

## EMPLOYMENT WORK STATUS DETERMINATION

Many businesses feel that the law is unclear and confusing regarding the classification of workers as employees or independent contractors. This sometimes leads to costly audit assessments for unreported wages when employees are misclassified as independent contractors.

### **EMPLOYMENT DETERMINATION GUIDE (DE 38)**

In an effort to assist businesses with properly classifying their workers, the Employment Development Department (EDD), in partnership with the Small Business Employer Advisory Committee, developed the DE 38 and its "Worksheet on Employment Status." The worksheet can be used by businesses to help determine whether a worker is most likely an employee or an independent contractor. The DE 38 also includes examples of independent contractors and common law employees.

To obtain this guide, access the EDD website at [www.edd.ca.gov/pdf\\_pub\\_ctr/de38.pdf](http://www.edd.ca.gov/pdf_pub_ctr/de38.pdf) or contact the Taxpayer Assistance Center at 888-745-3886.

### **EDD RULING**

After completing the DE 38, if you are not sure whether the worker is an employee or an independent contractor, you may request a written determination. The determination will be issued in the form of an EDD ruling letter.

An EDD ruling letter is a written determination that interprets and applies provisions of the California Unemployment Insurance Code and is issued to businesses that hire workers. The purpose of a ruling letter is to provide a written analysis of the working relationship and the EDD's determination whether the worker is an employee or an independent contractor. This is an official document, which may be used to resolve future issues.

The EDD's determination is based upon the facts presented. If there are facts that were omitted or misrepresented, the determination made by the EDD is not valid and will not be binding. If the facts change during the course of the working relationship, the determination is no longer valid and you will need to contact the EDD for a new ruling.

However, a ruling letter will not be issued under the following circumstances:

- 1) If there is an open audit or investigation involving the requestor or worker(s) at issue.
- 2) If the identical issue is involved by the requestor/agent in either pending litigation or by the California Unemployment Insurance Appeals Board.
- 3) For hypothetical situations.

### **How to Request a Ruling**

A written determination may be requested by submitting a *Determination of Employment Work Status for Purposes 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](http://www.edd.ca.gov/pdf_pub_ctr/de1870.pdf) or contact the Taxpayer Assistance Center at 888-745-3886. This form should be completed for one individual who is representative of the class of workers whose status is in question. If a written determination is desired for more than one class of workers, a separate DE 1870 should be completed for each class. If you previously completed an Internal Revenue Service Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding (Form SS-8), you may mail us a copy of the Form SS-8 with any related attachments instead of completing a DE 1870. Return the completed form and attachments to:

Employment Development Department  
FACD-Central Operations, MIC 94  
P.O. Box 826880  
Sacramento, CA 94280-0001

### **Process**

After receiving your completed form and any applicable attachments, the EDD will analyze the information received. An EDD representative may contact you or some of your workers if further clarification is needed. The EDD will respond with a written determination within 60 days of receiving your request.

### **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 EDD website at [www.edd.ca.gov/Office\\_Locator/](http://www.edd.ca.gov/Office_Locator/). Additional information is also available through the EDD no-fee payroll tax seminars and online courses. View the in-person and online course offerings on the EDD website at [www.edd.ca.gov/Payroll\\_Tax\\_Seminars/](http://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.