

# Comparison of State Unemployment Insurance Laws 2016

## EMPLOYMENT

For UI Purposes, employment is generally defined as the performance of any services, of whatever nature, by an employee for the person employing him or her.

## EMPLOYER-EMPLOYEE RELATIONSHIP (A B C Test)

Most state laws contain strict tests to determine whether there is sufficient absence of control by an employer that the worker is not an employee but an independent contractor. More than half of the states provide criteria commonly called the “ABC” test under which service for remuneration is considered employment and the worker is an employee unless each of three tests is passed:

- A** The worker is free from control or direction in the performance of the work under the contract of service and in fact;
- B** The service is performed either outside the usual course of the business for which it is performed or is performed outside of all places of business of the enterprise for which it is performed; and
- C** The individual is customarily engaged in an independent trade, occupation, profession, or business.

Other states have variations of this “ABC” test. For example, in some states only the “A” and “C” tests apply. The tests used in states are listed in the following table.

TABLE 1-4: WORKERS CONSIDERED EMPLOYEES UNLESS:									
State	Workers Free from Control Over Performance (A)	Service Outside Regular Course or Place of Employer's Business (B)	Worker in an Independent Business (C)	Other Tests	State	Workers Free from Control Over Performance (A)	Service Outside Regular Course or Place of Employer's Business (B)	Worker in an Independent Business (C)	Other Tests
AK	X	X	X		AL				Masterservant <sup>1</sup>
AR				A and B or A and C	AZ				Service performed by an employee for the entity employing him
CA	X	X	X	Contract of hire, written or oral, express or implied <sup>2</sup>	CO	X		X	
CT	X	X	X		DC				Contract of hire, written or oral, expressed or implied
DE	X	X	X		FL	X	X	X	X <sup>2</sup>
GA	X		X	SS-8 Determination from the IRS	HI	X	X	X	
IA	X			Contract of hire, written or oral, expressed or implied	ID	X		X	
IL	X	X	X		IN	X	X	X	20-factor test
KS	X				KY				Masterservant <sup>1</sup> ; by judicial interpretation

State	Workers Free from Control Over Performance (A)	Service Outside Regular Course or Place of Employer's Business (B)	Worker in an Independent Business (C)	Other Tests	State	Workers Free from Control Over Performance (A)	Service Outside Regular Course or Place of Employer's Business (B)	Worker in an Independent Business (C)	Other Tests
LA	X	X	X		MA	X	X	X	
MD	X	X	X		ME	X	X		
MI				20-factor test <sup>3</sup>	MN			X	Masterservant <sup>1</sup>
MO				Common law of right to control	MS	X			Masterservant <sup>1</sup>
MT				Works under approved IC exemption certificate	NC				Contract creating employee relationship
ND				20-factor test	NE	X	X	X	Contract creating employee relationship
NH	X	X	X		NJ	X	X	X	
NM	X	X	X		NV	X	X	X	
NY				Contract of hire, written or oral, expressed or implied	OH	X			Contract of hire, written or oral, expressed or implied
OK	X	X	X		OR	X		X	
PA	X		X		PR	X	X	X	
RI	X	X	X		SC				Contract of hire, written or oral, expressed or implied
SD	X		X		TN	X	X	X	
TX				Common law	UT	X		X	
VA				20-factor test	VI	X	X	X	
VT	X	X	X		WA	X	X	X	
WI				Statutory factors <sup>4</sup>	WV	X	X	X	
WY	X			X <sup>5</sup>					

<sup>1</sup> In AL, KY, MN, and MS, master-servant refers generally to the employer's right of direction and control.

<sup>2</sup> In CA and FL, in addition to the A, B, and C tests, the following tests are considered: 1) in locality, work is usually done by specialist without supervision; 2) specialized skill is required in the particular occupation; 3) length of time for which person is employed suggests an independent relationship; 4) method of payment is by the job rather than by time; 5) parties do not believe they are creating a master and servant relationship; 6) principal not in business; and 7) principal does not supply the instrumentalities, tools, and the place of work for the person doing the work.

<sup>3</sup> MI, an individual from whom an employer is required to withhold federal income tax will be prima facie considered to perform services in employment.

<sup>4</sup> WI, direction and control and independent business (i.e. A and C) tests used for governmental and nonprofit entities, loggers, and truckers.

<sup>5</sup> WY, individual must represent services to the public as being in self-employment or as an independent contractor, and individual must be able to substitute another individual to perform the services.

## EMPLOYMENT SPECIFICALLY EXCLUDED

State exclusions from employment generally follow the FUTA exclusions. However, the states often exclude other types of employment as well. This section presents a brief discussion of each of the exclusions that occur in all or nearly all of the state laws. A great many miscellaneous exclusions, which occur in only a few states and affect relatively small groups, are not included. The following table provides an overview of some of the basic exclusions from the definition of employment used by states.

**TABLE 1-5: SIGNIFICANT MISCELLANEOUS EMPLOYMENT EXCLUSIONS**

State	Insurance Agents on Commission	Real Estate Agents on Commission	Casual Labor Not in Course of Employer's Business	Part-Time Service for Nonprofit Organizations Exempt from Federal Income Tax <sup>1</sup>	State	Insurance Agents on Commission	Real Estate Agents on Commission	Casual Labor Not in Course of Employer's Business	Part-Time Service for Nonprofit Organizations Exempt from Federal Income Tax <sup>1</sup>
AL	X	X	X	X	AK	X	X	X	X <sup>1,2</sup>
AZ	X	X	X	X	AR	X	X	X	X
CA		X	X	X	CO	X	X	X	X
CT	X	X	X	X	DE	X	X		
DC	X		X	X	FL	X	X	X	X
GA	X	X	X		HI	X	X	X	X <sup>2</sup>
ID	X	X			IL	X	X		X
IN	X		X	X	IA		X		
KS	X	X	X	X	KY	X	X	X	X
LA	X	X	X	X	ME	X	X		X <sup>1</sup>
MD	X	X	X	X	MA	X	X	X	X
MI	X	X		X	MN	X <sup>3</sup>	X <sup>3</sup>	X	
MS	X	X	X	X	MO	X	X		
MT	X	X	X		NE	X	X	X	X
NV		X			NH	X	X	X	X
NJ	X	X			NM	X	X		
NY		X			NC	X	X	X	X
ND	X	X	X	X	OH	X		X	X
OK	X	X			OR	X	X	X	
PA	X	X	X		PR		X	X	
RI	X <sup>3</sup>	X	X	X	SC	X	X	X	X
SD	X			X	TN	X	X		
TX	X	X			UT	X	X	X	X
VT	X	X	X	X	VA	X	X	X	X
VI			X		WA	X	X	X	
WV	X				WI	X	X		X
WY		X	X						

<sup>1</sup> In all states, this exclusion is limited to remuneration of less than \$50 in any CQ, except in AK, (less than \$250), and ME (less than \$150).

<sup>2</sup> In AK and HI, does not exclude just part-time service.

<sup>3</sup> Does not exclude such service if performed for a corporation or by industrial and debit insurance agents; MN does not exclude such service if performed by a corporate officer

**SOURCE: US Department of Labor 2016**

**Reference: <http://www.unemploymentinsurance.doleta.gov/unemploy/pdf/uilawcompar/2016/coverage.pdf>**