

Let the EDD Help!

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Don't be taken by surprise!

Avoid unplanned tax liabilities by properly classifying your workers.

For questions regarding an employment relationship, you can request that the Employment Development Department (EDD) provide a written determination by completing a *Determination of Employment Work Status for Purposes of State of California Employment Taxes and Personal Income Tax Withholding* (DE 1870). To obtain this form, access the EDD Web site at www.edd.ca.gov/pdf_pub_ctr/de1870.pdf.

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 Web site at www.edd.ca.gov/Office_Locator/.

The EDD can also provide guidance on employee or independent contractor issues, general information sheets on various classes of employment, and information regarding any of our upcoming no-fee payroll tax seminars.



STATE OF CALIFORNIA

LABOR AND WORKFORCE DEVELOPMENT AGENCY

EMPLOYMENT DEVELOPMENT DEPARTMENT

Telephone: (888) 745-3886
www.edd.ca.gov

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.



DON'T BE TAKEN BY SURPRISE!

Is your
worker an
employee or
independent
contractor?



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Unanticipated Tax Liability

Test for Employment

Factors continued:

If you have a business and pay other people to do work for you or on behalf of your business, you may be surprised with an unanticipated tax liability if a worker you consider to be an independent contractor files a claim for Unemployment Insurance or State Disability Insurance benefits.

That worker may actually be an employee and you would be responsible for past and present employment taxes for that individual.

A written contract by itself may NOT protect you from liability.

The Common Law Test for Employment

The most important factor in determining whether a worker is an employee or independent contractor:



Does the employer have the right to control the manner and means by which the worker performs his or her services?

Other key factors to consider are:

- ↳ The right to discharge the worker at will is strong evidence of the right of direction and control of the worker.
- ↳ The worker is not in a distinct trade or occupation.
- ↳ The work is not highly skilled or specialized.
- ↳ The work is usually done under supervision.
- ↳ The worker does not provide the tools, equipment, and place of work.

- ↳ The work is long term or continual, not an isolated event.
- ↳ The worker is paid based on time worked or piece rate.
- ↳ The work is not separate from the regular work, business, or services provided by the employer.
- ↳ The actual practices of the working relationship between the parties are different from the terms of their independent contractor agreement.
- ↳ The worker has little or no meaningful discretion over how to do the job.

Employee by Specific Statute of Law

A worker not considered to be a common law employee may be a statutory employee by law. Some examples are:

- ↳ Unlicensed construction subcontractors
- ↳ Route salespersons
- ↳ Commission and agent drivers

