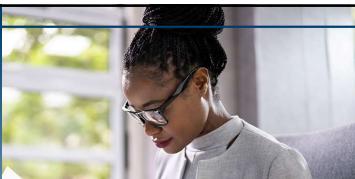


DETERMINING EMPLOYMENT STATUS IN CALIFORNIA



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Our Presenters



Matt Dooley
Training Manager
Corporate Learning



Bennett Steiner
Assistant Underwriting Manager
Small Commercial Operations

2

A chef in a white uniform and tall white chef's hat is smiling and holding a small bowl of green salad. In the background, another chef is visible in a kitchen setting.

3

Presumption of Employment

“Any person rendering service to another, other than as an independent contractor, or unless expressly excluded... is presumed to be an employee.”

- California Labor Code § 3357

- Burden of proof is on employer
- Workers in service, whether paid or not



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Who's Included as an Employee?

- Undocumented workers
- Minors
- Family members
- Workers without formal employment contracts
- Elected/appointed paid public officers
- Officers/members of a board of directors
- Working members of a partnership/LLC



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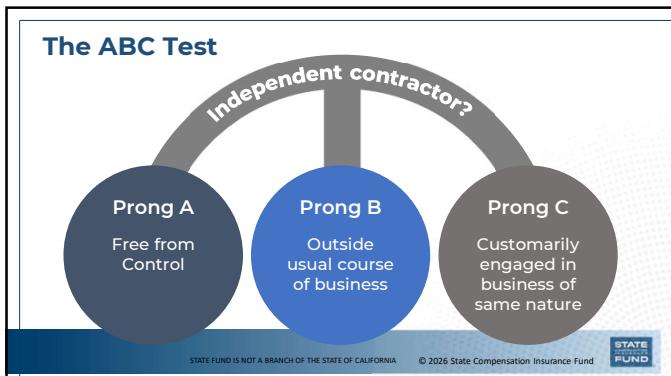
Employment Status

Assembly Bills 5 & 2257

Changed the applicable test in California to determine if a worker is an independent contractor



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Example #1 – ABC Test

Moe's Moving Company hires a team of movers.

- Moe decides the price the customer pays
- Moe tells the movers when and where to go
- Movers use a truck with "Moe's Moving" logo

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Example #2 – ABC Test

Wally's Grocery Store has a water pipe burst and they hire a plumber to fix it.

- Plumber charges the grocery store for work
- Plumber has other customers

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The “Borello” Test



- 11-factor test to determine whether an individual is an independent contractor
- Principal factor is whether:
"The person to whom service is rendered has the right to control the manner and means of accomplishing the result desired"

California Supreme Court case of S.G. Borello and Sons v. the Department of Industrial Relations

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Conditional Exemptions

Occupations for which if certain conditions are fulfilled, then the occupation is **exempt from the “ABC” test**

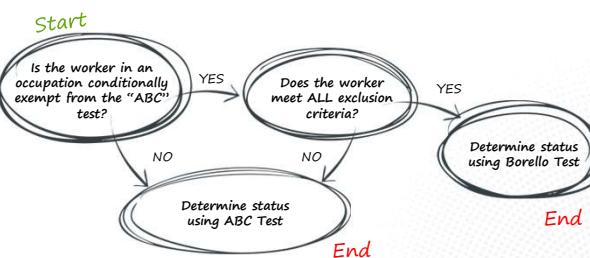
and will be evaluated under the “Borello” test.



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ABC Test Exemptions



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Example: Professional Services Exemption

The "Borello" test applies to **Professional Services** if all conditions are met:

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Employment Status Resource Center

Friday, July 25, 2025

Español Get Help

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Conditional Exemption Information

Construction subcontractors

Current Expiration of Exemption - None

Labor Code Reference: [§2781](#)

Condition of Exemption from ABC Test	Additional Conditions (if any)
1. The subcontract is in writing. 2. Subcontractor is licensed by the CSLB. 3. Subcontractor has business license/tax registration if required by subcontractor's domicile. 4. Subcontractor's business location separate from contractor's business location. 5. Subcontractor authorized to hire/ fire others. 6. Subcontractor must prove assumption of financial responsibility for errors or omissions in labor or services.	If conditions for exemption met, employment status for individual working for contractor determined by Borello and Labor Code §2750.5.

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Audit Documentation Requirements

Independent contractor status is determined on case-by-case basis.

Documents that may be required:

- Business license
- Contractor's license number and expiration date
- Written contracts
- Certificate of workers' compensation insurance



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Things to Remember

- With the presumption of employment, the burden is on the **employer to prove** that a worker is not an employee.
- The **method of payment has no bearing** on employment status.
- Certain **records will be needed** to substantiate the worker as an independent contractor.



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