

TAXICAB INDUSTRY

Taxicab drivers typically operate taxicabs under one of three business arrangements:

1. The taxicab company acknowledges the driver as an employee.
2. The driver owns and operates the taxicab, independently arranges fares, and personally pays for required licenses, permits, and insurance.
3. The driver performs services as a lease driver on either a fixed-fee or percentage-of-receipts basis.

Under the first arrangement, the taxicab driver is subject to the direction and control of the taxicab company and would be considered a common law employee (refer to Information Sheet: Employment, DE 231). Under the second arrangement, the taxicab driver independently makes business decisions related to the taxicab service. Since the driver is not subject to the direction and control of the taxicab company, the driver would be considered self-employed. Under the third arrangement, determining whether a driver is an employee or self-employed person requires a detailed analysis of the business arrangement. How the industry-specific details of the arrangement impact the employment status of drivers who lease a taxicab on a fixed-fee or percentage-of-receipts basis is discussed below.

FIXED-FEE DRIVERS AS EMPLOYEES IN THE TAXICAB INDUSTRY

There is a strong indication that taxicab drivers who lease taxicabs on a fixed-fee basis under all of the following circumstances are employees. Therefore, there is a high probability that drivers classified as independent contractors are incorrectly classified when the drivers:

- Lease the taxicab on a daily basis or pay the lease fee at the end of every shift.
- Do not have a financial interest in a business and are not subject to a financial risk of loss.
- Are not involved in a separate and distinct business of their own.
- Perform work that is a regular part of the taxicab company's business.
- Can be terminated by the taxicab company without liability by termination or nonrenewal of the lease agreement.

FIXED-FEE DRIVERS AS INDEPENDENT CONTRACTORS IN THE TAXICAB INDUSTRY

There is a strong indication that taxicab drivers who lease their taxicab on a fixed-fee basis are independent contractors when they:

- Do not perform services under the direction and control of the taxicab company. They are free to conduct their business however they choose.

- Do not rely on the company for their customers. They secure their customers on their own with only an occasional referral from the company. They are not required to accept any referral.
- Prepay to lease a taxicab for a period of at least 28 days.
- Choose their shifts to drive the taxicab.
- Must be provided advance notice of termination or nonrenewal of the lease agreement by the taxicab company or the company may be liable for damages under the terms of the agreement. Drivers are liable for unpaid lease fees when they withdraw from the agreement early, and lease agreements provide provisions for arbitration of disputes.

DRIVERS WHO LEASE TAXICABS BASED ON A PERCENTAGE OF THEIR RECEIPTS

The California Unemployment Insurance Appeals Board (CUIAB) has held taxicab drivers to be employees when the following circumstances apply:

- The drivers pay a percentage of what they earn to the taxicab company in order to lease a taxicab.
- Since the taxicab company's income depends on how much revenue is generated by the driver, the company may attempt to increase that income by placing controls and requirements on the drivers, such as assigning shifts, requiring the maintenance of trip sheets, and paying for all advertising.
- The drivers do not have a substantial investment in the business, are not subject to an entrepreneurial risk of loss, and do not have a distinct business of their own.
- The work performed by the drivers is a regular part of the taxicab company's business, and drivers can terminate or be terminated without any liability.

IMPACT OF GOVERNMENTAL REQUIREMENTS

Local governments commonly mandate that a taxicab company exercise certain controls over taxicab drivers and the company's operation of vehicles. Depending on the jurisdiction, such controls may include, but are not limited to, driver dress codes, maintenance of trip records, restrictions on and requirements for the driver's use of the vehicle, response time goals and handling of dispatches, required color schemes, driver and company licensing, driver training, and a variety of requirements to ensure transportation accessibility and public safety. Such mandates are not viewed as being evidence of control and are given no weight in making the ultimate determination.

However, if the company expands upon or exceeds the government mandates, then the requirements are considered in determining the amount of control exercised over the drivers.

MAJOR COURT CASE

In Santa Cruz Transportation, Inc. v. Unemployment Insurance Appeals Board (1991) 235 CA 3d 1363; 1 Cal Rptr 2d 641, the Appeals Court held that the drivers who paid the taxicab company a fixed-fee to lease a taxicab were employees of the company. Therefore, any fixed-fee lease driver who operates in a manner similar to the drivers described in the Santa Cruz Transportation decision would be an employee. Refer to the chart below that lists the elements cited in the court decision and the weight the CUIAB and the courts will give to each.

KEY ELEMENTS IN THE SANTA CRUZ TRANSPORTATION CASE	WEIGHT GIVEN TO ELEMENTS IN THE SANTA CRUZ TRANSPORTATION CASE
The terms of the lease allowed the company to terminate the drivers.	The right to terminate at will is strong evidence of employment. The right to terminate conveys an inherent power of the company over the driver. The company could choose not to renew the lease of a driver without advance notice or liability. This would be strong evidence of an employment relationship and would be given high weight.
The drivers could be terminated under the lease agreement if they did not maintain good relations with the public.	The company exercised control over the actions and behavior of the drivers by requiring them to always have a good relationship with the public. Failure to do so would result in the termination of the driver. With this right, the company can demand many things of the driver, and the driver, fearing loss of his or her job, would be obliged to follow such demands. High weight would be given to this element.
The lease agreement designated the time period when the shift began and ended.	When the drivers are not allowed to set their own hours of work, the company is directing and controlling their services. This element is given medium to high weight. When shift drivers lease a taxicab for 12 hours a day or 12-hour shifts over a period of a week and leases are allowed only when they are available for the shift requested, drivers cannot set their own hours and are not free to work when they choose.
The drivers were required to schedule their meal breaks with the dispatcher.	If the dispatcher has control over when breaks are taken, this is strong evidence of control over the drivers and would be given high weight as an employment element. If the drivers are only required to give notice of breaks to the dispatcher, the element would be given low weight.
The drivers were prohibited from using the taxicab for personal use.	The company controlled the use of the taxicabs by the drivers. This element would be given medium weight.
The drivers were required to accept charge slips from certain customers.	The company exercised control over the services by requiring the acceptance of alternative methods of payment. This was evidence that the company had the right to control the services, and that right was complete and authoritative. This alone is strong evidence of an employer-employee relationship and is given high weight.
The drivers were required to conform to a company dress code.	A specific dress code, such as the wearing of uniforms, is given high weight and is strong evidence of employment. A general dress code, (for example, "neat appearance") would be given low weight.
The drivers were required by the company to account for fares they received by a daily trip sheet and there was no evidence that the city required the drivers to maintain trip sheets.	Required reports are viewed as "review of work" which is strong evidence of the taxicab company's right to control the drivers. This element is weighted high as an indicator of employment. Having drivers complete city or governmental agency required reports is an element given no weight.

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**KEY ELEMENTS IN THE
SANTA CRUZ TRANSPORTATION CASE (CONT.)**

**WEIGHT GIVEN TO ELEMENTS IN THE
SANTA CRUZ TRANSPORTATION CASE (CONT.)**

The work did not require the expertise of a skilled professional.	Operating a taxicab does not require a high level of technical skill and this element would be given high weight. A lower level of technical skill is strong evidence of employment.
The drivers did not advertise their services.	If the company holds itself out as a taxicab service and does all advertising, this would be strong evidence that the drivers are working in the furtherance of the company's business and would be given medium to high weight.
The taxicab company operated a fleet of cabs for public carriage.	The taxicab company was in the business of providing taxicab services, not leasing taxicabs. This element would be given high weight.
The taxicab company's name was on the taxicab.	The company's name on the taxicab was an indication that the driver represented the taxicab company and the driver performed services in the furtherance of the company's business. This element would be given medium to low weight.
The drivers' work was part of the regular business of the taxicab company.	The drivers' services were performed as an integral part of and in direct furtherance of the company's business, which indicates employment. This element would be given high weight.
The taxicab company owned the taxicab.	The drivers did not have a significant investment in providing their services (for example, own their cab, own medallions or the permits necessary to operate a taxicab, etc.). This was strong evidence of employment and is given high weight. A daily lease is not considered a significant investment and does not create an entrepreneurial risk of loss associated with an independent contractor.
The taxicab company owned the municipal taxicab license.	The drivers operated under the company's license. This is an element receiving high weight as evidence of employment.
The drivers depended on the company's dispatcher for their livelihood.	If the drivers are required to use the company's dispatcher in order to secure business, this is strong evidence that the company is controlling the services performed by the drivers. This element would be given high weight.
The customers called the taxicab company for taxicab services; the taxicab company arranged for the performance of the services.	If the customers generally secure the services of the drivers through the company, this would be an employment element as the drivers depend on the taxicab company for business. If the drivers secure business on their own and could accept or reject referrals from the company dispatcher, this would be an indication of independent contractor status. This element would receive high weight.

ADDITIONAL INFORMATION

This information sheet describes the most common circumstances in the taxicab industry and how those circumstances affect whether a taxicab driver's services are performed as an employee or independent contractor. If you have questions about the employment classification of taxicab drivers, you can visit your 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 contact us at 1-888-745-3886.

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