

FAMILY EMPLOYMENT

Family employment is the term used to describe one family member employed by another family member. Certain family employees are excluded under Section 631 of the California Unemployment Insurance Code (CUIC) from Unemployment Insurance (UI), Employment Training Tax (ETT), and State Disability Insurance* (SDI) coverage. However, the wages paid to the family member are subject to personal income tax (PIT) withholding and are reportable as PIT wages. Please note that when a family employment exclusion applies, an opportunity exists for SDI coverage. Elective SDI coverage may be requested if both the employer and employee agree. Refer to Information Sheet: *Specialized Coverage* (DE 231SC) for more information.

Section 631 of the CUIC states, in part, that "Employment" does not include service performed by a child under the age of 18 years in the employ of his [or her] father or mother, or service performed by an individual in the employ of his [or her] son, daughter, or spouse (including, effective January 1, 2005, the employee's registered domestic partner). Section 631-1 of Title 22, California Code of Regulations, specifies that this exemption includes adopted children under 18 years of age, but stepchildren, foster children, sons-in-law, or daughters-in-law are not included. Once a child reaches his or her eighteenth birthday, this exclusion no longer applies.

The exclusion for a minor child differs from the federal rules in that it applies even if the minor is married, living with parents, or independently self-supporting. Also, the federal rules contain no exclusion for registered domestic partners.

Services performed by an individual in the employ of relatives other than those referred to in Section 631 of the CUIC are not excluded. For example, services performed by an individual in the employ of his or her brother, sister, niece, nephew, aunt, uncle, stepparent, foster parent, father-in-law, mother-in-law, or grandparent are not excluded.

Section 631 of the CUIC does not apply if the employing entity is a corporation, even if all the stock of the corporation is owned by one person or jointly held by a married couple. In this situation, the worker is employed by the corporation, not by the shareholders to whom he or she is related. Similarly, this exclusion does not apply if the employing entity is a limited liability company.

When applying the Section 631 family employment exclusion to a partnership, the family employment criteria must be applied to each partner individually. If the criteria for the exclusion apply to each partner individually, the family member would then be excluded from UI, ETT, and SDI for services performed for the partnership. If any partner does not meet the family criteria, the family member would not be excluded from UI, ETT, and SDI coverage.

The following are examples of partnerships where the Section 631 exclusion applies:

- ◆ A husband and wife general partnership employing their natural or legally adopted minor children. (A minor child who is the stepchild of one of the partners would not qualify for the exclusion.)
- ◆ A general partnership consisting of registered domestic partners employing their minor child. The exemption applies only when the child is the natural child of both partners, the natural child of one partner and the legally adopted child of the other partner, or the legally adopted child of both partners.
- ◆ A general partnership consisting of siblings who employ their natural or adoptive parent(s).
- ◆ A general partnership between the employee's natural or adoptive parent(s) and the employee's spouse as long as the employee is under 18 years of age.

* Includes Paid Family Leave (PFL).

Examples of situations where Section 631 exclusion does not apply:

- ◆ A limited partnership that employs two minor children of the general partner. As the partnership is not composed solely of the parents of the minor children, the minor children's services would not be excluded.
- ◆ A husband and wife partnership employing the husband's father and mother. This relationship does not meet the qualifications for exemption and services performed would not be excluded.
- ◆ A corporation that employs the wife and son of the corporate president. The services performed by the wife and son would not be excluded.

Additional Information

For further information, you may visit your 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, or you may call us toll-free at 1-888-745-3886.

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.