

NOTICE:

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

(This notice is required by A.R.S. § 41-1091(B).)

NOTICE OF SUBSTANTIVE POLICY STATEMENT
DEPARTMENT OF ECONOMIC SECURITY

1. Title of the substantive policy statement and the substantive policy statement number by which the policy statement is referenced:

Unemployment Insurance Tax: Private Duty Nursing. The substantive policy statement number is 17P-C048.

2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:

The substantive policy statement was issued and will become effective on May 19, 2010.

3. Summary of the contents of the substantive policy statement:

The substantive policy statement describes the Department's rationale and treatment of nurses and nurses aides engaged in private duty nursing for the purpose of Unemployment Insurance Tax.

4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:

A.R.S. §§ 23-613.01 (E) and 23-615 (8).

Internal Revenue Ruling (Rev. Rul.) 61-196, 1961-2 C.B. 155.

26 U.S.C. §§ 3301 through 3311.

5. Statement as to whether the substantive policy statement is a new statement or a revision:

This is a new substantive policy statement.

6. Name, address and telephone number of the person to whom questions and comments about the substantive policy statement may be directed:

Name: Beth Broeker

Address: Arizona Department of Economic Security
1789 W. Jefferson, Site Code 837A
Phoenix, AZ 85007

Phone: 602-542-6555

E-mail: bbroeker@azdes.gov

Policy Statement
Number: 17P-C048
Unemployment Insurance Tax
Date Issued: May 19, 2010

SUBJECT

Private duty nursing.

AUTHORITY

Arizona Revised Statute (A.R.S.) § 23-613.01 (E) states that “an individual or class of individuals determined to be an employee or employees for purposes of the federal unemployment tax act, as amended (26 United States Code §§ 3301 through 3311), are employees under this chapter.”

In addition, A.R.S. § 23-615 (8) also provides that “service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter.”

Internal Revenue Ruling 61-196, 1961-2 C.B. 155 addresses whether a nurse is an independent contractor or an employee. Generally, licensed practical nurses and registered nurses are considered to be independent contractors. However, when such nurses are on the regular staff of a hospital, clinic, nursing home, or physician, work for a salary, follow prescribed routines during fixed hours, and are subject to the direction and control of those engaging them, they are employees. The Revenue Ruling also lists four (4) factors to be considered in situations where a determination as to the existence of either an employer-employee or independent contractor relationship is required with respect to nurses; First, the type and nature of the service performed. Second, the control exercised and by whom. Third, whether the individual is a licensed nurse. Fourth, the evidence establishing whether or not the services were performed in the conduct of an independent trade, business or profession.

DISCUSSION AND CONCLUSION

In general, registered nurses and licensed practical nurses perform some services of a domestic nature while engaged in private duty nursing. However, unless the domestic services are substantial they may be disregarded in determining coverage. Consequently, registered nurses and licensed practical nurses engaged in private duty nursing are independent contractors.

Generally, registered nurses and licensed practical nurses will be independent contractors when providing private duty nursing and employees when working in a hospital, clinic, nursing home, or physician’s office.

In addition, nursing assistants or nurses' aides who provide primarily domestic services should be considered employees unless it is shown that the services provided are comparable to those performed by registered nurses or licensed practical nurses whereby they exhibit the same level of skill attributable to specialized training or experience and, therefore, should be considered independent contractors.

REFERENCES

A.R.S. §§ 23-613.01 (E) and 23-615 (8).

Internal Revenue Ruling (Rev. Rul.) 61-196, 1961-2 C.B. 155.

26 U.S.C. §§ 3301 through 3311.

AGENCY RECEIPT

NOTICE OF SUBSTANTIV E POLICY STATEMENT

1. **Agency Name:** Department of Economic Security
2. **Title of the substantive policy statement and the substantive policy statement number by which the policy statement is referenced:**

Unemployment Insurance Tax: Private Duty Nursing. The substantive policy statement number is 17P-C048.