

STATUTORY EMPLOYEES

UNEMPLOYMENT INSURANCE (UI), EMPLOYMENT TRAINING TAX (ETT), AND STATE DISABILITY INSURANCE* (SDI)

A *statutory employee* is defined as an employee by law under a specific statute. Generally, most individuals are determined to be employees under common law (see Information Sheet: *Employment* [DE 231]). However, certain groups of workers have been specifically covered by the law for UI, ETT, and SDI purposes. These groups are considered statutory employees.

Corporate Officers as Statutory Employees

Under Section 621(a) of the California Unemployment Insurance Code (CUIC), a statutory employee includes any officer of a corporation.

Refer to Information Sheet: *Payments to Corporate Officers* (DE 231PC) for additional information.

Agent/Commission Drivers, Traveling/City Salespersons, and Home Workers as Statutory Employees

Statutory employees include workers performing services for an individual or entity (the *principal*) in a continuing relationship as:

- An agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services for his/her principal. Refer to Section 621(c)(1)(A) of the CUIC.
- A traveling or city salesperson, other than an agent-driver or commission-driver, engaged upon a full time basis in the solicitation on behalf of, and transmission to their principal (except for sideline sales activities on behalf of some other person), of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their own business operations. Refer to Section 621(c)(1)(B) of the CUIC.
- A home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by that person which are required to be

returned to that person or a person designated by him/her. Refer to Section 621(c)(1)(C) of the CUIC.

Services provided by these groups are covered if:

- The contract for service contemplates that substantially all of the work is to be performed personally by that worker,
- The person performing the work does not have a substantial investment in the facilities used in the performance of those services (other than the facilities for transportation), and
- The services are not in the nature of a single transaction.

Refer to Information Sheet: *Salespersons* (DE 231N) for more detailed information on agent-driver, commission-driver, and traveling or city salesperson.

Artists and Authors as Statutory Employees

(Refer to Sections 601.5, 621[d], and 686 of the CUIC.)

An artist or author is a statutory employee in the motion picture, radio, or television industry if:

- The individual's work is done under a collective bargaining agreement in which he/she is defined as an employee, and
- The employer has the right to control and direct the services to be performed.

The author of a commissioned or specifically ordered work is a statutory employee of the person commissioning the work if:

- The parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire, and
- The ordering or commissioning party obtains ownership of all the rights comprised in the copyright in the work.

*Includes Paid Family Leave (PFL).

Members of a Limited Liability Company (LLC) Treated as a Corporation for Federal Income Tax Purposes as Statutory Employees

Effective January 1, 2011, under Section 621(f) of the CUIC, a statutory employee includes any member of an LLC that is treated as a corporation for federal income tax purposes.

Refer to Information Sheet: *Limited Liability Entities* (DE 231LLC) for more detailed information.

Statutory Employees in the Construction Industry

Any individual not holding a valid contractor's license but performing services requiring a contractor's license will be considered an employee of the licensed or unlicensed contractor who has hired such an individual. Refer to Sections 621.5(a) and (b) of the CUIC.

Refer to Information Sheet: *Construction Industry* (DE 231G) for more detailed information.

PERSONAL INCOME TAX (PIT)

- For PIT purposes, Sections 13004, 13004.5, and 13009 of the CUIC requires withholding for wages paid to statutory employees:
 - As corporate officers,
 - As member(s) of an LLC that is treated as a corporation for federal income tax purposes, and
 - In the construction industry.
- In accordance with Sections 13009 and 13009.5, wages paid to the other types of statutory employees

are not subject to California PIT withholding if the worker is not also an employee under the usual common law rules (see DE 231):

- If they are not also a common law employee, PIT withholding is not required and wages paid are not required to be reported on the *Quarterly Contribution Return and Report of Wages (Continuation)* (DE 9C) as PIT wages.
- If they are also determined to be common law employees, PIT withholding is required and wages paid are required to be reported on the DE 9C as PIT wages.

Note: For residents performing services within or without California, or nonresidents performing services within California, refer to Information Sheet: *Multistate Employment* (DE 231D).

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 Employment Development Department's (EDD) Web site at 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 the EDD's Web site at www.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 (888) 745-3886 (voice), or TTY (800) 547-9565.

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