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 website 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 website 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

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.

Employment Development Department
State of California

DON'T BE TAKEN BY SURPRISE!

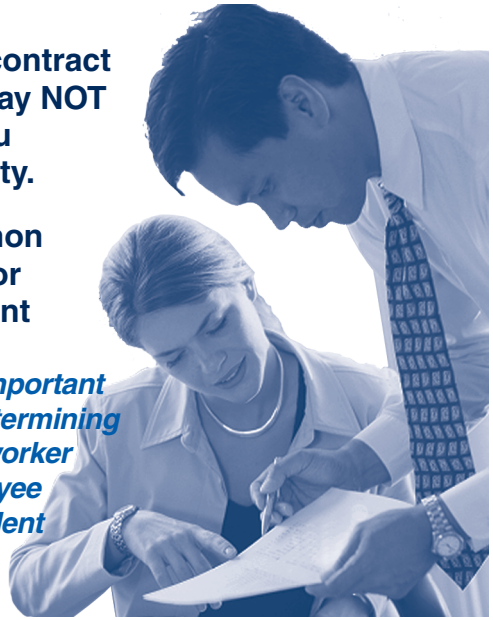
Unanticipated Tax Liability

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 salepersons
- Commission and agent drivers

Refer to *Information Sheet: Employment* (DE 231).