

EMPLOYMENT WORK STATUS DETERMINATION

INTRODUCTION

Many businesses feel that the law is very unclear and confusing regarding classification of workers as employees or independent contractors. This sometimes leads to costly audit assessments for unreported wages when employees have been misclassified as independent contractors. In partnership with the Small Business Employer Advisory Committee, the Employment Development Department (EDD) has developed the *Employment Determination Guide* (DE 38) and its "Worksheet on Employment Status." The worksheet can be used by business entities in determining 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.

HOW TO REQUEST A DE 38

To obtain this guide, access EDD's Web site at www.edd.ca.gov/pdf_pub_ctr/de38.pdf or contact the Taxpayer Assistance Center toll-free at (888) 745-3886.

EDD RULING

If after completing the worksheet you are not sure whether the worker is an independent contractor or employee, 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 issued to businesses or prospective businesses that hire (or plan to hire) workers and that interprets and applies provisions of the California Unemployment Insurance Code. The purpose of a ruling letter is to provide a written analysis of the working relationship and the Department's determination whether the worker is an employee or independent contractor. This is an official document which may be used to resolve future issues.

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 If the facts change during the course of the working relationship, the determination is no longer valid and you will need to contact EDD for a new ruling.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

HOW TO REQUEST A RULING

A written determination may be requested by submitting a *Determination of Employment Work Status* (DE 1870). To obtain this form, access EDD's Web site at www.edd.ca.gov/pdf_pub_ctr/de1870.pdf, call our automated Fax-on-Demand system at (877) 547-4503, 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 Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding form (SS-8), you may mail us a copy of the SS-8 with any related attachments instead of completing a DE 1870 form. Upon completion, return 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, EDD will analyze the information received. A Department representative may contact you or some of your workers if further clarification is needed. The Department 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 the number above or visit the EDD Web site at www.edd.ca.gov.

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 1-888-745-3886 (voice) or TTY 1-800-547-9565.

This information sheet is provided as a public service. It is for informational purposes only and may not be applicable in all situations.