

Q. Do I have to have Workers' Compensation Insurance?

A. Yes, every California employer using employee labor, *including family members*, must purchase Workers' Compensation Insurance (Labor Code Section 3700). If you fail to have Workers' Compensation Insurance for your employees, it can be expensive as the DLSE is required to issue and serve a stop order/penalty assessment prohibiting further use of employee labor until you do purchase Workers' Compensation Insurance. Effective January 1, 2011, the penalty assessed for failure to have Workers' Compensation Insurance is based upon the greater of (1) twice the amount the employer would have paid in workers' compensation insurance premiums during the period the employer was uninsured, or (2) \$1,500 per employee. However, there are exceptions for partnerships, if the only persons performing labor are the partners and corporations where the corporate officers are the sole shareholders; in which case, the corporation, officers and directors come under the Workers' Compensation provisions only by election.

Q. My niece helps in my business for a few hours a day, but I don't consider her an employee. Is that correct?

A. No, under the labor law she is considered an employee. An employee is defined as someone you engage or permit to work. Even though your niece is part of your family, she is considered an employee and you, as the employer, must provide Workers' Compensation Insurance to cover her in case of a work-related injury. In addition, you are also required to pay the minimum wage unless the employee is your spouse, parent or child and you are a sole proprietor or partnership. Corporations do not have children and therefore, no family relationship to the officers of the corporation can be exempt from these requirements.

Q. I employ persons classified as independent contractors. What obligations do I have to purchase Workers' Compensation Insurance or comply with other labor laws?

A. Employers often improperly classify their employees as independent contractors to avoid paying payroll taxes, minimum wage or overtime, or complying with other wage and hour requirements such as providing meal periods and rest breaks, etc. Additionally, employers do not have to cover independent contractors under Workers' Compensation Insurance. However, because potential liabilities and penalties are significant it is important that each working relationship be thoroughly researched and analyzed before classifying an individual as an independent contractor and not an employee. You should understand that the DLSE presumes that the worker is an employee ([Labor Code Section 3357](#)). However, the actual determination of whether a worker is an employee or independent contractor depends upon a number of factors which must be considered. Consequently, it is necessary to closely examine the facts of each relationship and then apply the law to those facts. The most significant factor to be considered is whether the person to whom service is rendered (the employer or principal) has control or the right to control the worker, the work to be done and the manner and means in which it is performed. For further information on this subject, please visit the DLSE website at www.dir.ca.gov/dlse/FAQ_IndependentContractor.htm