



Worker Classification - ABC Test Exceptions

ABC Test - Workers will be classified as employees unless they:

- A) Work free from control and direction of hiring entity, both under contract and in fact
- B) Perform work outside the usual course of the hiring entity's business, and
- C) Customarily engage in independently established trade, occupation, or business of same nature

ABC Test does not apply to... if...

Insurance		
Licensed salesman Loss control	Auditor Underwriting inspections	Risk management
Medical		
Physician Veterinarian	Podiatrist Psychologist	Surgeon Dentist
		<ul style="list-style-type: none"> • Licensed by the State of CA • Services to or by a health care entity
Subject to Business & Professions Code		
Real estate licensee Repossession agency	Home inspector	<ul style="list-style-type: none"> • Licensed by State of CA • Free from control and direction of hiring entity
Professionals		
Lawyer Private investigator	Accountant Architect	Engineer Landscape architect
		<ul style="list-style-type: none"> • Licensed by State of CA
Finance		
Investment advisor Agents	Securities broker-dealer Representatives	<ul style="list-style-type: none"> • Registered with SEC or FINRA or licensed by State of CA
Professional Services		
Enrolled Agent	licensed by US Dept of Treasury	
Marketing	original & creative work depending on invention, imagination, talent	
HR Administrator	work is intellectual & varied, so cannot be standardized	
Travel agent	regulated by CA Attorney General	
Graphic design		
Grant writer		
Fine artist	creates works of art to be appreciated for imaginative, aesthetic, or intellectual content	<ul style="list-style-type: none"> • Business location separate from hiring entity, which may include individual's residence (but can choose to work at location of hiring entity) • Business license and any other professional licenses required (if work performed > 6 months after 1-1-20)
Payment processing	through independent sales org	
Still photographer		
Photo journalist	• NOT individuals who work on motion pictures, theatrical or commercial productions, news, etc. (They WILL be employees.)	<ul style="list-style-type: none"> • Ability to set or negotiate own rates
Videographer		
Photo editor		
Freelance writer	• Cannot directly replace an employee	<ul style="list-style-type: none"> • Ability to set own hours (outside of project completion dates and reasonable business hours)
Editor	who performed the same work at same volume for hiring entity	
Newspaper cartoonist		
Illustrator		
Translator		<ul style="list-style-type: none"> • Customarily and regularly exercises discretion and independent judgment in performance of services
Copy editor	• Does not primarily perform work at hiring entity's business location	
Content contributor	• Not restricted from working for more than one hiring entity	
Producer		
Narrator		<ul style="list-style-type: none"> • Customarily engaged in same type of work with another hiring entity or holds themselves out to other potential customers as available to perform same type of work
Advisor		
Cartographer		
Specialized performer teaching "master class" ≤1 week		
Licensed real estate appraisers		
Licensed professional forester		
Esthetician	• Sets own rates, processes own payments & paid directly by clients	
Electrologist	• Sets own hours & sole discretion to decide # of clients and who	
Manicurist (until 2022)		
Barber	• Has own book of business and schedules own appointments	
Cosmetologist	• Maintains own business license • Issues Form 1099 to landlord	

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ABC Test does not apply to...		if...
Competition Judge including amateur umpire/referee		<ul style="list-style-type: none"> Requires specialized skill set or expertise
Providing Data to Data Aggregator		<ul style="list-style-type: none"> Free from control & direction with respect to substance and content of feedback Consideration is at least minimum wage Requires independent judgment & discretion Retain ability to reject feedback requests
Individual		
Business-to-Business Contracting Relationship		<ul style="list-style-type: none"> Free from control and direction of contracting business Services direct to contracting business, not customers, unless regularly contracting with other businesses Contract in writing (including payment details) License/tax registration if required where work is done Maintains bus location separate from hiring entity Customarily engaged in business of the same nature Can contract with other businesses to provide same or similar services and maintain its own clientele without without restriction from hiring entity Advertises and holds itself out to the public as available to provide same or similar services Provides own tools & equip (unless proprietary) Can negotiate its own rates Can set own hours and location of work Not requiring license from Contractor's State License Bd
Sole Proprietor Partnership LLC LLP Corporation		
Construction Industry		
Subcontractors		<ul style="list-style-type: none"> Subcontract is in writing Licensed by Cont's State Lic Bd (except certain truckers) Has business license and tax registration (if required by jurisdiction where domiciled) Maintains business location separate from hiring entity Has authority to hire and fire others who assist Assumes financial responsibility for errors & omissions (insurance, indemnity obligations, bonds, warranties) Customarily engaged in business of same nature
Construction trucking Hauling/trucking services in const industry using vehicles req com'l driver's lic or GVW rating >26,000# (until 2022) Special rules Any entity that utilizes >1 truck will be deemed the employer for all drivers of those trucks Employee providing their own truck must be reimbursed by company for expenses incurred		
Direct Sales		
Direct sales person Real estate broker/salesman Mineral broker Cemetery broker/salesman Oil & gas broker Yacht broker/salesman Manufactured Housing Salesman		<ul style="list-style-type: none"> Primarily in person demonstration and sales Compensation directly related to sales, not hrs worked Contract provides worker is not an employee
Commerical Fisher working on an American vessel		
Referral Agency, including but not limited to...		
Tutoring (not public school teacher) Graphic design Web design Event planning Home cleaning Photography Minor home repair Furniture assembly Moving Animal service Picture hanging Errands (inc boarding) Dog walking Pool cleaning Dog grooming Yard cleanup Youth sports coach Caddying Consulting (not schools) Event vendors Interpreting Does not apply to: Transportation Trucking Delivery Agricultural labor Retail Courier In-home care Logging Janitorial High hazard industries Construction services other than minor home repair		<ul style="list-style-type: none"> Free from control and direction of referral agency Business & professional licenses if required in jurisdiction where work performed State contractors license (if required) Delivers services to client in service provider's name; not required to use referral agency's name Provides own tools and supplies Customarily or previously engaged in independently established business of same nature Referral agency does not restrict from maintaining own clientele Sets own terms or negotiates directly with clients Allowed to accept or reject clients/contracts and not penalized for doing so
Motor Club Individual 3rd party Performing services utilizing employees & vehicles of 3rd party		
Newspaper Distributors		
Newspaper distributors under contract with publisher Newspaper carriers working w/ publisher or distributor		

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ABC Test does not apply to...		if...
Single-Engagement Events		
Sole Proprietor Partnership LLC LLP Corporation Does not apply to: Transportation Trucking Delivery Agricultural labor Retail Courier In-home care Logging Janitorial High hazard industries Construction services other than minor home repair	performing at a single-engagement event (no more than once a week)	<ul style="list-style-type: none"> • Neither is subject to control & direction by other • Each has ability to negotiate their own pay with other • Written contract specifies payment details • Each maintains own bus location (inc prin res) • Each provides own tools, vehicles, & equipment • Each has own business license (if required in jurisdiction where work is performed) • Each is customarily engaged in same type of work or or holds themselves out to other potential customers as able to perform that same work • Each can contract with other businesses to provide the same or similar service & maintain own clientele
Musician or Musical Group Single-Engagement Events		
Musicians Musical groups Includes rehearsals	performing at a single-engagement event (no more than once a week) (does not include tours)	<ul style="list-style-type: none"> • NOT if musical group performing as a symphony orchestra, at a theme or amusement park, or in a musical theater production • NOT if musical group is an event headliner for performance in venue with > 1,500 attendees • NOT if performing at a festival that sells > 18,000 tickets/day
Individual Performance Artist		
Individual performing: Comedy Improvisation Stage magic Illusion Mime Spoken word Storytelling Puppetry Does not apply to: Individual performing in theatrical production Musician or musical group as outlined above	performing their original material that is creative in character and the result of which depends primarily on the individual's invention, imagination, or talent	<ul style="list-style-type: none"> • Collective bargaining agreements or contractual agreements shall govern determination of employment status in all events (notwithstanding ABC test) • Free from control & direction of hiring entity • Retains right to exercise artistic control over all elements of the performance • Retains rights to intellectual property created in connection with the performance • Sets terms of work and has ability to set or negotiate rates • Free to accept or reject each performance engagement without penalty by hiring entity
Recording Industry in connection with creating, marketing, promoting, or distributing sound recordings or musical compositions		
Recording artists Vocalists Musicians engaged in creation of sound recordings Songwriters Lyricists Composers Proofers Managers of recording artists Record producers & directors Musical engineers and mixers engaged in creation of sound recordings Photographers working on recording photo shoots, album covers, & other press & publicity Independent radio promoters Any other individual engaged to render any creative production, marketing, or independent music publicist services	<ul style="list-style-type: none"> • Shall not be precluded from organizing under labor law • If not royalty-based, treated as employees only for minimum wage & overtime rules 	<ul style="list-style-type: none"> • "Single-Engagement Events" rules above may apply • NOT film & television unit production crews working on live or recorded performances for audiovisual works, including still photographers & cinematographers • NOT publicists if not independent music publicists • Collective bargaining agreements or contractual agreements shall govern determination of employment status in all events (notwithstanding ABC test)
Borello (old law to apply if one of the ABC exceptions above applies)		
Primary: Whether the person to whom services is rendered has the right to control the manner and means of accomplishing the result desired Secondary: Right to discharge at will, engaged in a distinct occupation or business, work performed without supervision, requires skill, length of time, etc.		
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