

COURIER AND MESSENGER INDUSTRY

The purpose of this Information Sheet is to provide guidance to the courier and messenger industry on properly classifying couriers and messengers for employment tax purposes.

WHO IS A COURIER OR MESSENGER?

A “courier” or “messenger” includes individuals who transport property on behalf of a principal for compensation (*Vehicle Code §34601[a]*). A courier or messenger may use motorized or non-motorized means to transport property for compensation (i.e., by motor vehicle, bicycle, or on foot).

A courier or messenger does not include a household goods carrier (*Public Utilities Code §5109*), a household goods carrier transporting used office, store, and institution furniture and fixtures under its household goods carrier permit (*Public Utilities Code §5137*), persons providing only transportation of passengers, or a passenger stage corporation transporting baggage and express upon a passenger vehicle incidental to the transportation of passengers (*Vehicle Code §34601[a]*).

WHO IS A PRINCIPAL?

A “principal” in the courier and messenger industry is a business that uses couriers or messengers to transport property for compensation.

WHO IS AN EMPLOYEE?

Under California Unemployment Insurance Code (CUIC) §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 an employer to perform services and the employer has the right to exercise control over the manner and means by which the individual performs his or her services.

The right of 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 of direction and 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 is not sufficient to show a risk of loss.

The numbered factors above are evidence of the right of control. These factors are described more fully in Title 22, California Code of Regulations, §4304-1. 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 separately established bona fide businesses and as such, are subject to profit or loss. They are usually contracted to perform specific tasks, and they 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.

ARE COURIERS AND MESSENGERS EMPLOYEES?

Two California Court of Appeal decisions and a recent precedent tax decision by the California Unemployment Insurance Appeals Board (CUIAB) provide guidance as to whether couriers and messengers are employees.

In *JKH Enterprises v. Department of Industrial Relations* (2006) 142 Cal. App. 4th 1046, the Court of Appeal held courier drivers to be employees, noting that the functions performed by the drivers did not require a high degree of skill and were integral to JKH Enterprises' business. The court found that by obtaining the clients in need of the services and providing the workers to conduct it, JKH enterprises retained all necessary control over the operation as a whole.

In *Air Couriers International v. Employment Development Department* (2007) 150 Cal. App. 4th 923, the Court of Appeal held that the following indicated employment:

- The independent contractor agreement was insufficient to have created an independent contractor relationship. The principal failed to ensure the drivers understood the legal and practical ramifications of the contract, the contract was not enforced, and there were conflicting versions of the contract.
- Drivers performed an integral and entirely essential aspect of the business.
- The principal provided the forms it required the drivers to use in order to get paid, and the drivers were paid on a regular schedule.
- The principal, via its dispatchers, provided the drivers with pick-up and delivery deadlines for each delivery.
- The principal encouraged the drivers to wear uniforms and provided the drivers with identification badges and vehicle placards.
- The customers serviced by the drivers were the principal's customers, not the driver's customers. The principal set the rates it charged the customers, billed the customers directly, and collected payment from them.

- The failure of the principal to control the actual routes and speeds which drivers used when making deliveries did not denote a lack of control.
- The simplicity of the work—take a package from point A to point B—made detailed supervision or control unnecessary. Instead, the principal retained all necessary control over the overall delivery operation.
- The drivers worked regular schedules. Many of these schedules involved regular daily routes. Regular schedules were consistent with employee status and reflect employer control.
- No difference was found between employee status and the driver's discretion on when to take breaks or vacation.
- The drivers were not engaged in a separate profession or operating an independent business.
- The drivers did not have a major investment in equipment or materials. They did not lease or purchase special vehicles to make their deliveries.
- Many drivers delivered for the principal for years.

The Court of Appeal upheld the trial court's conclusion that the drivers operated as the principal's employees in delivering packages. The trial revealed the principal exerted control over the drivers to coordinate and supervise the company's basic function: timely delivery of packages. The court determined the drivers performed an integral and entirely essential aspect of the principal's business.

In Precedent Tax Decision P-T-495, the CUIAB found that the following were indicators of employment:

- The contract terms were unilateral. The delivery drivers were presented with an ultimatum—call yourself independent contractors or lose the opportunity to work for us. The ultimatum itself may be the best indicator of control.
- The principal changed the title by which it classified the drivers and then proceeded to control the details of the drivers' services.
- Work was only given to drivers who would follow the principal's requirements as to the time and method of delivery. Therefore, the delivery requirements of customers, such as the method and time of conveying the delivery to its destination, operated as if they were commands.
- Utilizing a pager, the drivers were in communication with, and reported to, the principal's dispatcher throughout the day.

- Drivers were required to record each delivery on a company-provided run sheet.
- When supervision was not exercised, it was because the work was simple or such that supervision was impractical.
- The work required no experience or specialized skill.
- The services were continuously performed over a period of months or years.
- Drivers were not engaged in distinct occupations or businesses of their own and their livelihoods depended exclusively on the principal.
- The work performed by the drivers was integral to the principal's business.
- The principal could terminate the drivers' services at will.

Some facts indicated independence. For example, the drivers provided their own delivery vehicle, paid their own expenses, were paid by the job, and believed they were independent contractors. However, the CUIAB concluded that the drivers performed an essential function which was integral to the principal's business and did so in a dependent role.

The drivers had no real choice about becoming independent contractors. There was no practical difference between the functions of the drivers when they were employees, and the functions of the drivers who were independent contractors. They did not operate distinct and independent businesses and their livelihoods depended exclusively on the principal. Therefore, the CUIAB concluded that the drivers were employees.

A copy of P-T-495 is available on the CUIAB's Web site at www.cuiab.ca.gov/precedent/pt495.pdf.

ADDITIONAL INFORMATION

For assistance regarding the employment status of couriers or additional information, please contact the Taxpayer Assistance Center toll-free at 1-888-745-3886 or visit EDD's Web site at www.edd.ca.gov/taxrep/taxnews.htm.

If you would like to request a formal employment status determination, you may download the *Determination of Employment Work Status* (DE 1870) from our Web site at www.edd.ca.gov/taxrep/de1870.pdf, call our automated Fax on Demand system at 1-877-547-4503, or contact the Taxpayer Assistance Center. For more information, refer to Information Sheet: *Employment Work Status Determination* (DE 231ES) available at www.edd.ca.gov/taxrep/de231es.pdf or contact the above listed numbers. The completed DE 1870 should be mailed to:

Employment Development Department
 FACD - Central Operations, MIC 94
 P.O. Box 826880
 Sacramento, CA 94280-0001

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