

## STATUTORY EMPLOYEES (AGENT/COMMISSION DRIVERS, TRAVELING/CITY SALESPERSONS, CONSTRUCTION WORKERS, HOMEWORKERS, ARTISTS, AND AUTHORS)

A *statutory employee* is defined as an employee by law under a specific statute, whereas most individuals are determined to be an employee under common law (see Information Sheet: *Employment* [DE 231]). However, certain groups of workers have been specifically covered by the law for unemployment insurance, employment training tax, and State disability insurance\* purposes.

California personal income tax (PIT) withholding is required for statutory employees in the construction industry and for corporate officers who are either (1) residents of California or (2) nonresidents performing services in California. Wages paid to other types of statutory employees are not subject to California PIT withholding if the worker is not also an employee under the usual common law rules (see DE 231). Whether or not PIT withholding is required, wages paid to all statutory employees must be reported on the *Quarterly Wage and Withholding Report* (DE 6) as PIT wages.

Statutory employees include workers performing services for an individual or entity (the *principal*) in a continuing relationship as:

- An agent-driver or commission-driver engaged in distributing meat, vegetable, fruit, or bakery products, beverages (other than milk), or laundry or dry-cleaning services for his/her principal.
- A traveling or city salesperson (other than an agent- or commission-driver), working full time on behalf of their principal (except for sideline activities on behalf of some other person), taking orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies to be used for their own business operations.
- A homemaker performing work (according to specifications furnished by the person for whom the services are performed) on materials or goods furnished by that person which are required to be returned to that person or a person designated by him/her.

Services provided by the groups listed above are covered if:

- A substantial amount of the work is personally performed.
- The person performing the work does not have a substantial investment in the facilities used in the performance of those services (other than the facilities for transportation).
- The services are not in the nature of a single transaction.

Refer to Information Sheet: *Salespersons* (DE 231N) for more detailed information.

### STATUTORY EMPLOYEES IN THE CONSTRUCTION INDUSTRY

Any individual not holding a valid contractor's license but performing services requiring a contractor's license will be considered an employee of the licensed or unlicensed contractor who has hired such an individual.

Refer to Information Sheet: *Construction Industry* (DE 231G) for more detailed information.

### ARTISTS AND AUTHORS AS STATUTORY EMPLOYEES

In the motion picture, radio, or television industry, an artist or author is a statutory employee if:

- The individual's work is done under a collective bargaining agreement in which he/she is defined as an employee, and
- The employer has the right to control and direct the services to be performed.

\* Includes Paid Family Leave (PFL).

The author of a commissioned or specifically ordered work is a statutory employee of the person commissioning the work if:

- Under written agreement specifying that the work is made for hire, and
- The commissioning party obtains ownership of the work.

#### **ADDITIONAL INFORMATION**

If you have questions regarding statutory employees, you may visit the local Employment Tax Office listed in the *California Employer's Guide* (DE 44) or on our Web site at [www.edd.ca.gov/taxrep/taxloc.htm#taxloc](http://www.edd.ca.gov/taxrep/taxloc.htm#taxloc). You may also call us toll-free at 1-888-745-3886.

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