

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

contractors, California's new AB5 requires a new test be used to determine whether workers in California fall under employee or independent contractor status.

**Nellie Akalp** • Jan. 16, 2020



Attempting to refine and contain current nebulous rules for independent contractors, California's new AB5 requires a new test be used to determine whether workers in California fall under employee or independent contractor status. The new law affects your clients, whether they are currently independent contractors or whether they hire independent contractors. Here's what to know and how to offer viable solutions.

## **Pre AB5**

Much has been made in the news about California Assembly Bill 5 or AB5 and the

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

is performed? The more control a business has when it comes to on-the-job instructions, supplies purchased, tools used, etc., the more the worker is considered an employee. Independent contractors, on the other hand, receive no regular evaluations or ongoing training.

- **Financial Control.** Which party controls the financial and business purchases of the project—this includes investing in equipment and reimbursing expenses. Independent contractors use their own equipment (which can then be used for their other clients) and are paid a flat fee or predetermined hourly rate for contracted hours.
- **Relationship.** The IRS also scrutinizes how the relationship between the contractor and the business is outlined and followed. A written contract describing the temporary work or job, payment details and the end date of the project goes far in proving the relationship is not employer/employee.

## Enter in AB5

**California's AB5** has gone beyond the IRS classification declares employers and independent contractors must apply a 3-point ABC test to determine whether an independent contractor should actually be reclassified as an employee.

A contractor is still considered independent if:

1. "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." This is essentially the same definition the IRS uses for behavior, financial and relationship restrictions.
2. "The worker performs work that is outside the usual course of the hiring entity's business." The most controversial part of the test, this is where you'll need to help clients really drill down on what exactly the contractor is expected to perform and how it is different from an employee's responsibilities. For instance, extra help

hired during a busy season would not appropriately be considered independent

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

business (business license, state registration, Federal EIN ID) as proof of their independent status.

There are a variety of professions exempt from AB5 due to the points in the C portion of the test. For example professional service providers are exempt if they:

- Maintain a separate business location
- Have a business license and professional licenses
- Can negotiate their own rates for services
- Can set their own hours/schedule
- Have (or could have) multiple clients
- Maintain control of their time, tasks, and techniques

The following professions are also exempt:

- Attorneys
- Landscapers
- Accountants
- Insurance agents
- Doctors
- Dentists
- Veterinarians
- Architects
- Private investigators
- Engineers
- Investment advisors
- Direct salespersons
- Travel agents
- Some artists

Recently, [owner-operator truck drivers](#) were determined to be exempt by a Los

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

down on ride sharing companies, in case it affects similar type clients.

## Offering Clients Solutions

While enforcement of AB5 will most likely be slow, if your business clients are caught for misclassification, they may be facing not only fines, but possibly having to issue back pay and benefits. California already has a different worker misclassification law which has been in effect for eight years (California [Senate Bill 459](#)). Punishment for nonadherence comes with heavy penalties, giving “the state Labor and Workforce Development Agency the power to fine companies \$5,000 to \$25,000 per violation for willfully misclassifying workers and allows the state Labor Commissioner to assess additional civil and liquidated damages.”

For clients hiring independent contractors or clients working as independent contractors, creating separate business entities such as a corporation, LLC or partnership, establishes both parties as separate businesses and ensures there is not an employee/employer relationship. Businesses and workers should maintain separate business locations, have the required licenses/permits, register the business with the Secretary of State and file the correct documentation. As the new year begins and before tax season starts in full force, consider sending out an informative email newsletter letting your clients know about AB5 and what you can do to help them make sense of it.

=====

*Nellie Akalp is a passionate entrepreneur, business expert and mother of four. She is the CEO of [CorpNet.com](#), a trusted resource and service provider for business incorporation, LLC filings, and corporate compliance services in all 50 states. Nellie and her team recently launched a partner program for accountants, lawyers, and business professionals to help them streamline the business incorporation and compliance process for their clients.*

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

CPA Practice Advisor is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors.

© 2024 Firmworks, LLC. All rights reserved