

# LET EDD HELP!

**Don't be taken by surprise!  
Avoid unplanned tax liabilities  
by properly classifying  
your workers.**

**You** can request that the Employment Development Department issue you a written determination on an employment relationship. For more information regarding this service, you may visit your local Employment Tax Office listed in

the California Employer's Guide (DE 44) and 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.



EDD can also provide you guidance on employee or independent contractor issues, general information sheets on various classes of employment, and information regarding upcoming employment tax seminars.



STATE OF CALIFORNIA

LABOR AND WORKFORCE DEVELOPMENT AGENCY

EMPLOYMENT DEVELOPMENT DEPARTMENT

Employment Development Department

800 Capitol Mall  
Sacramento, CA 95814  
Telephone: (888) 745-3886

[www.edd.ca.gov](http://www.edd.ca.gov)

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 (888) 745-3886 (voice) or TTY (800) 547-9565.

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# DON'T BE TAKEN BY SURPRISE!

Is your  
worker an  
employee or  
independent  
contractor?



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## Unanticipated Tax Liability

If you have a business and pay other people to do work for you or on behalf of your business, you may be surprised with an unanticipated tax liability if a worker you consider to be an independent contractor files a claim for Unemployment or State Disability Insurance benefits.



That worker may actually be an employee and you would be responsible for past and present employment taxes for that individual.

### Chances of liability are greater if:

- You pay for such services by the hour or other time period.
- The services are performed for customers of your business.
- The services are provided on a regular basis.
- The workers do not work for anyone else.
- You provide the tools, equipment, and place of work.

## Test for Employment

**A written contract by itself may not protect you from liability.**



### The Common Law Test for Employment

The most important factor in determining whether a worker is an employee or independent contractor is:

**Does the employer have the right to control the manner and means by which the worker performs his services?**

**Other factors to be taken into consideration are:**

- The right to discharge the worker at will is strong evidence of the right of direction and control of the worker.
- The worker is not in a distinct trade or occupation.
- The work is not highly skilled and specialized.
- The work is usually done under supervision.

## Factors continued:

- The worker does not provide the tools, equipment, and place of work.
- The work is long-term or continual, not an isolated event.
- The worker is paid based on time worked or piece rate.
- The work is not separate from the regular work, business, or services provided by the employer.
- There is no written contract showing the intent of the parties to create an independent relationship.
- The worker has little or no meaningful discretion over how to do the job.

### Employee by Specific Statute of Law

A worker not considered to be a common law employee may be a statutory employee by law. Some examples are:

- Unlicensed construction subcontractors.
- Route salespersons.
- Commission and agent drivers.

*This is not a complete list; there are other examples in the law.*

# PROTECT YOURSELF