



## PHYSICAL THERAPIST

A physical therapist is a person who treats a patient's disease, injury, or illness by physical means, rather than with drugs, through the use of exercise, massage, infrared or ultraviolet light, electrotherapy, hydrotherapy, or heat. Physical therapists must be licensed as such by the Physical Therapy Examining Committee under the authority of the Division of Allied Health Professions of the California Board of Medical Quality Assurance. Failure to obtain the required license and working under the license of another are both illegal activities that will result in a Board inquiry and legal sanctions.

### Who is an Employee?

An employer-employee relationship exists when a person who hires an individual to perform services has the right to direct and control the manner and means by which the individual performs his or her services. In Tieburg v. Unemployment Insurance Appeals Board [(1970) 471 P.2d 975 Cal. 3d 943] the Supreme Court stated, "...the right to control and direct the individual who performs services as to the details and means by which the result is accomplished is the most important consideration but not the only element in determining whether an employment relationship has been created." The court also pointed out that there are secondary factors that must be considered when making an employment status determination. Therefore, instead of making an employment status determination based on any one single factor, it is based on a multifactor test. For example, take the factor, "Part of Regular Business of Principal." When a worker's services are an integral or

normal part of the principal's business activities, that particular factor would be considered indicative of employment. Although the factor is indicative of employment, that one factor alone will not establish an employment relationship.

### Determination Factors

The attached Table of Determination Factors lists 14 factors found in two California Unemployment Insurance Appeals Board (CUIAB) cases addressing the status of physical therapists. In the first case, T-85-124, physical therapists assigned by a registry to do temporary work with various institutions were held to be employees of the registry. In the second case, T-91-00072, physical therapists who set their own hours, worked for others, and arranged for their own replacements were held to be independent contractors. The following factors should be used to determine whether or not an employment relationship exists. Along with each factor, the chart lists evidence that indicates either "employment" or "independent contractor" status. Lastly, each factor has been given a weight based on the importance or significance of the factor as evaluated by the CUIAB.

A grouping of heavily weighted factors indicating employment would normally be considered employment. When the factors appear to be evenly distributed, the law has said the relationship is also employment. If a grouping of heavily weighted factors indicates independence, the individual would be considered an independent contractor for the purposes of the California Unemployment Insurance Code.

## TABLE OF DETERMINATION FACTORS

<u>FACTORS</u>	<u>EVIDENCE</u> EMPLOYEE	<u>OF:</u> INDEPENDENT CONTRACTOR	<u>WEIGHT</u>
(1) Policies, Rules or Procedures of Conduct	Set by the principal as evidenced by written or verbal instructions as to the manner and means or methods of treating patients.	Worker performs his or her services independent of any policies, rules or procedures of conduct of the doctor when performing services for a patient referred by a doctor.	The setting of policies, rules or procedures and instructions by the principal is an indication of direction and control over the worker's services and carries great weight.
(2) Supervision on the job	The worker is subject to supervision from the principal. The principal reviews the work performance as to how the worker conducts himself or herself on the job. Where the principal is a registry and the client supervises the work of the therapist it has been held that the client is acting in the principal's place.	Details (manner and means) of the work are not subject to supervision by principal. Physical therapists determine the treatment after evaluating the patient. Therapist and patient agree on follow-up visits without doctor involvement.	To the extent that the principal exercises control over the work through supervision it is evidence that the principal has the right to control the work, and that this right to control the work is complete and authoritative. This right to control (whether or not exercised) carries the greatest weight in making an employer-employee relationship determination.
(3) Reports	Principal requires worker to submit reports regarding hours worked, treatments provided, progress, customer's satisfaction, complaints or problems.  In the case of a registry as the principal, the therapist is required to have client or patient sign reports to certify accuracy.  Reports are used as basis for payment and future assignments.	The principal does not require the worker to complete any reports.	Reporting requirements are an extension of the factor "supervision" and would be given medium to great weight depending on the purpose and content of the reports (verbal or written). Reports that are used to monitor the worker's performance are considered controls by the principal over the manner and means of the work.
(4) Training	Training is provided or required by the principal. The principal instructs the worker on details of the job, on the policies, rules or procedures of conduct, etc.	Therapists are fully trained and licensed at their own expense. Additional training is not provided. Attendance at training is not required. Worker is not paid for time at training.	The act of conducting training to give the worker an orientation by itself, is not a strong indication of employment. However, if by intent or fact the purpose of the training is to convey instructions about performing the work, a dress code, customer relations, etc., it infers that the principal has the right to control the services. This would carry great weight.

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(5) Meetings	Principal conducts meetings and worker's attendance is required or expected. The worker's time is paid for.	Principal does not hold required meetings. Attendance is not mandatory and nonattendance is viewed without negative consequence. Time at meetings is not paid for or meetings are not held.	The act of holding informational meetings, by itself, is not a strong indication of employment. However, if by intent or fact the purpose of the meeting is to convey policies, rules or procedures or instructions, it infers that the workers are not in control of their services and are not independent. This would carry great weight.
(6) Principal and Worker Contract	Agreement between the principal and the worker gives the principal the right to direct and control the manner and means of the work. Agreement contemplates that the worker will perform the services personally. Contract prohibits certain actions, such as accepting direct payment for services from the principal's clients.	Agreement forbids principal from directing the worker as to details (manner and means) of the work. Agreement contemplates the worker is an independent contractor.	Terminology used in a written agreement is not conclusive of the relationship, but is evidence of the relationship intended.  Written agreements do not necessarily depict the actual practices of the parties in a relationship. The actual practices of the parties in a relationship are more important than the wording of an agreement in making an employer-employee relationship determination.  An agreement in which the principal expresses only an interest in the end result and abandons the right to control the details (manner and means) of the work is evidence of independence.
(7) Termination	Both the principal and the worker have the right to terminate the relationship at will without prior notice or without cause and without any further contractual liability (except for work already performed).	By agreement or practice, the principal is required to pay for work not performed, if the principal unilaterally terminates the relationship, other than for cause. The contract makes the worker liable for damages if the worker fails to complete the terms of the contract.	The right to terminate conveys an inherent power of the principal over the worker. The right to terminate at will, without cause, is strong evidence of employment. Most importantly, if the services being performed by the worker are on a continuous, rather than sporadic basis, it would give the appearance of the principal having the right to terminate the services at will by not using the worker's services anymore.

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(8) Engagement in a Distinct Business	<p>The worker does not operate his or her own business. Work performed is an integral part of the principal's business. The worker does not advertise his or her services to the general public as a separate business. The worker performs services under the principal's name. The worker receives payment for services from the principal whether or not the customer pays. The principal handles the billings and collections. The principal provides insurance coverage. The worker is prohibited from providing services for others while performing services for the principal.</p> <p>The principal is responsible for arranging for a substitute if the worker is unable to keep an appointment. The worker does not contribute either capital or money to the business and does not have an entrepreneurial risk of loss.</p> <p>The therapist replaces an acknowledged employee who is unavailable or is supplementing the work of regular employees.</p>	<p>The worker operates an independent business separate from that of the principal. The worker advertises under own name, has a business or other license where required, and has an investment in facilities or equipment. The worker provides his or her own insurance coverage or pays for the cost of coverage under principal's insurance plan. The worker arranges for his or her own substitute, if he or she is unable to keep an appointment.</p> <p>The worker is not prohibited by the principal from providing services for others when performing services for the principal. The worker assumes an entrepreneurial risk of loss (i.e., worker does not receive payment for services from the principal if the patient does not pay).</p>	<p>If the worker has established a separate business, distinct from that of the principal, and the work is performed in the furtherance of that separate business, great weight would be given toward independence. If the worker does not have an established separate business, distinct from that of the principal, and the work is performed in the furtherance of the principal's business, great weight would be given towards an employment relationship.</p>
(9) Duration of Services	<p>The worker performs services on a continuous or as needed basis.</p>	<p>The worker provides services on a sporadic, per job basis.</p>	<p>This factor, by itself, is not controlling. It tends to reflect whether a person is an employee or independent contractor. Independent contractors usually perform work on a job basis for shorter, designated periods of time. Employment is usually of open-ended duration. A long series of short term assignments from a single principal will tend to show continuity and employment.</p>

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(10) Whether the Principal or the Worker Supplies the Instrumentalities, Tools, and Place of Work	The principal provides the worker with office space, telephone, support services, forms, supplies, business cards, uniforms, etc.	The worker pays for his or her own office, equipment, support services, forms, supplies, business cards, uniforms, etc.	If the worker has established his or her own office, and pays all the expenses connected with that separate office, there is a strong indication of independence. On the other hand, if the worker generally works out of the principal's office where all necessities are provided and paid for by the principal, then there is a strong indication of an employment relationship.
(11) Custom in Industry and Location	Principals treat their workers as employees.	Workers typically operate their own separately established businesses.	This factor, by itself, is not controlling. This is because each determination must stand on its own facts regarding the principal's right to direct and control. Industry custom merely gives an inference or direction to the determination.
(12) Method of Payment	Payment by time period (hour, week, month, etc.) or piece rate. Payment made at regular intervals. Compensation set by the principal. The principal provides the worker advance payments furnished for services or expenses are reimbursed. Benefits are furnished at no cost to the worker. The principal sets the rate of pay.	The fees are negotiated per job. The worker may receive advance payments for services provided they are agreed upon based on the contract between the worker and the principal. The worker pays for his or her own expenses. The principal furnishes no benefits to the worker.	This factor, by itself, is not controlling. It is only an indication of the type of relationship. This is because a worker may be paid solely by the job, but the controls are sufficient to create an employer-employee relationship.
(13) Belief of Parties	Both parties believe the relationship is one of employment.	Both parties agree that the relationship is one of independence.	This factor, by itself, is not controlling. The belief of parties only infers the intent of the relationship.
(14) Part of Regular Business of Principal	The worker's services are an integral or normal part of the principal's business activities. Activities are central to delivering the services provided by the business.	The worker's services are only supportive of the business activities, purpose and are not an integral part of the principal's business activities. Doctor refers patient to therapist as to any other licensed specialist.	This factor is given medium to great weight. The presumption is that if the worker's services are an integral (regular, normal, central) part of the principal's business, then the principal by business necessity needs to maintain control over the worker's services.

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