

DETERMINATION OF EMPLOYMENT WORK STATUS FOR PURPOSES OF STATE OF CALIFORNIA EMPLOYMENT TAXES AND PERSONAL INCOME TAX WITHHOLDING

Purpose

This form is to be used by business entities who would like to receive a determination as to whether a worker is an employee for purposes of California Unemployment Insurance, Employment Training Tax, State Disability Insurance (SDI)*, and Personal Income Tax (PIT) withholding.

This form should be completed carefully, and it should be completed for one individual who is a representative of the class of workers whose status is in question. If a written determination is desired for another class of workers, complete a separate DE 1870. A written determination for any worker will apply to other workers of the same class if facts are the same as those of the worker whose status is the subject of the written determination.

General Information

For assistance in completing this form, contact your local Employment Tax Office of the Employment Development Department (EDD) or call the Taxpayer Assistance Center at 1-888-745-3886. Upon completion, return to:

**State of California
Employment Development Department
FACD-Central Operations, MIC 94
PO Box 826880
Sacramento, CA 94280-0001**

The EDD may need to contact you if additional information is required.

This form is designed to cover many work activities. Some of the questions may not apply to you. You must answer questions 1-39 or mark them "UNKNOWN" or "DOES NOT APPLY." Answer questions 40-79 only if applicable. If additional space is needed, please attach another sheet with the question number clearly identified. Write your business name, federal identification number, and the EDD employer payroll tax account number at the top of each additional sheet attached to this form.

PLEASE TYPE OR PRINT ALL INFORMATION CLEARLY.

* Includes Paid Family Leave (PFL).

| | | | |
|--|--------|---------|------------|
| NAME OF ENTITY | | | |
| NAME OF OWNER | | | |
| ADDRESS OF ENTITY | (CITY) | (STATE) | (ZIP CODE) |
| PHONE NUMBER (INCLUDING AREA CODE) | | | |
| ENTITY'S FEDERAL EMPLOYER IDENTIFICATION NUMBER | | | |
| ENTITY'S EDD EMPLOYER PAYROLL TAX ACCOUNT NUMBER | | | |

Check the type of entity for which the work relationship is in question:

Individual Partnership Corporation Limited Liability Company (LLC)

Limited Liability Partnership (LLP) Other (specify): _____

If the entity is a corporation, is the worker an officer of the corporation? Yes No

If the entity is an LLC, is the worker a member of the LLC? Yes No

If the entity is an LLC, how is the LLC treated for federal income tax reporting purposes?

Sole Proprietorship Partnership Corporation

1. Provide a brief description of the entity's business operation (e.g., drug store, farmer, construction, etc.): _____

2. Has this issue been the subject of a prior or current EDD audit, benefit claim investigation, hearing, or prior DE 1870 determination? Yes No Unknown
 If "Yes," please explain and provide any applicable dates: _____

3. Has any other governmental agency ruled on the status of services performed by the worker or another person performing the same or similar services? Yes No Unknown If "Yes," please attach a copy.

4. Total number of workers in this class: _____
 Attach names, addresses, and phone numbers of the workers in this class. If there are more than 10 workers, attach the information for only 10.

5. This information is about services performed by the worker from _____ to _____.
 (Date) (Date)

6. State the worker's occupation, title, and give a complete description of the services provided: _____

7. How did the worker learn of the job (e.g., advertisement, online, in a newspaper, word of mouth, etc. If there was a job announcement, please attach a copy.): _____

8. What were the requirements for the worker's position (e.g., previous experience, education, etc.): _____

9. Is the worker still performing services for the entity? Yes No
 If "No," explain why and how the worker was terminated, laid off, or quit: _____

10. Were the services performed under a written agreement or contract? Yes No
 If "Yes," please attach a copy.

11. If the agreement was not in writing, or the terms of the written agreement were not complied with in practice, describe the actual terms and conditions of the arrangement: _____

12. Was it agreed or understood that the worker would perform the services personally? Yes No
 If "No," please explain: _____

13a. Does the worker have helpers? Yes No

If "Yes," answer questions 13b through 13g.

If "No," go to question 14.

b. Who hired the helpers? Worker The entity Unknown

c. Who could discharge the helpers? Worker The entity Unknown

d. Who paid the helpers? Worker The entity Unknown

e. If the worker paid the helpers, did the entity reimburse the worker? Yes No Unknown

f. What services do the helpers perform? _____

g. Are Social Security/Medicare (FICA), SDI, and PIT withheld from the helpers' wages?

Yes No Unknown

If "Yes," who reports and pays these taxes? _____

14a. Was the worker permitted to provide services for others during the same time periods services were performed for the entity? Yes No Unknown

If "Yes," answer questions 14b through 14f.

If "No" or "Unknown," go to question 15.

b. What percent of the worker's total working time was spent working for others? _____

c. What percent of the worker's total income was earned from others? _____

d. Describe services the worker performed for others: _____

e. Did the entity have first call on the worker's time and efforts? Yes No Unknown

f. Who owned or rented the premises where the services were performed? _____

15a. List the kind and value of tools, equipment, and/or facilities furnished by the entity: _____

b. Was the worker required to wear a uniform or badge? Yes No

If "Yes," describe what the worker was required to wear: _____

Who paid for the items? _____

16. List the kind and value of tools, equipment, and/or facilities furnished by the worker? _____

17a. List any expenses connected with the services of the worker: _____

b. Who was responsible for paying these expenses? _____

c. Was the worker reimbursed by the entity for any of these expenses? Yes No

18. Did the worker perform under: His/her business name The entity's name

19. Did the worker advertise or maintain a business listing in the phone directory, a trade journal, Internet, etc.?

Yes No Unknown If "Yes," please attach a copy.

- 20a. Did the worker hold himself/herself out to the public as available to provide services of this nature?
 Yes No Unknown
 If "Yes," please explain: _____

- b. Or any other nature? Yes No Unknown
 If "Yes," please explain: _____

21. Did the worker have an office or shop of his/her own? Yes No Unknown
 If "Yes," where (e.g., was the office in the worker's home or was it rented office space?): _____

- 22a. Was a license or certificate required to perform the services? Yes No Unknown
 If "Yes," does the entity possess such a valid license or certificate? Yes No
 If "Yes," does the worker possess such a valid license or certificate? Yes No Unknown
- b. Who issued the license or certificate to the entity and/or worker? State type and number for the entity and/or worker:

- c. Who paid the worker's license or certificate fee? _____
23. How did the entity engage the worker? Full-time Part-time Particular Job Indefinite Period
 Other, please explain: _____
24. Did the entity require the worker to perform during a scheduled time? Yes No
 If "Yes," please explain: _____
- 25a. Was the worker provided training by the entity? Yes No
 If "Yes," what kind and how often? _____

- b. Who paid for the worker's training expenses? _____
- c. Was the worker provided an orientation by the entity? Yes No
 If "Yes," please describe: _____
26. Was the worker required to follow a work schedule by the entity specifying days and hours in which work had to be performed? Yes No
 If "Yes," please provide work schedule: _____
 Who established the work schedule? _____
27. Was the worker given instructions about the way the service was to be performed? Yes No
 If "Yes," explain the nature of the instructions: _____

28. Could the entity change the methods used by the worker in performing the services or otherwise direct him/her as to how to perform the work? Yes No
 Explain your answer: _____

- 29a. Does the worker report to the entity or its representatives? Yes No
 If "Yes," how often? _____
- b. For what purpose? _____
- c. In what manner (in person, in writing, by phone, time record, etc.)? _____
 Attach copies of report forms used in reporting to the entity.
30. Was the worker required to produce a certain amount of work regularly or achieve certain performance goals if services were to continue? Yes No
- 31a. Check the type of pay the worker received? Salary Commission Hourly Other
 If "Other," please explain: _____
- b. Who set the pay rate? Worker Business Entity Negotiated Other
 If "Other," please explain: _____
- c. Was the worker paid in regular intervals? Yes No
 If "Yes," what was the frequency? Daily Weekly Monthly Other
 If "Other," please explain: _____
32. Was the worker guaranteed a minimum pay? Yes No
33. Was the worker eligible for a pension, bonuses, paid vacations, sick pay, etc.? Yes No
 If "Yes," please explain: _____
34. Did the entity carry workers' compensation insurance on the worker? Yes No
35. Could the entity discharge or layoff the worker without notice? Yes No
36. Could the worker quit at any time? Yes No
37. Would a liability be incurred if the worker quit or was discharged before the job was complete? Yes No
 If "Yes," please explain: _____
38. Please explain why you believe the worker is/was an employee of the entity or an independent contractor:

39. How did the worker report earnings for income tax purposes? Wages Self-employment Income Unknown

ANSWER QUESTIONS 40 THROUGH 45 ONLY IF THE WORKER IS AN AGENT DRIVER OR COMMISSION DRIVER

An **agent driver** or **commission driver** is a person who operates his/her own truck or the truck of the entity and serves the customers of the entity as well as soliciting his/her own customers.

40. State the products and/or services the driver distributes (for example: bakery products and laundry services):

41. If the driver distributes more than one product or service, which is considered the principal or main product?
 Explain: _____
42. Who does the driver serve? Customers or routes designated by the entity His/her own customers Both
43. Was the driver required to perform the services personally? Yes No
44. Were the driver's services part of a continuing relationship with the entity and not in the nature of a single transaction?
 Yes No
45. What investment, other than for transportation, does the driver have in his/her business?

**ANSWER QUESTIONS 46 THROUGH 58 ONLY IF THE WORKER WAS A
TRAVELING OR CITY SALESPERSON**

46. What type of product is sold? _____
47. To whom are sales made? _____
48. What typical type of business is the buyer in? _____
49. Does the buyer resell the product or use it in its business? _____
50. Did the worker have an exclusive territory? Yes No
51. Did the entity specify when and how often to work the territory? Yes No
If "Yes," please explain: _____

52. What percent of total sales that the worker made for the entity were made to wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments? _____
53. What was the percent of working time that the worker spent in selling to organizations other than those specified in #52, such as manufacturers, schools, churches, and homeowners? _____
54. What was the approximate number of hours worked per day for the entity? _____
55. Was the worker required to perform the services personally? Yes No
56. Was the worker required to forward the orders to the entity? Yes No
57. Were the worker's services part of a continuing relationship with the entity? Yes No
58. What investment, other than transportation, does the worker have in the business? _____

ANSWER QUESTIONS 59 THROUGH 67 ONLY IF THE INDIVIDUAL WORKED AT HOME

59. Who furnished materials or goods used by the worker? Individual Entity
60. Was the worker furnished a pattern or given instructions to follow in making the product? Yes No
If "Yes," please explain: _____

61. Was the worker required to return the finished product either to the entity or to someone designated by the entity?
 Yes No
62. Was the worker required to perform the services personally? Yes No
63. Were the worker's services part of a continuing relationship with the entity? Yes No
64. Is the entity licensed by the California Division of Labor Standards Enforcement? Yes No Unknown
65. Does the worker have a valid permit from the California Division of Labor Standards Enforcement?
 Yes No Unknown
66. Who bears the cost of material damaged by the worker? Worker Entity
67. Explain the nature of any substantial investment in facilities used in connection with performance of the worker's services: _____

**ANSWER QUESTIONS 68 THROUGH 72 ONLY IF THE INDIVIDUAL IS A
REAL ESTATE SALESPERSON OR BROKER**

68. Does the entity provide advances against unearned commissions, expense accounts, or reimbursements of expenses incurred by the worker? Yes No

Please explain: _____

69. Does the entity approve the sales before they are placed in escrow? Yes No

70. Does the worker have any other duties with the entity besides selling real estate? Yes No

If "Yes," please explain the nature of such duties and the method of payment: _____

71. Does the entity allow the worker to have exclusive listings? Yes No

72. Does the worker have a valid license to sell real properties? Yes No

**ANSWER QUESTIONS 73 THROUGH 79 ONLY IF THE ENTITY IS A
TEMPORARY SERVICES EMPLOYER OR LEASING EMPLOYER**

73. Does the entity negotiate with clients or customers for such matters as time, place, type of work, working conditions, quality, and price of the services? Yes No

74. Does the entity determine the assignments or reassignments of the workers, even though workers retain the right to refuse specific assignments? Yes No

75. Does the entity retain the authority to assign or reassign a worker to other clients or customers when a worker is determined unacceptable by a specific client or customer? Yes No

76. Does the entity assign or reassign the worker to perform services for a client or customer? Yes No

77. Does the entity set the rate of pay of the worker, whether or not through negotiation? Yes No

78. Does the entity pay the worker from its own account(s)? Yes No

79. Does the entity retain the right to hire and terminate workers? Yes No

I declare that all copies of contracts and all statements submitted are true, correct, and complete to the best of my knowledge and belief. If any misrepresentation has been made or facts have been omitted, I understand that the determination will not be valid and will not be binding upon the EDD.

(NAME PRINTED)

(DATE)

(SIGNATURE)

(PHONE NUMBER)

(TITLE)