

WHAT CALIFORNIA EMPLOYERS NEED TO KNOW ABOUT AB 5

AS OF JANUARY 1, 2020



Under AB 5 and the “ABC” test, a worker is your employee unless all three of the following can be proven:

- A** The worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact; AND
- 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 for the hiring entity.

PARTIAL LIST OF EXEMPTIONS

Be sure to review all of your current independent contractor relationships and documentation to ensure compliance.

Under AB 5, all workers are *presumed to be employees*. However, AB 5 has many notable exceptions, including:

- Licensed Physicians and Surgeons, Dentists, Podiatrists, Psychologists, or Veterinarians
- Licensed Lawyers, Architects, Engineers, Private Investigators, and Accountants
- Registered or Licensed Securities Broker-Dealers and Investment Advisers
- Real Estate Licensees
- Direct Sales Salespersons
- Commercial Fishermen
- Repossession Agencies
- Certain Motor Club Service Providers
- Insurance Agents
- Construction Subcontractors
- Construction Trucking Services
- Certain Professional Services including:
 - Marketing
 - HR administrators
 - Travel agents
 - Graphic designers
 - Grant writers
 - Fine artists
 - IRS enrolled agents
 - Payment processing agents
 - Still photographers
 - Photojournalists
 - Freelance writers/editors
 - Newspaper cartoonists
 - Hair stylists
 - Licensed estheticians, electrologists, manicurists, barbers, and cosmetologists
- Certain Business-to-Business Service Providers
- Certain Referral Agencies that connect clients with service providers that provide:
 - Graphic design
 - Photography
 - Tutoring
 - Event planning
 - Minor home repair
 - Moving
 - Home cleaning
 - Errands
 - Furniture assembly
 - Animal services
 - Dog walking
 - Dog grooming
 - Web design
 - Picture hanging
 - Pool cleaning
 - Yard cleanup

FOR MORE DETAILS ABOUT THE CONSTRUCTION SUBCONTRACTOR AND CONSTRUCTION TRUCKING SERVICES EXEMPTIONS, SEE OTHER SIDE

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Construction Subcontractor Exemption



- **Construction subcontractors are exempt if all of the following are satisfied:**
 - The subcontract is in writing; *AND*
 - The subcontractor is licensed by the Contractors State License Board and the work is within the scope of the license; *AND*
 - The subcontractor has the business license or business tax registration required in the location of its principal place of business; *AND*
 - The subcontractor maintains a business location separate from contractor's business or work location; *AND*
 - The subcontractor has authority to hire and to fire persons to provide or to assist in providing the services; *AND*
 - The subcontractor assumes financial responsibility for errors or omissions in labor or services as evidenced by insurance, legally authorized indemnity obligations, performance bonds, or warranties relating to the labor or services being provided; *AND*
 - The subcontractor is customarily engaged in an independently established business of the same nature as that involved in the work performed.

(Labor Code, § 2750.3, subd. (f).)

Construction Trucking Services* Exemption



- **Construction trucking services are exempt if all of the Construction Subcontractor Exemption criteria are satisfied... PLUS, If the contractor providing trucking services does not have a contractor's license:**
 - It must be a business entity formed as a sole proprietorship, partnership, LLC, LLP, or corporation; *AND*
 - For work performed after January 1, 2020, it must be registered with the Department of Industrial Relations as a public works contractor, regardless of whether the subcontract includes public works; *AND*
 - It must utilize its own employees to perform the trucking, unless it is a sole proprietor, operating its own truck to perform the entire subcontract and, holds a valid motor carrier permit issued by the DMV; *AND*
 - It negotiates and contracts with, and is compensated directly by, the licensed contractor.
- (Labor Code, § 2750.3, subd. (f)(8)(A).)
- **For work performed after January 1, 2020, any business entity that provides construction trucking services to a licensed contractor utilizing more than one truck shall be deemed the employer for all drivers of those trucks.** (Labor Code, § 2750.3, subd. (f)(8)(B).)
 - **This carve-out for construction trucking services expires in two years on January 1, 2022.** (Labor Code, § 2750.3, subd. (f)(8)(D).)

*"Construction trucking services" are defined as "hauling and trucking services provided in the construction industry pursuant to a contract with a licensed contractor utilizing vehicles that require a commercial driver's license to operate or have a gross vehicle weight of 26,001 or more pounds."