

CALIFORNIA NONRESIDENCY AND EMPLOYMENT CONTRACT PROVISIONS

“Any individual domiciled in this state who is absent from the state for an uninterrupted period of at least 546 consecutive days under an employment-related contract shall be considered outside this state for other than a temporary or transitory purpose.” (R&TC §17014(d)) In order to meet the nonresidency rules of R&TC §17014(d), we suggest you include the following items in your employment contract.

1.	Written contract. R&TC §17014(d) merely states there is a required “employment-related contract.” Without a written contract, the employee would not be able to prove the specific requirements required by the code. The FTB demands a written contract.
2.	<p>Signed contract. A contract is legally created when there are two parties to a transaction and there is (1) an offer, (2) acceptance, and (3) consideration. In order to avoid any question of these three requirements, the contract should be signed by the employer who is offering the employment, and the employee who is accepting the employment. The consideration from the employer is a salary and from the employee is the services to be provided out-of-state.</p> <div style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <p style="text-align: center;"><i>Comment</i></p> <p style="text-align: center;">For a pre-existing employee, it is probably acceptable to have only a written order on company letterhead that states the employee is required to work outside of California – but why take a chance?</p> </div>
3.	Date of contract. Sign and date the contract prior to the beginning of the “uninterrupted period of at least 546 consecutive days.” Otherwise, the FTB could argue, and they are presumed correct, that it was not made for an uninterrupted period. This is especially true if the employee returns to California – whether for visits or for business purposes (as an employee).
4.	Employment-related provision. Be sure the contract states that the individual is performing services as an employee or independent contractor.
5.	Uninterrupted period provision. The contract must state that the employee will work for an uninterrupted period of at least 546 consecutive days. Although the employee may have vacations or come back to California for business purposes (as an employee), there must be no allowance for a break in the employment contract. (R&TC §17014(d))
6.	45-day provision. The individual may come back to California for vacation or for business reasons, but he or she may not be present in California more than 45 days during a taxable year. It may be advisable to state such a provision in the contract, but it is not a requirement. (R&TC §17014(d)(1))
7.	Spousal provision. A spouse who leaves for an uninterrupted period of at least 546 consecutive days may also be deemed a nonresident. It may be advisable to state such a provision in the contract, but it is not a requirement. (R&TC §17014(d)(3))