being available to perform similar services for others and did provide such services to others.

The above-mentioned cases may not encompass the entire set of factors used by the CUIAB in establishing an employee or independent contractor status in the physical therapy industry 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) or access the EDD Web site at www.edd.ca.gov/Payroll_Taxes/.

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.

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 send a written determination stating whether the workers are employees or independent contractors based on the facts provided. To obtain this publication, access EDD's Web site at www.edd.ca.gov/pdf_pub_ctr/de1870.pdf.

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.

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