



**STATE OF NEW YORK
DEPARTMENT OF LABOR**

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Determining Jurisdiction of Employment When Services are Performed in a Number of States

Under the New York State Unemployment Insurance Law, “employment” means any service under contract of employment for hire, express or implied, written or oral. When an employee performs services in more than one state for a single employer, it is necessary to determine the state to which his employment should be reported for unemployment insurance purposes. Based on the principle that the employment of an individual, insofar as possible, should be allocated to one state and not fragmented among several states in which he might perform services, all states, including New York State, have adopted uniform provisions concerning coverage of services performed in more than one state.

New York Law provides for the application of successive tests, namely, (1) localization, (2) base of operations of the employee, (3) place of direction and control, and (4) residence, to determine where services should be reported. These tests must be applied in succession to the entire services performed by an employee under a single contract of hire. If application of a test results in allocation of all services to one state, no further test may be used. Otherwise, it is necessary to proceed to the succeeding test. Split coverage ensues if application of the tests does not result in allocation of all services to one state.

(1) Localization

Services are allocated to that state in which they are localized. Services are deemed localized within a state if they are either performed entirely within the state or are performed both within and without the state but those performed without the state are incidental to the person’s services performed within the state, for example, are temporary or transitory in nature or consist of isolated transactions.

(2) Base of Operations

If services are not localized in any state, all services are allocated to the state where the employee has his base of operations, if some services are performed in that state. This test cannot be applied if the employee has either more than one or no base of operations. Base of Operations may be defined as follows:

“The base of operations of an employee is that place at which he is not continuously located but from which he customarily starts out to perform his functions in two or more jurisdictions and to which he customarily returns in order to receive instructions from his employer or communications from other persons, or to replenish stocks and materials, repair equipment used, or to perform any other functions necessary in the exercise of his trade or profession at some other point or points.”

(3) Place of Direction and Control

If neither of the two preceding tests results in allocation of services to one state and direction and control emanates from only one state in which the employee performs some service, then all services are allocated to that state. Direction and control means the place from which the employer directs and controls the activities of employees. It is not necessarily the location of the principal office but rather the point from which basic authority over the supervision of services emanates (i.e., place from which job assignments are made and/or instructions are issued; place at which personnel and payroll records are maintained.)

(4) Residence

If none of the preceding tests results in allocation of services to one state, the employee's services are allocated to that state in which he resides, if some services are performed in that state.

Work Within New York State

If none of the tests results in allocation of services to one state, an employee's services in New York State are in "employment" if contributions are not required for those services by any other state or federal government.

Work Outside New York State

Generally, services performed entirely outside the state are excluded. However, if such services are not covered under the law of any other state, they are covered under New York law if performed (1) outside the United States (except Canada and the Virgin Islands) by a citizen of the United States for an American employer whose principal place of business is located in New York State; (2) within the United States, Canada or the Virgin Islands, if the place from which the services are directed and controlled is New York State.

If none of the above conditions apply, services performed entirely without this state by a New York resident, is "employment" in New York, if an election to voluntarily cover such services is filed with and approved by this Division.