Employment Development Department

State of California

Attention California Businesses:

Don't be taken by surprise!

Do you know when to consider a worker an independent contractor?

Let EDD help you

AVOID UNPLANNED TAX LIABILITIES

Don't Fall Into an Employment Tax Liability Trap

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 or State Disability Insurance.

Workers providing services to or on behalf of your business may be <u>your</u> employees for employment tax purposes, even though you believe they are independent contractors.

A written contract <u>by itself</u> may not protect you from liability.

Chances of liability are greater if: you pay for such services by the hour or other time period; the services are performed for customers of your business; the services are provided on a regular basis; or the workers do not hold themselves out to the public as being in business and provide their services to a wide range of other customers. The test for liability is:

Whether the proprietor, either directly or through agents (or even customers), has the right or the ability to supervise or otherwise <u>control</u> the time, place, and manner in which workers carry out their jobs. Unless the proprietor clearly does not have the <u>right</u> to supervise and control the workers, either directly or indirectly, an employment relationship probably exists and employment taxes may be due.

<u>DANGER</u>

There are many additional situations in which employment exists as a result of legislation, even though the common law relationship is one of principal and independent contractor. Examples are: unlicensed construction subcontractors, route salespersons, and commission- and agent-drivers. This is not a complete list; there are numerous other examples in the law.

You can request that the Employment Development Department issue you a written determination on an employment relationship. For more information regarding this service, please contact the nearest Employment Tax Customer Service Office (ETCSO) listed on page 4 of this brochure. The ETCSOs can also provide you guidance on employee or independent contractor issues, general information sheets on various classes of employment, and information regarding upcoming employment tax seminars.

The Common Law Test for Employment

Does the principal or the worker have the right to control the manner and means by which the work is done?

Where it is not clear whether the principal (proprietor) has the right of control, the actual working relationship between principal and worker must be examined. If one or more of the following conditions exist, there may be an employment relationship:

- The principal has the right to discharge the worker at will and without cause.
- The worker is not in a distinct trade or occupation.

- In the geographic area and in the occupation, the work is usually done under direction by employees rather than by independent specialists without supervision.
- The work is not highly skilled and specialized.
- The worker does not provide the tools, equipment, and place of work.
- The services are provided on a repetitive or long-term basis.
- The worker is paid based on the time worked or piece rate.
- The work is not separate from the regular work, business, or services provided by the principal.
- There is no written contract showing the intent of the parties to create an independent relationship.
- The nature of the work is such that the worker has little or no meaningful discretion over how to do the job.

These conditions are based on the determining factors articulated by the State Supreme Court and on the regulations of the Department implementing those factors. The regulations may be found in Title 22, California Code of Regulations, Section 4304-1. These questions do not substitute for, supersede, or amend the regulations. They only point out in simple, direct language the issues raised by those regulations.

Remember, your tax dollars support EDD services to California's 1,038,000-member business community. We're here to help you succeed in today's competitive economy. Please give us a call whenever you have questions about employment-related issues.

The California State Employment Development Department (EDD), as a recipient of federal and state funds, is an equal opportunity employer/program and is subject to Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA).

You can obtain information about accommodations for disabilities by contacting your nearest EDD office on page 4 of this brochure.

Employment Development Department
Employment Tax Customer Service Offices

OUT-OF-STATE EMPLOYERS, contact:

Sacramento	(916) 464-3502

IN-STATE EMPLOYERS, contact:

Bakersfield	(661) 395-2896
Capitola	(831) 464-6293
Chico	(530) 895-4401
Downey	(562) 923-1237
El Centro	(760) 353-4990
El Monte	(562) 923-1237
Escondido	(760) 737-2200
Eureka	(707) 445-6522
Fresno	(559) 445-5132
Laguna Hills	(949) 768-6102
Long Beach	(562) 428-0021
Los Angeles	(323) 669-7670
Marysville	(530) 741-4020
Modesto	(209) 576-6205
Monterey	(831) 649-2902
Oakland	(510) 577-2396
Orange	(714) 288-2601
Pleasant Hill	(925) 977-8265
Redding	(530) 225-2205
Riverside	(909) 383-4176
Sacramento	(916) 464-3502
San Bernardino	(909) 383-4176
San Diego	(619) 516-1920
San Francisco	(415) 929-5700
San Jose	(408) 277-9400
San Luis Obispo	(805) 549-3512
San Mateo	(650) 358-4102
Santa Monica	(310) 576-6400
Santa Rosa	(707) 576-2094
Stockton	(209) 956-1438
Vallejo	(707) 648-4040
Van Nuys	(818) 901-5208
Ventura	(805) 654-4506
Visalia	(559) 635-3220

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