

CALIFORNIA'S AB 5 — FACT SHEET

Establishes “ABC Test” for determining employee v. independent contractor status

- Any worker is presumed to be an employee unless the hiring entity proves that:
 - (A) The person is free from the hiring entity's control in performing the work; AND
 - (B) The person performs work outside the hiring entity's usual business; AND
 - (C) The person is engaged in an independent trade, occupation or business
- Employee status applies for purposes of minimum wage, employment taxes, wage and hour issues, worker's comp, unemployment insurance, and paid sick leave/family leave

A number of jobs/occupations are exempted from the ABC Test

- Licensed insurance professionals
- Physicians, dentists, veterinarians, psychologists
- Lawyers, architects, engineers, accountants, private investigators
- Registered financial services professionals
- Direct sales personnel
- “Professional service” personnel who perform marketing, tax, human resources, travel, graphic design, grant writing, fine artist, payment processing, photography, writing, editing or newspaper cartoon services
- Licensed estheticians, electrologists, manicurists, barbers, and cosmetologists
- Licensed real estate and repossession professionals
- Relationships between contractors and subcontractors in the construction industry
- Relationships between a referral agency and a service provider
- “Bona fide business-to-business contracting relationships” (which must satisfy numerous additional requirements)

No specific exemption for independent truck owner-operators

Temporal scope of new law

- Effective date of AB 5 is Jan. 1, 2020, and applies to work performed after that date
- Uncertain whether and to what extent new AB 5 standards will be applied retroactively

Geographic scope of new law

- Applies to all persons who perform services in California
- Hiring entities from other states must adhere to AB 5 for services performed in California

Potential wider impact

- ABC Test has been adopted in other jurisdictions; not currently applied as broadly
- Other states are considering enacting their own AB 5, or may apply ABC Test more broadly