



SANTA CRUZ COUNTY
**BUSINESS
COUNCIL**

AB 5: Worker Status **Employees and** **Independent Contractors**

Background

- In 1989 the *S. G. Borello & Sons, Inc. v Dept. of Industrial Relations* case set a broad test that determined if a worker was considered an employee by using 11 factors such as whether the work is part of the company's regular business, whether the company or the worker supplies the equipment, tools, and the place for the person doing the work, the worker's financial investment in the equipment or materials required to perform the work, etc.
- In April, the *Dynamex Operations West, Inc. v. Superior Court of Los Angeles County* case revised the Borello test and led to the "ABC" test
- The ABC test established the standard in which workers should be considered employees or independent contractors
- "ABC" test: To avoid being considered an employee, a worker must: A. Be free of the hirer's control; 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.

Background (continued)

- Other states like Arizona and Florida have passed similar laws
- Supporters included labor leaders, unions, ridesharing driver groups, and state Democrats
- Opposers included State Republicans, the California Chamber of Commerce, and gig economy companies
- California loses an estimate of \$7 billion a year in tax revenue from misclassified employees (dir.ca.gov)

Timeline

- Introduced by San Diego Assemblymember Lorena Gonzalez in December 2018
- Uber and Lyft pledged \$90 million in order to keep their drivers classified as contractors (\$60 million on a ballot initiative with Doordash contributing an extra \$30 million)
- Approved by the State Senate 29-11 and the State Assembly 56-15
- Recently signed by Governor Newsom
- Now is awaiting litigation

What's in the Bill?

- Starting January 2020 the State Attorney General and other large cities can pursue companies who do not comply
- This bill would officially adopt the ABC test into law
- Employees guaranteed rights such as sick days, health benefits, minimum wage, overtime, etc.

Who's Exempt?

- Doctors
- Some licensed professionals (i.e. lawyers, architects, etc)
- Financial services
- Real estate agents
- Direct sales
- Commercial fisherman
- Builders and contractors
- Professional services (i.e. travel agents, marketing, etc.)
- Freelance writers, photographers
- Hair stylists, barbers
- Licensed estheticians, electrologists, manicurists
- Tutors
- AAA-affiliated tow truck drivers

Temporary Exemptions

- AB 170 allows a one-year delay to AB 5 for contracted newspaper delivery workers
- Commercial fishermen are exempt until 2023
- Licensed manicurists get a two year exemption

Who's Not Exempt

- Rideshare and delivery services
- Truck drivers
- Janitors and housekeepers
- Health aides
- Newspaper carriers
- Unlicensed manicurists
- Land surveyors, landscape architects, geologists
- Campaign workers
- Language interpreters
- Strippers
- Rabbis

Next Steps

- Many are still fighting to receive last minute exemptions such as Uber and Lyft
- If no exemptions are received there will be plans for litigation
- An estimate of 2 million workers will be affected by AB 5