

Misclassified Workers' Guide to Applying for California Disability Insurance and Paid Family Leave

The California State Disability Insurance (SDI) program provides short-term Disability Insurance (DI) and Paid Family Leave (PFL) wage replacement benefits to eligible workers who need time off work. Under DI, a worker is eligible for up to 52 weeks of partial wage replacement benefits if they need time off work because of their non-work-related illness, injury, or pregnancy. Under PFL, a worker is eligible for up to eight weeks of partial wage replacement benefits. Workers can apply for PFL if they need time off work because they are caring for a seriously ill family member, bonding with a new child, or participating in a qualifying event related to a family member's military deployment to a foreign country. An individual filing for benefits must be either working or seeking work and must have paid minimum contributions into the program.

For most workers, the required SDI contributions are automatically deducted from the employee's wages and are listed on paystubs as "CASDI" or "SDI." In some cases, workers who should be paying into the program have not been doing so because they have been misclassified as independent contractors. Misclassified workers are employees whose wages are not being properly taxed because the employer has incorrectly treated them as independent contractors or has been paying the worker 'under the table' (e.g., in cash, via personal check, or through online platforms like Venmo or CashApp). **You are still eligible for DI and PFL benefits if you have been misclassified.** This guide describes the additional steps a misclassified worker should take to access DI and PFL benefits.

Retaliation

California laws that prohibit retaliation apply only to employers and employees. If you are a true independent contractor, these protections do not apply to you. If you are a misclassified worker and take any of the actions laid out on pages 3-5 to challenge your classification and access DI or PFL benefits, your employer is prohibited from retaliating against you. Retaliation includes termination, demotion, unfavorable changes in shifts, not paying benefits, not promoting according to generally followed schedules, or anything else that would dissuade a reasonable employee from participating in the protected activity.

FOR MORE INFORMATION visit www.legalaidatwork.org/wf or call Legal Aid at Work's Work and Family Helpline at (800)880-8047 for free and confidential legal advice.

Have I been misclassified?

In California, a worker is not an independent contractor just because they or the business they are working for says so. Instead, under California Labor Code § 2775, a hiring entity must meet a three-part test, called the “ABC” test, to classify a worker as an independent contractor for DI or PFL purposes. If your employer has incorrectly categorized you as an independent contractor, you may still be eligible for DI or PFL benefits, even though you have not paid into the program. **If any of the following are true, you may be eligible to receive DI and PFL benefits:**

A

You are under the control and direction of the hiring entity in connection with the performance of the work, either according to the terms of the contract for work or in reality.

EXAMPLES:

- You are required to show up to work at a certain time or according to a specific schedule.
- You are hired for a carpentry job, but your employer provides all the wood, hammers, saw, nails, hard-hats, etc.
- You are supervised while working and disciplined for failure to meet or comply with employer policies.
- You are required to complete your assigned tasks in a specific order.

B

You are performing work that is within the usual course of the hiring entity’s business.

EXAMPLES:

- You were hired by a company that provides delivery services to drive a delivery truck.
- You were hired by a construction company that specializes in renovations, including painting, to work on a crew of painters for an apartment complex renovation project.
- You were hired by an online home care company to perform in-home healthcare services.

C

You are not typically engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

EXAMPLES:

- You have not established a small business that provides housekeeping services that are the same or similar to the housekeeping you perform for the hotel that hired you.
- You do not perform janitorial services for several different companies, including the hiring entity, and you do not have a website or hand out business cards advertising your janitorial services.

If the description under A, B, or C describes your employment situation, go to pages 3-5 for directions on how you can access DI and PFL as a misclassified worker. If none of the above applies to you and your employment situation, and you believe that you have been properly classified as an independent contractor, go to page 6 for information on how you can access DI or PFL benefits in the future.

I've been misclassified. How can I access DI or PFL benefits?

The following scenarios can help you decide how to access DI and PFL benefits if you believe you are an employee that has been misclassified as an independent contractor. See page 2 to determine whether you have been misclassified. Find the scenario that applies to you for advice on how to proceed.

A

I have already applied for DI or PFL. I received my Notice of Computation (DE 429D/DE 429DF) and my earnings during the quarters shown on the notice show "\$0" or are incorrect. What do I do?

1. Within 30 days of the mailing date of the DE 429D/DE 429DF:

- a. Send a letter (see sample in Appendix A) to the mailing address on the notice stating that you are disputing the weekly benefit amount because you believe you have been misclassified and describing why you believe you are a misclassified employee (see page 2 for examples of why you believe you have been misclassified).
- b. Include proof of any wages you received from your employer.
 - This can include documents such as pay stubs, copies of checks from the employer, bank statements showing deposits to your account, or screenshots of Paypal or Venmo transactions.
- c. Include a copy of the DE 429D or DE 429DF.

2. If a representative from the Employment Development Department (EDD) calls to discuss your DI or PFL claim, answer all questions to the best of your ability to minimize any delays in receiving your benefits.

What will happen?

- If you have listed an organization or company as your employer, and the EDD is unable to find your reported wages, they may initiate a wage audit of your employer to determine if the employer has misclassified you and/or your colleagues:
 - o As a result of a wage audit, the EDD may require your employer to:
 - Pay penalties, and
 - Start deducting payroll taxes from your paychecks.
- If the EDD determines you are an employee, it will provide your DI or PFL benefit payments retroactive to the first payable date of your claim.

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It is illegal for your employer to retaliate against you for taking these actions if you are an employee. See page 1 for more information.

I've been misclassified. How can I access DI or PFL benefits? (cont.)

B

I am about to apply for DI or PFL. I believe I am an employee (see pg 2) but:

1. I have been receiving my pay "under the table" (i.e., in cash), or
2. I have received a 1099 form for my taxes, or
3. My employer has been telling me I am an independent contractor.

What should I do when I apply?

1. **Complete and submit a paper Claim for Disability Insurance (DI) Benefits (DE 2501) or Claim for Paid Family Leave (PFL) Benefits (DE 2501F) form. (You can order paper claim forms at forms.edd.ca.gov/forms.)*****
 - a. Include a letter (see sample at Appendix A) stating that you believe you have been misclassified and describing why you believe you are a misclassified employee (see page 2 for examples of why you believe you have been misclassified).
 - b. Include proof of any wages you received from the employer to your application.
 - This can include documents such as pay stubs, copies of checks from the employer, bank statements showing deposits to your account, or screenshots of Paypal or Venmo transactions.
2. **If a representative from the EDD calls to discuss your DI or PFL claim, answer all questions to the best of your ability to minimize any delays in receiving your benefits.**

What will happen?

- If you have listed an organization as your employer, and the EDD is unable to find your reported wages, the EDD will try to determine whether you have been misclassified.
 - o Your first benefit payment may be delayed as they determine your worker status and compute the correct weekly benefit amount.
 - o Once the EDD reaches a decision on whether you have been misclassified:
 - It will notify you about your eligibility for DI or PFL.
 - If the EDD determines you are an employee, it will provide your DI or PFL benefit payments retroactive to the first payable date of your claim.
- The EDD may also initiate a wage audit of your employer to determine if the employer has misclassified you and/or your colleagues.
 - o As a result of a wage audit, the EDD may require your employer to:
 - Pay penalties, and
 - Start deducting payroll taxes from your paychecks.

*** If you are undocumented you still may access DI and PFL benefits. If you do not have a Social Security number (SSN), order and submit a paper DI/PFL application leaving blank the box asking for your SSN. For more information on applying for DI/PFL as an undocumented worker, see our [Undocumented Workers' Guide to Applying for California Disability Insurance & Paid Family Leave](#).

I've been misclassified. How can I access DI or PFL benefits? (cont.)



I don't need DI or PFL right now, but I and/or my colleagues have been paid under the table (i.e., in cash). How can we ensure we have access to these benefits in the future?

What should I do?

File an [Underground Economy Operations Lead Referral/Complaint \(DE 660\)](#) in English or Spanish ([DE 660/S](#)): This form allows anyone to report payroll tax fraud by coordinating the joint enforcement of tax, labor, and licensing laws. Misclassifying workers or failing to withhold payroll taxes can be considered payroll tax fraud. The form must be emailed or mailed to the EDD Underground Economy Operations. You may leave the contact information section blank to remain anonymous. You may also report payments in cash and other payroll tax avoidance by submitting the online [Fraud Reporting Form](#) or calling 1-800-528-1783.



I don't need DI or PFL right now, but I and/or my colleagues have been receiving 1099 forms for our taxes and/or have been told by the employer that we are independent contractors. How can we ensure we have access to these benefits in the future?

You have three options for reporting this violation.

1. Submit a [Preliminary Worker Classification Form \(DE 230\)](#) in English or Spanish ([DE 230/S](#)): This form allows a worker to receive an opinion from the EDD on whether they have been misclassified as an independent contractor or provide a lead to the EDD for potential further investigation. The worker can request an opinion that can either be shared exclusively with the employee or also be sent to the employer. The form can be completed anonymously.
2. Report a [Labor Law Violation](#): This online form allows a worker to report widespread violations of labor law by an employer or violations affecting multiple employees, including tax and payroll violations and misclassification. Your name and contact information can be kept confidential. You can also call 1-855-297-5322 or email letf@dir.ca.gov to report violations.
3. [Submit a Fraud Reporting Form](#): This online form allows anyone to report fraud to the EDD, including intentional misclassification of workers or misreporting of payroll taxes. You can submit anonymously by not providing your name or phone number. You can also call 1-800-528-1783 to report the violation.



It is illegal for your employer to retaliate against you for taking these actions if you are an employee. See page 1 for more information.

Disability Insurance Elective Coverage for Properly Classified Independent Contractors or Self-Employed Individuals

What if I have been properly classified as an independent contractor?

You may not be eligible for DI or PFL benefits right now, but you can voluntarily contribute to SDI and be eligible in the future. California's Disability Insurance Elective Coverage (DIEC) program offers up to 39 weeks of DI and 8 weeks of PFL to independent contractors or self-employed individuals who voluntarily contribute to the program by paying insurance premiums determined by the individual's net profits. (See edd.ca.gov/en/payroll_taxes/Disability_Insurance_Elective_Coverage/)

How can I be eligible for Disability Insurance Elective Coverage?

- Must be self-employed, a general partner for a business, or an independent contractor. Please see page 2 to determine whether you are an independent contractor or an employee for DI and PFL in California.
- Have a minimum net profit of \$4,600 annually.
- Have a valid license, if required by your occupation.
- Be able to perform all of your normal duties on a full-time basis at the time your application is submitted.
- Receive the major portion of your income from your trade, business, or job as an independent contractor.
- Your business is not seasonal.
- You must stay in the program for two complete calendar years unless you discontinue your business or move out of California.

Before enrolling, consider reviewing more information on the [DIEC program](#), including the premium costs and the benefit amounts available to make sure that applying makes sense for you.

To [apply for DIEC](#), download and complete the appropriate application and return by mail to the EDD.

Appendix A: Sample Letter for Misclassified Workers' DI or PFL Application

To whom it may concern:

My name is _____ . I have worked for _____ since _____ .
name of employee employer start date at employer

I believe I am eligible for {Disability Insurance/Paid Family Leave} but have been misclassified.

_____ is a _____. It is located at/I perform my
employer describe the type of business & the goods/services offered
work at _____. The work I perform includes _____
address of employer describe your tasks and responsibilities,

where and when you work, and any relevant staffing structures, e.g., working on a team with others who do similar work and who are all employees

I believe my employer has not been classifying me as an employee because (check all that apply):

- I received a 1099 form for my taxes instead of a W-2.
- I have been paid in cash or under the table.
- I am not receiving paystubs or my paystubs do not show "SDI" or "CASDI" tax deductions.
- My employment contract lists me as an independent contractor.
- My employer or a manager/supervisor/human resources representative has told me that I am an independent contractor.

However, according to California Labor Code § 2775, I believe I am an employee because (check all that apply).

- I am under the direct control of my employer in the following ways: _____

describe ways employer controls your work, such as requiring you to show up to work at a certain time or according to a specific schedule; providing the tools, equipment, and supplies you use to complete your job; supervising or disciplining you; requiring that your tasks be completed in a specific order

- My work doing _____ is within the usual course of the employer's business
describe the work that you perform for the employer
as _____

describe the business activity your employer does, e.g., "a retail store selling clothes" or "a trucking company transporting goods"

- I am not typically engaged in any independently established trade, occupation, or business that does the same work of _____ as I do for my employer.
describe the work that you perform for the employer

I believe I have been misclassified from _____ to _____.
start date end date

Attached is proof of the wages I have been paid from _____ to _____.
date date

If there are periods of employment where your wages looked different describe those periods and how the wages differed (e.g., lesser/greater wages more/less consistent across pay periods, etc.). If you do not have documentation of wages in those periods, state that you are unable to attach proof of wages and provide an explanation for the lack of documentation if possible.

name of employee

EDD customer account number, claim ID, SSN, or date of birth

address

telephone/mobile number