



State of California

FREQUENTLY ASKED QUESTIONS AND ANSWERS ABOUT THE CALIFORNIA INDEPENDENT CONTRACTOR REPORTING LAW (California Unemployment Insurance Code Section 1088.8)

- Q1. Who has to report?
A1. Any business or government entity (defined as a "service-recipient") that is required to file a federal Form 1099-MISC for services performed by an independent contractor (defined as a "service-provider") must report.
Q2. Who is a service-recipient?
A2. A service-recipient is any business or government entity that is required to file a federal Form 1099-MISC for services performed by an independent contractor.
Q3. Who is a service-provider?
A3. A service-provider is defined as an independent contractor; an independent contractor is any individual who is not an employee of the service-recipient for California purposes and who receives compensation or executes a contract for services performed in or outside California.
Q4. What information do I report?
A4. You are required to provide the following information.
Business or government entity's (service-recipient):
Independent contractor's (service-provider):
Q5. When do I have to report?
A5. As of January 1, 2001, you must report information to EDD within twenty (20) days of either making payments totaling \$600 or more or entering into a contract for \$600 or more with an independent contractor in any calendar year, whichever is earlier.
Q6. What do I do if it is difficult to determine when the contract with equal or exceed \$600 or if there is no set contract amount?
A6. If you are unable to determine when total payments made equal or exceed \$600, you may estimate the dollar amount of the contract and check the box on the DE 542 that indicates "ongoing."
Q7. If the cost of parts and materials is included in the contract or payments, is this cost included in determining if the \$600 threshold has been met?
A7. Yes. If either the contract amount or amount paid includes the cost of parts or materials, that cost is to be included in determining whether the service-provider has been paid \$600 or more.
Q8. How do I report?
A8. Report independent contractors on the Report of Independent Contractor(s) (DE 542).
Q9. How do I obtain the Report of Independent Contractor(s) (DE 542) and/or whom do I contact if I have questions?
A9. For assistance or to order forms, please call our hotline number (916) 657-0529, Monday through Friday from 8 a.m. to 5 p.m. (PT).

Q10. Where do I report?

A10. Mail to: Employment Development Department
P.O. Box 997350, MIC 99
Sacramento, CA 95899-7350

Fax to: (916) 255-3211

Q11. What is the purpose of the independent contractor reporting law?

A11. The information you provide to EDD will increase child support collection by helping to locate parents who are delinquent in their child support obligations.

Q12. What type of penalty is charged if the report is late?

A12. The EDD may assess a penalty of \$24 for each failure to comply within the required time frames. Also, a penalty of \$490 may be assessed for the failure to report independent contractor information if the failure is the result of conspiracy between the service-recipient and service-provider.

Q13. Do I report independent contractors who work in another state? If my business is not in California, do I report the independent contractors?

A13. Under California law, "service-recipients" must report "service-providers." By definition, a service provider is an independent contractor who provides services (rather than goods) to a business or government entity; a service-recipient must meet one of these three tests:

1. Does business in California.
2. Derives trade or business income from sources within California
3. In any manner in the course of a trade or business is subject to the laws of California.

If your business/government entity meets one or more of the three service-recipient tests, you must report independent contractors whose services are performed for any of your business operations that also meet at least one of the three tests.

Example #1

Your business is headquartered in California and therefore meets one of the service-recipient tests. Your California office hires an independent contractor (IC) who lives and works in New York. You must report this IC to EDD since the IC performs services for your California business operation.

Example #2

Your business is headquartered in California and therefore meets one of the service-recipient tests. You also have a business operation in Massachusetts. The Massachusetts location hires a Massachusetts-based IC to perform janitorial services in Massachusetts. You do not have to report this IC to EDD since the IC performs services for a business operation that does not meet any of the service-recipient tests.

Example #3

Your business is headquartered in North Dakota and has a branch office in California that uses ICs. Those ICs should be reported since the California office meets the service-recipient tests. However, if the North Dakota office hires an IC to perform services for the North Dakota location, those services would not be reported because the IC performs services for an office that does not meet any of the service-recipient tests.

Example #4

Your business is headquartered in Indiana and does not have any branch offices in California. Your business registered with a California state agency to have independent sales agents (ICs) sell your products in California. You must report these ICs to EDD since they perform services for a business operation deriving income from California and subject to some California laws, thereby meeting two of the service-recipient tests.

Q14. Do any other states require independent contractor reporting?

A14. Yes. According to the U.S. Department of Health and Human Services, Iowa, Massachusetts, Minnesota, New Hampshire, and New Jersey require some sort of independent contractor reporting.

Q15. Can other states report their independent contractors to California and vice versa?

A15. No. There are no reciprocal agreements between the states for this purpose.

Q16. If my business contracts with a service-provider that is a corporation, general partnership, or limited liability company, must this service-provider be reported?

A16. No. The legislative requirements only call for the reporting of service-providers who are individuals working as independent contractors. In general, independent contractors who are sole proprietors are to be reported to EDD.

Q17. My service-providers have federal employer identification numbers (FEINs) and business names. How do I determine if they are sole proprietors? Can I report their FEINs instead of their social security numbers (SSNs)?

A17. By statute, you are required to obtain the first name, last name, and SSN of any service-providers that are sole proprietors. The federal Form W-9 was recently revised and now requires sole proprietors to list their first and last names. You may

want your service-providers to complete new Forms W-9. If the SSN is still not known after reviewing the W-9, ask the service-provider for the SSN. If the service-provider does not provide it, fill out the SSN box with zeroes (000000000).

- Q18. If my business contracts with a service-provider on more than one occasion during a year, are the individual contracts cumulative in reaching the \$600 reporting threshold? Also, if I report a service-provider during the year and then enter into another contract that again calls for at least \$600 in compensation, must the service-provider be reported a second time?
- A18. The threshold for requiring reporting is \$600 in a year on an aggregate basis. Therefore, you would only report once a year for each service-provider, and there is no basis to require reporting each time a service-provider receives \$600 in a year.
- Q19. My business doesn't have employees. Do I have to register with EDD solely for purposes of reporting my service-providers?
- A19. No. Service-recipients who are not registered with EDD are not required to register and receive a California employer account number solely for purposes of reporting independent contractor service-providers. Unregistered service-recipients complete the *Report of Independent Contractor(s)* (DE 542) using their social security or federal employer identification numbers.
- Q20. For purposes of independent contractor reporting, must the contract be in writing or would a verbal contract also qualify?
- A20. A contract may be either written or verbal.
- Q21. My business engages the services of a worker who is my acknowledged employee, and I reported this employee under the New Employee Registry when first hired. This same worker also performs work for my business as a valid independent contractor and receives a federal Form 1099-MISC which reflects this compensation. Must I also report the worker for the independent contractor compensation?
- A21. Yes.
- Q22. If my business engages workers whose services are exempt by statute from state payroll taxes, should I report the workers as independent contractors to EDD?
- A22. To answer this question, one must first determine if the workers are performing services for the business or government entity as employees or independent contractors. If the workers are engaged as employees, their services would **not** be reported as independent contractors. However, the business or government entity may be required to report the employees as part of the New Employee Registry (under Section 1088.5 of the California Unemployment Insurance Code) if the requirements of that section are met. When a service-recipient hires workers who are not employees and is required to provide the workers with a Form 1099-MISC, the service-recipient is required to report the workers (service-providers) as independent contractors (under the provisions of Section 1088.8 of the California Unemployment Insurance Code).
- Q23. Are churches or nonprofit organizations required to report independent contractors they engage for services?
- A23. Yes. Title 26, Code of Federal Regulations, Section 1.6041-1(b) defines the term "trade or business," which includes churches and nonprofit organizations. Therefore, reporting independent contractors is required.
- Q24. How can I get a copy of Section 1088.8 of the California Unemployment Insurance Code (CUIC)?
- A24. You can view the code section at www.leginfo.ca.gov/calaw.html. Click on "Unemployment Insurance Code," then click on "Search." The CUIC Table of Contents will appear; the code sections are grouped in numerical order on the right side of the page. Scroll down to "1085-1098," click on the link, then scroll down to 1088.8.

You may also call our toll-free number 1-888-745-3886 to have the code section mailed or faxed to you.