

California's New Independent Contractor Rules

The new “gig economy” bill has shaken up California.

Here's what employers need to know.

What happened? California's Assembly Bill 5 (AB 5) is a new bill that was signed into law on September 10, 2019.

What changed? AB 5 codifies, clarifies and grants exemptions to the California Supreme Court's 2018 Dynamex decision. In combination, AB 5 and Dynamex make it harder for companies to label workers as independent contractors.

Is AB 5 a federal law? No, AB 5 is only for California.

When does it start? The law takes effect on January 1, 2020.

How many independent contractors are there in California? There are 1-2 million individuals.

What does it mean for me? Your current independent contractors may be misclassified.

Are there any exceptions? Several professions won exemptions to AB 5, usually on the grounds that the independent contractors set or negotiate their own rates, communicate directly with customers, and make at least twice minimum wage. (Contact us to find out if the person performing work for you falls into one of the classifications.)

How do I know if it applies to me? The court established the “ABC” test. To avoid being considered an employee, a worker must:

- A. Be free from control and direction of the hirer, and
- B. Do work that is “outside the usual course of the hiring entity's business,” and
- C. Be established in a trade similar to the work being performed.

The most difficult requirement to prove is “B”. Here are two scenarios that could apply to you.

Scenario 1 - You need someone to take care of administrative work for your office and want to pay them for the hours they work. You provide equipment necessary to complete the job and dictate the hours they should be at work.

Scenario 2 - The sink breaks in your office kitchen and you contact a plumber to come in to fix it.

Results: The administrative professional would not be classified as an independent contractor, but the plumber would be, due to these factors under the ABC test:



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A) Free of hirer's control and direction – The administrative assistant would not meet this requirement, whereas the plumber would.

B) Work occurring outside the course of normal business – The work done by the administrative assistant is within the normal course of the hirer's business, therefore, they must be classified as an employee. The broken sink fixed by the plumber is outside of the normal course of the hirer's business.

C) Be established in a trade similar to the work being performed – The administrative assistant may be in the same trade as the hirer's business, but it is typically not a strong enough case to prove. The plumber has their own business and is in the trade of plumbing, not the hirer's trade.

Remember: For someone to qualify for independent contractor status, they must meet A, B and C.

Want help?

Reach out to the Armanino Outsourced Human Resources Solutions team to learn more about how to classify your employees. Our experts are here to research, analyze, and advise you on next steps so you can position your company as an employer of choice.

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