

CA WORKER CLASSIFICATION

Client Name(s): _____
(Hereinafter referred to as "Client")

Tax Practitioner: Monica Haven, E.A.
(Hereinafter referred to as "EA")

In 2019, the Governor of California signed AB-5, under which most workers are presumed to be employees for purposes of the Labor Code, the Unemployment Insurance Code, and for most wage orders of the Industrial Welfare Commission UNLESS a hiring entity can satisfy the three-factor A-B-C test. This means that many workers previously classified as independent contractors are now employees under California law. As a result, you must withhold state income and payroll taxes, as well as meet California's minimum wage and overtime requirements.

As per the A-B-C test, *all* three conditions must be met in order to treat the worker as an independent contractor:

- A. The worker must be free from the control and direction of the hiring entity in connection with the performance of the work 1) under contract and 2) based on the standard commonly known as the *Borello* "control test" [S.G. *Borello & Sons, Inc. v. Dept. of Ind. Rel.* (1989) 48 Cal.3d 342];
- B. The worker must perform work that is outside the usual course of the hiring entity's business;
- C. The worker must be customarily engaged in an independently established trade or business of the same nature as the work performed.

Exemptions

While legislation provides for numerous exemptions to the application of the A-B-C test, these exemptions do not mean that workers can automatically be treated as independent contractors. Instead, additional facts and circumstances must be evaluated to determine if a worker is an employee or an independent contractor. **NOTE:** In 2020, voters approved Proposition 22 which provides that delivery and rideshare drivers for such companies as DoorDash, Lyft, Uber, and Postmates may be classified as independent contractors.

Penalties could apply

CA law imposes severe financial penalties for willfully misclassifying a worker as an independent contractor. The penalties, which are in addition to other assessments, penalties, or fines, are:

- \$5,000 to \$15,000 for each violation (a single misclassified individual); and
- \$10,000 to 25,000 for each violation if the Labor Commissioner, or a court, determines there is a "pattern and practice" of these violations.

To ensure proper classification, you are *urged to obtain a legal opinion from a competent attorney*. You may not rely upon the advice of your tax professional or other paid professional.

Important points

Forming or operating as a corporation or an LLC is not a work-around. The corporation or LLC will be ignored if the worker does not meet the A-B-C test, and the worker who owns the entity will still be an employee of the payor.

In many cases the worker may still be an independent contractor for federal purposes; increasing filing complexity and the need to reconcile reporting differences between federal and state returns.

The effective date of the law is January 1st, 2020 but could be applied retroactively. The law is extremely complex and remains in a state of flux. Legal and electoral challenges can be expected.

Client Signature: _____

Date: _____

Print Client's Name: _____

Spouse Signature: _____

Date: _____

Print Spouse's Name: _____

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