

TAXICAB INDUSTRY

The purpose of this information sheet is to provide guidance to the taxicab industry on properly classifying workers for employment tax purposes.

Taxicab drivers typically operate taxicabs under one of three business arrangements.

1. The taxicab company acknowledges the driver as an employee.
2. The driver owns and operates the taxicab, independently arranges fares, and personally pays for required licenses, permits, and insurance.
3. The driver performs services as a lease driver on either a fixed-fee or percentage-of-receipts basis.

IMPACT OF GOVERNMENTAL REQUIREMENTS

Local governments commonly mandate requirements that a taxicab company must meet in order to lawfully own and operate a taxicab company. Generally, these mandates will include provisions that require a taxicab company to exercise certain direction and control over its taxicab drivers to ensure transportation accessibility and to maintain public safety. These requirements differ in each jurisdiction and are not viewed as evidence of an employment relationship unless a taxicab company expands upon or exceeds the mandates. If a taxicab company expands upon or exceeds the mandates, it will be considered evidence of direction and control over the drivers and is evidence of an employment relationship.

WHO IS AN EMPLOYEE?

Under California Unemployment Insurance Code (CUIC) Section 621(b), an employee is "any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee."

A common law employee is an individual who is hired by a principal to perform services and the principal has the right to exercise control over the manner and means by which the individual performs his or her services.

The right to control, whether or not exercised, is the most important factor in determining the relationship. The right to discharge a worker at will and without cause is strong evidence of the right to control.

Other factors to take into consideration are:

1. Whether or not the one performing the services is engaged in a separately established occupation or business.
2. The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of a principal without supervision.
3. The skill required in performing the services and accomplishing the desired result.
4. Whether the principal or the person providing the services supplies the instrumentalities, tools, and the place of work for the person doing the work.
5. The length of time for which the services are performed to determine whether the performance is an isolated event or continuous in nature.
6. The method of payment, whether by the time, a piece rate, or by the job.
7. Whether or not the work is part of the regular business of the principal, or whether the work is not within the regular business of the principal.
8. Whether or not the parties believe they are creating the relationship of employer and employee.
9. The extent of actual control exercised by the principal over the manner and means of performing the services.
10. Whether the principal is or is not engaged in a business enterprise, or whether the services being performed are for the benefit or convenience of the principal as an individual.

Another consideration relative to employment is whether or not the worker can make business decisions that would enable him or her to earn a profit or incur a financial loss. Investment of the worker's time does not show a risk of loss.

The numbered factors above are evidence of the right to control. These factors are described more fully in Section 4304-1 of Title 22, California Code of Regulations. When those factors are considered, a determination of whether an individual is an employee will depend upon a grouping of factors that are significant in relationship to the service being performed, rather than depending on a single controlling factor.

WHO IS NOT AN EMPLOYEE?

Independent contractors are not employees. They are engaged in a separately established, bona fide business and are subject to profit or loss. They usually contract to perform a specific task and have the right to control the way the work is to be accomplished. They have a substantial investment in their business and customarily perform services for more than one business. Generally speaking, they are anyone who is not an employee under the common law rules unless they are statutory employees.

EMPLOYEE OR INDEPENDENT CONTRACTOR?

Tax decisions by the California Unemployment Insurance Appeals Board (CUIAB) provide some guidance as to whether workers in the taxicab industry will be classified as employees or independent contractors.

In *Santa Cruz Transportation, Inc. v. Unemployment Insurance Appeals Board* (1991) 235 CA 3d 1363; 1 Cal Rptr 2d 641, the Appeals Court held the drivers who paid the taxicab company a fixed-fee to lease a taxicab were common law employees of the company.

The Appeals Court found the following were indicators of employment:

- The terms of the lease allowed the company to terminate the drivers.
- The drivers could be terminated under the lease agreement if they did not maintain good relations with the public.

- The lease agreement designated the time period when the shift began and ended.
- The company had the right to coordinate their meal breaks.
- The drivers were prohibited from using the taxicab for personal use.
- The drivers were required to accept charge slips from certain customers.
- The company maintained a dress code.
- The company required the drivers to account for the fares they received by maintaining trip sheets. There was no evidence that the city required the drivers to maintain trip sheets.
- The work did not require the expertise of a skilled professional.
- The drivers depended on the company's dispatcher for their livelihood.
- The drivers did not set their own rates, but were paid according to the number and distance of fares they carried. There was no evidence of entrepreneurial risk.
- The company owned the taxicabs and municipal taxicab license. The taxicab company operated a fleet of cabs for public carriage.
- The customers called the company and the company arranged for the performance of the services.
- The taxicab company's name was on the taxicab.
- The drivers did not advertise their services.
- The driver's work was part of the regular business of the taxicab company.

The above-mentioned case may not encompass the entire set of factors used by the CUIAB in establishing an employee or independent contractor status in the taxicab industry and is presented here as an example only. The EDD and the CUIAB will determine status on a case-by-case basis by applying the applicable CUIC Sections to the specific facts existing in a particular working relationship.

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) or access the EDD Web site at www.edd.ca.gov/payroll_taxes/.

The following EDD resources are also available to help determine the correct classification of the workers.

Employment Determination Guide (DE 38)

The guide asks a series of "Yes" or "No" questions regarding the treatment of workers to help determine if a worker is most likely an employee or an independent contractor and whether you need to seek additional guidance. To obtain this guide, access EDD's Web site at www.edd.ca.gov/pdf_pub_ctr/de38.pdf.

Determination of Employment Work Status for Purposes of California Employment Taxes and Personal Income Tax Withholding (DE 1870)

The form provides a series of questions regarding the working relationship between the principal and the workers. After the form has been completed and returned, EDD will send a written determination stating whether the workers are employees or independent contractors based on the facts provided. To obtain this publication, access EDD's Web site at www.edd.ca.gov/pdf_pub_ctr/de1870.pdf.

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