



Independent Contractors – The ABC Test

California presumes that all workers are employees rather than independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the Industrial Welfare Commission (IWC) wage orders. Properly classifying a worker as an employee or an independent contractor is an important task—failure to properly classify can lead to liability for missed meal and rest periods, overtime and other wage and hour claims and penalties.

Because California presumes that a worker is an employee, the hiring entity must demonstrate the worker satisfies the test to be an independent contractor. This test is known as the “ABC test.” Under the ABC test, a worker is considered an employee and not an independent contractor, unless the hiring entity satisfies all three of the following conditions:

- A. The worker 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 worker performs work that is outside the usual course of the hiring entity’s business; AND
- C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

This is a tough standard, and many California employers will need to take a look at any independent contractors they currently use and any contractors they are contemplating using to see if they meet the ABC test—especially take a close look at factor “B.”

The law that implemented the ABC test has a significant number of exceptions listed by statute, as well. So, while California has moved away from the “Right to Control” test (also known as the *Borello* Test) in favor of the ABC test, any exceptions to the ABC test must still be analyzed under *Borello*.

If you believe the worker you are bringing onboard can legally be classified as a contractor, **before you proceed, consult counsel.** Even if the worker satisfies the ABC test, other obligations may apply. For example, as of January 1, 2025, SB 988 requires the hiring entity to execute a written contract with an independent contractor providing professional services in an amount equal to or greater than \$250. The contract must include specified terms, and the hiring entity must provide a copy to the independent contractor and retain the contract for four years, among other requirements.

Potential wage-and-hour penalties are costly and numerous if you improperly classify someone as an independent contractor instead of an employee!

For more information, refer to the DIR's [frequently asked questions](#) about independent contractor classifications.