

## The Dynamex A-B-C Test Is Codified in AB 5



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AB 5 adopts the A-B-C test from *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 for purposes of the employee/independent contractor analysis under the California Labor Code, Unemployment Insurance Code and Wage Orders. The A-B-C test provides that a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

- (A) The person 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 the work and in fact.
- (B) The person performs work that is outside the usual course of the hiring entity's business.
- (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Unless the relationship with the worker in question meets the A-B-C test, the worker is an employee unless one of the specified exceptions can be met. For those exceptions, the *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 test still applies. The exceptions include, but are not limited to, the following:

- Licensed – physicians, dentists, podiatrists, psychologists, veterinarians, lawyers, architects, engineers, accountants;
- Insurance agents;
- Real estate agents,
- Securities brokers;
- Direct salespersons,
- Commercial fishermen;
- Individuals working under a “professional services contact” (as defined in the statute) in the following areas: marketing, HR, travel agent, graphic design, grant writer, fine artist, enrolled agent, payment processing agent, photographer, freelance writer/editor/cartoonist (so long as they do not provide content to a putative employer more than 35 times a year);

- Licensed estheticians, manicurists, barbers, or cosmetologists who set their own rates, hours, schedules, etc.;
- Repossession agent;
- Others as specified.

[The full text of the bill may be found here.](#)

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