

Employee vs. Casual Labor or Independent Contractor

The Diocese strongly recommends that you follow the state and federal guidelines & the test used by the IRS to determine whether workers are employees rather than independent contractors or casual labor

Should your casual or day labor workers be considered employees? from EDD California Employer

“Casual labor” and “day labor” are common terms used to describe workers performing a variety of services, usually on a temporary or part-time basis. **Many businesses hire these types of workers and mistakenly believe that they are not employees simply because of their limited length of service or part-time hours.** Even though these workers may be hired for only an hour, day, or week, they are typically employees. Some examples of the types of workers referred to as casual laborers include:

- Part-time help
- Day laborers
- Students
- Outside laborers
- Temporary help
- Substitutes
- Workers in training
- Employees hired on a trial basis
- Workers paid less than \$600 a year

Common law rules of employment determine whether or not these workers are employees for purposes of the California Unemployment Insurance Code. Under common law, the most important factor to be considered when determining whether a worker is considered to be an employee or independent contractor is the right of control over the worker. **If you can control the way in which work is performed, or if you exercise extensive control over the work as a whole, the worker is your employee and there is a common law employee employer relationship.** For more information, please refer to our *Information Sheet: Casual Labor* (DE 231K), which is available on our Web site at www.edd.ca.gov/taxrep/taxform.htm#Forms or by calling 1-888-745-3886.

<http://www.edd.cahwnet.gov/taxrep/caemp204.pdf>
EDD California Employer
News and Notes for California
Employers from the State
Employment Development Department
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Employee or Independent Contractor? from www.irs.gov

Whether someone who works for you is an employee or an independent contractor is an important question. The answer determines your liability to pay and withhold Federal income tax, social security and Medicare taxes, and Federal unemployment tax.

In general, someone who performs services for you is your employee if you can control what will be done and how it will be done.

The courts have considered many facts in deciding whether a worker is an independent contractor or an employee. These facts fall into three main categories:

- Behavioral Control – Facts that show whether the business has a right to direct and control. These include:
 - Instructions - an employee is generally told:
 1. when, where, and how to work
 2. what tools or equipment to use
 3. what workers to hire or to assist with the work
 4. where to purchase supplies and services
 5. what work must be performed by a specified individual
 6. what order or sequence to follow
 - Training – an employee may be trained to perform services in a particular manner.
- Financial Control – Facts that show whether the business has a right to control the business aspects of the worker's job include:
 - The extent to which the worker has unreimbursed expenses
 - The extent of the worker's investment
 - The extent to which the worker makes services available to the relevant market
 - How the business pays the worker
 - The extent to which the worker can realize a profit or loss
- Type of Relationship – Facts that show the type of relationship include:
 - Written contracts describing the relationship the parties intended to create
 - Whether the worker is provided with employee-type benefits
 - The permanency of the relationship
 - How integral the services are to the principal activity

For a worker who is considered your employee, you are responsible for:

- Withholding Federal income tax,
- Withholding and paying the employer social security and Medicare tax,
- Paying Federal unemployment tax (FUTA)
- Issuing Form W-2, Wage and Tax Statement, annually,
- Reporting wages on Form 941, Employer's Quarterly Federal Tax Return.

For a worker who is considered an independent contractor, you may be responsible for issuing [Form 1099-MISC](#), *Miscellaneous Income*, to report compensation paid.

The status of certain workers is specifically determined by law; these workers are known as statutory employees and statutory non-employees. See [Publication 15-A](#), *Employer's Supplemental Tax Guide*, for more information.

If you would like for the IRS to determine whether or not a worker is considered an employee, please submit Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*.

<http://www.irs.gov/govt/fslg/article/0,,id=110344,00.html>

What test does the IRS use to determine whether workers are ICs or employees?

Under the IRS test, workers are employees if the people they work for have the right to direct and control the way they work -- including the details of when, where and how they do their jobs.

In contrast, **ICs are not controlled by the companies that hire them.** The hiring company's control is limited to accepting or rejecting the final results an IC achieves.

The IRS looks at a number of factors when determining whether a worker is an employee or an independent contractor. The agency is more likely to classify as an independent contractor a worker who:

- can earn a profit or suffer a loss from the activity
- furnishes the tools and materials needed to do the job
- is paid by the job
- works for more than one client company at a time
- invests in equipment and facilities
- pays his or her own business and traveling expenses
- hires and pays assistants, and
- sets his or her own working hours.

On the other hand, the IRS is more likely to classify as an employee a worker who:

- can be fired at any time by the hiring company
- is paid by the hour
- receives instructions from the hiring company
- receives training from the hiring company
- works full time for the hiring company
- receives employee benefits
- has the right to quit without incurring liability, and
- provides services that are an integral part of the hiring company's day-to-day operations.

How to Classify a New Hire from www.payroll.com:

For payroll accounting purposes, workers generally are classified as either **employees** or **independent contractors**. How a worker is classified will directly affect withholding and remitting income and Social Security taxes and also how the earnings are reported to the government. Classification is an important matter to the worker, employer, and government.

The **common law test** will determine if federal, state and local income taxes should be withheld from the worker and then remitted to the appropriate taxing agency by the employer. The results of the common law test will also determine if an employer must pay federal and state unemployment taxes on a worker's earnings. The key issue in the common law test is **the amount of control that the employer has over the worker**. Or in other words, how "independent" the worker is.

Four points in the common law test determine if the worker is an employee:

- Does the employer have the power to fire or terminate the worker at will?
- Does the employer provide a place for the worker to work, such as a desk or an office?
- Does the employer provide the worker with equipment, supplies or other items used on the job?
- Does the employer have a voice and responsibility in what the worker does and how the worker does a job?

If all four questions can be answered "yes," the worker should be classified as an employee.

If a worker is classified as an employee, the employer must:

- Withhold income and Social Security taxes from the employee's pay.
- Match the Social Security taxes each employee pays.
- Pay federal and state unemployment taxes on each employee's earnings.
- Issue a Form W-2 to each employee after the end of each calendar year

The following table illustrates important distinctions between employees and independent contractors:

Employee	Independent Contractor
Required to comply with employers instructions about when, where, and how to work	Sets own hours; determines own sequences of work
Hired by the employer	Works for other employers; services available to the public
Has a continuous relationship	Hired by a leasing company; self employed
Subject to dismissal; can quit without liability	Under contract that governs how the relationship can be severed
Work done personally	Permitted to hire assistants
Paid a salary; reimbursed for expenses; participates in companys fringe benefit program	Payment by the job; opportunity for profit and loss
Furnished tools, equipment, materials and training	Furnishes own tools, equipment, and training; substantial investment by the worker
Works at the employers premises	Works by the job
Wages and earnings reported on form W-2	Wages and earnings reported on form 1099
Performs services under the company's name	Performs services under the worker's business name