

TEMPORARY SERVICES AND EMPLOYEE LEASING INDUSTRIES

Employment occurs when an employer engages the services of an employee for pay. Under Section 621(b) of the California Unemployment Insurance Code (CUIC), employee is defined as “any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.” In general, a worker is a common law employee when the employer has the right to control the manner and means of accomplishing the desired result.

Section 606.5 of the CUIC specifies who shall be considered the employer of common law employees in the temporary services and employee leasing industries.

WHAT ARE TEMPORARY SERVICES AGENCIES AND EMPLOYEE LEASING AGENCIES, AND ARE THEY THE EMPLOYERS OF THE WORKERS THEY PLACE IN EMPLOYMENT?

Determining who is the actual employer of a worker is a two-part process. First, the worker must be an employee under the usual common law rules. If the worker is determined to be a common law employee, then the employer must be identified.

A temporary services employer and an employee leasing employer are employing units that contract with clients or customers to supply workers to perform services for the client or customer and perform **all** of the following functions:

1. Negotiates with clients or customers for matters such as time, place, type of work, working conditions, quality, and price of the services.
2. Determines assignments or reassignment of workers, even though workers retain the right to refuse specific assignments.
3. Retains 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.
4. Assigns or reassigns the worker to perform services for a client or customer.
5. Sets the rate of pay of the worker, whether or not through negotiation.

*Includes Paid Family Leave (PFL).

6. Pays the worker from their own account or accounts.
7. Retains the right to hire and terminate workers.

If an individual or entity contracts to supply workers to perform services for a customer or client **and all** of the above seven functions are met, the individual or entity is the employer of the workers who perform the services. As the employer, the individual or entity is responsible for reporting wages paid to the employees and paying Unemployment Insurance (UI) and Employment Training Tax (ETT) on those wages. Additionally, the individual or entity is required to withhold and remit State Disability Insurance (SDI)* and California Personal Income Tax (PIT) due on the wages paid.

Example

A temporary services company provided employee data processors to its client. The client provided the materials, work space, and computer time. The temporary services company performed the following functions:

- Negotiated with clients for time, place, type of work, working conditions, quality, and price of the services of the data processors.
- Determined the assignments or reassignments of the data processors.
- Had the authority to reassign a data processor who was found to be unacceptable by the client.
- Assigned the data processors to perform the services at the client’s business.
- Set the rate of pay of the data processors.
- Paid the data processors directly from its business account(s).
- Retained the right to hire and fire the data processors.

The company providing the data processors was the employer responsible for reporting because it performed all functions as specified in Section 606.5 of the CUIC.

Under What Circumstances Is the Client or Customer of the Agency the Employer of the Workers?

If an individual or entity who contracts to supply workers to perform services for a customer or client is not a leasing employer or temporary services employer (as described above), the client or customer would be the employer for UI, ETT, SDI, and PIT purposes. If the individual or entity contracting to provide the worker pays the worker, the individual or entity would merely be the agent of the client or customer and not the employer. Refer to Section 606.5(c) of the CUIC.

When Employers Loan Employees to Other Employers, Who Is the Employer of the Loaned Employees?

In circumstances where an employee is loaned by one employer to another employer, the loaning employer remains the employer responsible for UI, ETT, SDI, and PIT purposes if the loaning employer continues to pay remuneration to the employee, whether or not reimbursed by the other employer. However, if the employer to whom the employee is loaned pays remuneration directly to the employee for services performed, that employer shall be considered the responsible employer for employment tax purposes for any remuneration paid to the employee by such employer. This is true regardless of whether the loaning employer also pays remuneration to the employee. Refer to Section 606.5(d) of the CUIC.

ADDITIONAL INFORMATION

For further assistance, please contact the Taxpayer Assistance Center at (888) 745-3886 or visit the nearest Employment Tax Office listed in the *California Employer's Guide* (DE 44) or access EDD's Web site at www.edd.ca.gov/payroll_taxes/.

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.

This information sheet is provided as a public service and is intended to provide non-technical assistance. Every attempt has been made to provide information that is consistent with the appropriate statutes, rules, and administrative and court decisions. Any information that is inconsistent with the law, regulations, and administrative and court decisions is not binding on either the Employment Development Department or the taxpayer. Any information provided is not intended to be legal, accounting, tax, investment or other professional advice.