

MANUFACTURING INDUSTRY

The manufacturing industry includes businesses engaged in the mechanical or chemical transformation of materials or substances into new products. These businesses are usually described as plants, factories, or mills and characteristically use power driven machines and material handling equipment. Businesses engaged in assembling component parts of manufactured products are also considered manufacturing if the new product is neither a structure nor other fixed improvement. Also included is the blending of materials, such as lubricating oils, plastics, resins, or liquors.

Types of products produced by employers in the manufacturing industry include, but are not limited to, the following:

- Food and Kindred Products
- Textile Products
- Apparel Products
- Paper Products
- Chemical Products
- Rubber and Plastics
- Stone, Clay, Glass, and Concrete Products
- Electronic Equipment
- Transportation Equipment
- Misc. Manufacturing
- Tobacco Products
- Lumber and Wood Products
- Furniture and Fixture
- Printing and Publishing
- Petroleum and Coal
- Leather Products
- Primary Metal Industries
- Fabricated Metal
- Industrial Machinery and Equipment
- Instruments (Business)

Who is an Employee?

The definition of "employee" in the California Unemployment Insurance Code (CUIC) includes any officer of a corporation and any individual who has the status of employee under the usual common law rules. The CUIC also contains special statutory provisions that determine if a worker is specifically covered or specifically excluded from coverage.

Who is a Common law Employee?

The common law rule is "the law of a country or state, based on custom, usage, and the decisions and opinions of the law courts." Under common law, the most important factor to be considered is the right of control over the worker. If you, as an employer, can control what will be done and the details of how it will be done, then the worker is your employee and there is an employer-employee relationship. Other factors to be considered in

evaluating the relationship and the degree of control over the work 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 results.
- 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 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.

The belief of the parties is considered in determining the relationship but the actual facts of the relationship are the important factors. 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.

Who is a Statutory Employee?

Certain classes of workers have been specifically covered by law for the purposes of unemployment insurance, state disability insurance,* and employment training tax. If a statutory worker does not meet the common law tests for an employee, personal income tax withholding is not required.

Workers covered under specific statutes include individuals working for an employer in a continuing relationship as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him. The services of such person are covered if substantially all of the work is to be performed personally, the person performing it does not have a substantial investment in the facilities used in the performance of such services (other than the facilities for transportation), and the services are not in the nature of a single transaction.

Examples of Employment in the Manufacturing Industry

- (1) A business engaged in the manufacture of electronic components engaged a worker to assemble kits, update the catalogs, work in the warehouse, and salvage electronic components from used tape recorders. The worker performed services under the following circumstances:
 - The worker performed services on a part-time basis.
 - The worker's rate of pay was hourly and he was paid weekly.
 - Deductions were not taken from his pay.
 - The worker completed an employment application.
 - The business supervised the worker's services.
 - The business furnished any necessary tools or equipment.
 - The business provided the place of work.
 - The services performed by the worker required little if any skills.

- The worker was engaged for an indefinite period of time.
- The worker performed services which were an integral part of the business.

The above factors provide evidence of the right of direction and control by the business and support the finding that this worker is a common-law employee [Refer to the California Unemployment Insurance Appeals Board (CUIAB) Tax Decision T-80-135].

- (2) A business engaged home workers in the assembly of electronic components. The workers attached wires to terminals. The workers performed their services under the following circumstances:
 - The business hired the workers through advertisements in the newspaper and through word of mouth.
 - The workers picked up their assembly kits and specifications at the business.
 - The workers performed their services away from the business's premises and without direct supervision.
 - The workers had to know how to solder.
 - The business did not furnish the workers with any tools.
 - The workers were responsible for correcting any errors.
 - Substantially all of the services were to be performed personally by the workers.
 - The workers must return the finished product to the business.
 - The business would bill workers who did not return their kits.
 - The business advised the workers that they were independent contractors and should have their own business licenses.

The home workers were statutory employees because they personally performed their services according to the businesses specifications on goods furnished by the business which must be returned to the business (Refer to the CUIAB Tax Decisions T-83-15 and T-83-16).

Additional Information

Additional information regarding the employment status of workers in the manufacturing industry may be obtained from 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.

* Includes Paid Family Leave beginning January 1, 2004.

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