

RESIDENTIAL CARE FACILITIES

Residential care facilities include facilities for residential care for the elderly, adult residential facilities, group homes for children, and small family homes for children. These establishments are licensed as community care facilities by the State Department of Social Services and provide 24-hour care, meals, support, and maintenance services to the mentally ill, the developmentally disabled, children, and the elderly.

When Is a Facility an Employer?

Generally, a business becomes an employer upon paying wages in excess of \$100 in a calendar quarter to one or more employees. Wages consist of remuneration for services performed, including cash payments, commissions, bonuses, and the reasonable cash value of nonmonetary payments such as meals and lodging.

Who Is an Employee?

The California Unemployment Insurance Code defines an employee as "any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee."

A worker is a common law employee when the person for whom the services are performed has the right to direct and control the manner and means of accomplishing the desired result. The most important factor to be considered is the right of control over the worker. The right to discharge a worker at will and without cause is strong evidence of the right of direction and control. Other factors to be taken into consideration are:

- 1) Whether or not the person 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 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.

Types of employee services that are typical in the residential care industry include, but are not limited to:

Administrators	Cooks	Drivers
Caregivers	Housekeepers	Helpers
Relief Personnel	Office Staff	

What Are Wages?

Wages are payments made to an employee for services performed during employment. The payment may be made in cash or some medium other than cash. Types of payment typically considered to be wages include, but are not limited to:

- Cash
- Meals
- Lodging
- Commissions or Bonuses

Employer-provided meals and lodging are subject to unemployment insurance, state disability insurance,* and employment training tax. Also, lodging is subject to California personal income tax (PIT) for withholding and wage reporting purposes unless furnished on the employer's premises, for the employer's convenience, and as a condition of employment. Meals are subject to PIT withholding and reportable as PIT wages unless furnished for the employer's convenience and on the employer's premises. Refer to *Information Sheet: Personal Income Tax Wages Reported on the Quarterly Wage and Withholding Report* (DE 6), DE 231PIT, to explain the reporting of wages.

If more than half of the employees receive meals which are for the convenience of the employer, all meals furnished by the employer are considered furnished for the employer's convenience and are therefore not subject to PIT withholding. If fewer than half of the employees receive meals which are for the convenience of the employer, only those meals actually provided for the employer's convenience would be exempt from the PIT withholding requirement.

The taxable values of meals and lodging should not be less than the reasonable estimated values stipulated by the contract of employment or in a union agreement. If the cash values are not stipulated in the hiring or union agreement, the taxable values are established by regulation. The taxable value of lodging is 66 2/3 percent of the ordinary rental value to the public up to a maximum value per month and not less than a minimum value per week.

*Includes Paid Family Leave (PFL).

The taxable values of meals and lodging are listed below:

VALUE OF MEALS						VALUE OF LODGING	
YEAR	DAY	BR.	LU.	DI.	UNID.	MAX PER MONTH	MIN PER WEEK
2004	8.55	1.85	2.60	4.10	3.00	\$921	\$29.85
2005	9.00	1.95	2.75	4.30	3.10	\$957	\$31.05
2006	9.15	2.00	2.80	4.35	3.20	\$1,000	\$32.45
2007	9.30	2.00	2.80	4.50	3.20	\$1,000	\$33.80
2008	9.60	2.10	2.90	4.60	3.35	\$1,092	\$33.40

NOTE: These values apply to nonmaritime employees only.
Lodging: 66 2/3 percent of ordinary rental value.

The cash values of meals and lodging are subject to change each calendar year. This information is published in the Employment Development Department's (EDD) quarterly newsletter, the *California Employer*, which is mailed to all registered employers.

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.