

CASUAL LABOR

Casual labor is a common term used in the employer community to describe workers performing a variety of services, usually on a temporary or part-time basis. Often these workers are hired for just an hour, a day, or a week. Workers hired for an hour, a day, a week, or for part-time services are typically common law employees. There is no provision in the law that excludes a worker from employment solely because he or she works less than full-time. The following types of workers have been referred to as causal laborers:

- Part-time helper
- Day laborer
- Student
- A worker on probation
- A retiree collecting social security benefits
- A worker without a social security number
- Temporary helper
- Outside laborer
- Alien
- A worker in training

WHO IS AN EMPLOYER?

Under Section 135 of the California Unemployment Insurance Code (CUIC), an *employing unit* is any individual or type of organization that has in its employ one or more individuals performing services for it. Under Section 675 of the CUIC, an employing unit becomes an *employer* when it employs one or more employees and pays wages in excess of \$100 during any calendar quarter. *Wages* consist of remuneration for personal services performed, including cash payments, commissions, bonuses, and the reasonable cash value of nonmonetary payments for services, such as meals and lodging.

Once you become an employer, you must complete a registration form from the DE 1 series. Employers are responsible for reporting wages paid to their employees and paying Unemployment Insurance (UI) and Employment Training Tax (ETT) on those wages, as well as withholding and remitting State Disability Insurance* (SDI) and Personal Income Tax (PIT) due on wages paid.

WHO IS AN EMPLOYEE?

An "employee" includes all of the following:

- Any officer of a corporation.
- Any worker who is an employee under the usual common law rules.

- Any worker whose services are specifically covered by law. (Refer to Information Sheet: *Statutory Employees* [DE 231SE].)

Who Is a Common Law Employee?

Whether an individual is an employee for the purpose of Section 621(b) of the CUIC will be determined by the usual common law rules applicable in determining an employer-employee relationship. To determine whether one performs services for another as an employee, the most important factor is the right of the principal to control the manner and means of accomplishing a desired result. 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.

* Includes Paid Family Leave (PFL).

- 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 is not sufficient to 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 (CCR). A determination of whether an individual is an employee will depend upon a grouping of factors that are significant in relation to the service being performed, rather than depending on a single controlling factor.

The courts and the California Unemployment Insurance Appeals Board (CUIAB) have held that the existence of a written contract is not, by itself, a determining factor. The actual practices of the parties in a relationship are more important than the wording of a contract in determining whether a worker is an employee or independent contractor.

WAGES

The employee performing casual labor services may be paid based on piece rate or by the job, as well as by hour, salary, or sales. The methods of payment may include, but are not limited to, cash, check, meals, lodging, products or services, and the reasonable cash value of all remuneration in any medium other than cash.

However, wages do not include payment in any medium other than cash to an employee for service not in the course of the employer's trade or business, except for domestic services in a private home or in a local college club or local chapter of a college fraternity or sorority.

WHEN WOULD THE SERVICES REFERRED TO AS CASUAL LABOR BE EXCLUDED FROM EMPLOYMENT?

1. Under Section 640 of the CUIC, services **not in the course of the employing unit's trade or business** performed in any calendar quarter would be excluded UNLESS:
 - The remuneration received for services is \$50 or more

AND

 - The services (which are not in the course of the employing unit's trade or business) are performed by the individual for some portion of a day on each of some 24 days during either the current calendar quarter or the preceding calendar quarter.

Example: An individual worked 15 days and was paid \$150 in the first quarter of 2010. (Not subject as time factor was not met.) This same individual worked 26 days and was paid \$400 in the second quarter of 2010. (Subject as time and monetary requirements were met.) This individual then worked five days and was paid \$65 in the third quarter of 2010. (Subject as time requirement was met in the preceding quarter and the monetary requirement was met in the third quarter of 2010.)

2. Services performed by an employee that are **in the course of the employing unit's trade or business** would be considered employment regardless of the amount of remuneration received or the length of the services. However, under Section 641 of the CUIC, services performed in any calendar quarter in the employ of any organization that is exempt from federal income taxes, such as nonprofit organizations and farmer cooperative organizations, would be excluded if the remuneration for such services is less than \$50.

Any services performed in the course of the employer's trade or business are presumed to be employment unless found to be an independent contractor under common law.

"Service not in the course of the employing unit's trade or business" means service which does not, in any way, promote, advance or further the trade or business of the employing unit, and in no way tends toward the preservation, maintenance or operation of its business, business premises or business property. "Trade or business" includes any business or professional undertaking irrespective of its size or scope without regard to the principal trade or business of the employing unit. Refer to Section 640-1 of Title 22, CCR.

OTHER EXAMPLES

The CUIAB has previously considered the status of workers performing casual labor services. The following are examples of cases where the CUIAB has held that individuals performing services in the course of the employing unit's trade or business and referred to as casual labor are employees and not independent contractors.

- (1) A company providing telephone book delivery services to its clients engaged the services of part-time workers to deliver the phone books. The part-time workers performed their services under the following circumstances:

- The service provided by the workers was an integral part of the business.
- The workers were not in business for themselves.
- The fee and the delivery route were established by the company.
- The service provided by the workers was unskilled. The company trained the workers.
- The company supervised the workers through the quality controller.
- The company set the hours in which the deliveries were to be made and the overall timeframe for the completion of the routes.

The company retained the right to control the manner and the means of the work to be accomplished. It was found that the part-time workers were common law employees.

(2) A law firm engaged the services of clerks, filing clerks, temporary secretaries, legal secretaries, investigators, attorneys, and law clerks on a part-time basis and as-needed basis under the following circumstances:

- All the services were an integral part of the law business.
- Those who performed the same or similar services on a full-time basis were treated as employees by the law firm.
- None of the workers held a business license.
- All the workers were under the supervision and control of the law firm and the work to be performed was assigned by the law firm.
- Substantially all of the work was performed at the law firm's place of business.
- Each worker was subject to "at will" termination without cause and without further liability on the part of either party.

The evidence supported the finding that all the workers performed services as common law employees.

The above-mentioned cases may not encompass the entire set of factors used by the CUIAB in establishing an employee status and are presented here as examples only. The Employment Development Department (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) and on EDD's Web site at www.edd.ca.gov/Office_Locator/. Additional information is also available through EDD's no-fee payroll tax seminars and online courses. View the in-person and online course offerings on EDD's Web site at www.edd.ca.gov/Payroll_Tax_Seminars/.

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 issue a written determination stating whether the workers are employees or independent contractors based on the facts provided. To obtain this form, access EDD's Web site at www.edd.ca.gov/pdf_pub_ctr/de1870.pdf.

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.

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