

California Employment Status

V21

Overview

- History – Common Law
- ABC Test – New Employment Determination Standard
 - Exceptions
- Court Rulings
- Prop 22 – Classifies App-based Drivers as Independent Contractors
- Implementation
- Questions

History – Common Law

Prior to January 1, 2020, employment status determinations evolved from court decisions:

- *Empire Star Mines Co. v. California Employment Com.*, 28 Cal. 2d 33
- *Tieberg v. Unemployment Ins. Appeals Board*, 2 Cal. 3d 943
- *S. G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal. 3d 341

ABC Test - Dynamex

Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal. 5th 903 (*Dynamex*)

A worker is considered an employee unless the hiring entity satisfies **all three** of the following conditions, the individual:

- A. Is free from control and direction, both under contract and in fact
- B. Performs work that is outside the usual course of the hiring entity's business
- C. Has their own independently established business of the same type as the work performed

AB 5 and AB 2257

AB 5 codified “ABC” test

- Effective January 1, 2020

AB 2257 recasts, clarifies, and expands exceptions to the ABC test

- Effective - January 1, 2020

ABC Test: Condition A

The individual is **free from the control and direction** of the hiring entity in connection with the performance of the work, both under the contract for the performance of work and in fact.

The hiring entity must establish that the worker is free of control and direction to satisfy Condition A.

ABC Test: Condition B

The individual **performs work that is outside** the usual course of the hiring entity's business.

ABC Test: Condition B

Examples

Services are:

- **Not** part of the hiring entity's usual course of business.
A retail store hires an outside:
 - Plumber to repair a leak in a bathroom on its premises.
 - Electrician to install a new electrical line.
- Part of the hiring entity's usual course of business:
 - Clothing manufacturing hires a work-at-home seamstress to make dresses from cloth and patterns supplied by the hiring entity.
 - Bakery hires cake decorators to work on a regular basis on its custom-designed cakes.

ABC Test: Condition C

The individual is customarily engaged in an **independently established trade, occupation, or business** of the same nature as that involved in the work performed.

ABC Test: Employee or Independent Contractor?

Employee:

- An individual who performs services is **presumed to be an employee** unless the hiring entity can prove the worker meets **all** three conditions of the ABC test.

Independent Contractor:

- An individual for whom the hiring entity established **all three conditions** of the ABC test.

ABC Test - Exceptions

There are some exceptions for certain occupations/industries and contracting relationships.

- If the ABC test does not apply, the *Borello* test is used to determine if the worker is an employee or independent contractor.

ABC Test - Exceptions

- Business-to-business contracting
- Referral agency
- Professional services
- Single engagement event
- Entertainment industry
- Construction industry
- Data aggregator
- Occupations
- Motor clubs

Court Rulings

When a court of law rules that the ABC test cannot be applied:

- The determination of employee or independent contractor status shall be governed by the *Borello test*.

Proposition 22

- Background
- Four Required Conditions:
 - Schedule
 - Assignments
 - Working for other network companies
 - Working for any other company, including their own
- Effective Date

Implementation

- Marketing and outreach
- Other considerations

Questions?