

Determining Jurisdiction When Employment Services are Performed in Several Different States

New York State Unemployment Insurance Law defines “employment” as:

- Any service under contract of employment for hire
 - Expressed or implied
 - Written or oral

When an employee performs services in more than one state for a single employer, we need to determine which state to report the employment to for unemployment insurance purposes. To determine which state to report the employment to, all states, including NYS, have adopted the four following tests:

- Localization
- Base of Operations
- Place of Direction and Control
- Residence

Apply these tests in succession to all services an employee performs 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, go to the next test. Split coverage exists if application of the tests does not allocate all services to one state.

1. Localization

Services are allocated to the state in which they take place.

We consider services localized within a state if they are performed both in state and out of the state but those performed out of the state are incidental to the services performed within the state. Examples of incidental services are:

- temporary
- transitional in nature
- isolated transactions

2. Base of Operations

If services are not localized in any one state, we allocate all services to the state where the employee has his/her base of operations. (Some services must be performed in that state.) Do not apply this test if the employee has more than one or no base of operations. The base of operations of an employee is the place he/she:

- starts out to work (in two or more jurisdictions)
- returns to receive instructions or communication from his/her employer or other person
- replenishes stock and material
- repairs equipment used
- performs any other functions of his/her trade or profession

3. Place of Direction and Control

If neither of the two prior tests results in allocation of services in one state, look at the place of direction and control. If the place of direction and control is in only one state where the employee performs some services, then all services are allocated to that state.

Direction and control mean the place from which the employer directs and controls the activities of employees. It does not need to be the location of the principal office. It can be the place that is the source of:

- basic authority over the supervision
- job assignments
- instructions
- personnel and payroll records

4. Residence

If none of the prior tests results in allocation of services to one state, then allocate the employee's services to the state where he/she 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, we consider an employee's services as employment in NYS, if no other state or federal government requires contributions.

Work Outside New York State

Generally, we exclude services performed entirely outside NYS. If such services are not covered under the law of any other state, they are covered under NY law if performed:

- Outside the United States (except Canada and the Virgin Islands) by a citizen of the US for an American employer whose principal place of business is located in NYS
- Within the United States, Canada or the Virgin Islands, if the place that directs and controls the services is in NYS

If none of the above conditions apply, an employer may choose to cover such services. The employer would submit a written request which must be approved by this Division. Then services performed entirely outside this state by a New York resident would be covered as "employment" in New York.