

AUTOMOTIVE REPAIR INDUSTRY

The automotive repair industry consists of businesses engaged in the service and repair of motor vehicles. Motor vehicles include, but are not limited to, automobiles, trucks, vans, recreational vehicles, limousines, and hearses. This industry generally includes the following types of businesses:

- Top, Body, & Upholstery Repair Shops
- Automotive Paint Shops
- Automotive Exhaust System Repair Shops
- Tire Retreading & Repair Shops
- Automotive Glass Replacement Shops
- Automotive Transmission Repair Shops
- Diesel Engine Repair Shops
- Automotive Tune-Up Shops
- Automotive Brake System Repair Shops
- Automotive Radiator Repair Shops
- Automotive Wheel Alignment Shops
- Automotive Oil Change & Lube Shops
- General Automotive Repair Shops

WHO IS AN EMPLOYEE?

California courts have established and consistently upheld the concept of *presumption of employment*: the fact that an individual is performing work or labor for another (the *principal*) is considered evidence of employment and such worker is presumed to be an employee in the absence of evidence to the contrary.

A worker may be an employee based on the provisions of a particular statute or under the usual common law rules applicable in determining an employer-employee relationship. Under common law, the most important factor to be considered when determining whether a worker is an employee or independent contractor is the right of control over the worker. If you, as the principal, can control the way in which the work will be done, then in most situations the worker is your employee and there is a common law employer-employee relationship. Other factors to be considered in evaluating the relationship and the degree of control over the worker include, but are not limited to:

- 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 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. 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.

Although the belief of the parties is considered, the factual circumstances determine whether a working relationship is one of employment or independence. A written contract stating that the worker is an independent contractor will not change the relationship if you are actually the employer. You will still be liable for payroll taxes including the amount you should have withheld from the worker's wages.

Examples

The California Unemployment Insurance Appeals Board (CUIAB) has previously considered the status of auto repair workers. The CUIAB has generally held that auto mechanics and repair workers are employees and not independent contractors in cases where they work under some or all of the following circumstances:

- The services are performed on the employer's premises.
- The services are an integral part of the employer's business.
- The employer provides major equipment and the basic supplies and materials. (However, mechanics frequently own tools of a substantial value. This is typically not an indication that the mechanic is an independent contractor.)
- The employer sets the hours and assigns the work.
- The services are continuous in nature and not for a definite period of time.
- The employer collects all receipts and bears the risk of loss for bad debts.
- Services can be terminated at will.

(Refer to CUIAB Tax Decisions T-91-51, T-92-16, T-91-96, T-89-87, T-88-208, T-85-113, T-80-162, and T-80-4.)

The CUIAB has held that auto mechanics and repair workers are independent contractors in cases where they work under some or all of the following circumstances:

- The work is performed off the principal's premises.

- The work is performed after business hours.
- The worker has a business license and his/her own established business.
- The worker shares the risk of loss as to unpaid billings and bad checks.
- The worker bids the job and is responsible to complete the job for the bid amount.
- The worker hires and pays his/her own helpers.
- The worker deals with the customers directly and is responsible to them for the work performed.

(Refer to CUIAB Tax Decisions T-84-134 and T-85-145.)

The CUIAB has held individuals who had Bureau of Automotive Repair licenses to be independent contractors and has held those who did not have licenses to be employees even though all other factors were equal (T-96-48).

ADDITIONAL INFORMATION

Questions regarding the employment status of workers in the automotive repair industry may be directed to the nearest Employment Tax Office, listed in the California Employer's Guide (DE 44) and on our Web site at www.edd.ca.gov/taxrep/taxloc.htm#taxloc. You may also call us toll-free at 1-888-745-3886.

Speech and hearing impaired persons can reach us at 1-800-547-9565.

Equal Opportunity Employer/Program. Auxiliary services and assistance available to persons with disabilities.