

Subject: Worker classification as independent contractor or employee

Dear client,

During 2019 the California legislature passed a new law that typically makes it much more difficult for a worker to qualify as an independent contractor. Under this new law most workers are presumed to be employees, unless the hiring entity satisfies a 3-factor test (the ABC test).

ABC test - Under the ABC test, ALL THREE of these conditions must be met in order to treat the worker as an independent contractor:

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

Exemptions - The law provides many specific exemptions that make some workers exempt from the ABC test, and additional bills have been introduced that would further expand the exemptions. However, there are many detailed requirements that must be met in order to use the exemptions. Exemptions may apply to workers in these categories:

- Professional services
- Tax professionals
- Salon workers
- Newspaper distributors
- Business-to-business contracting
- Construction subcontractors
- Construction trucking
- Referral agencies
- Motor clubs
- Specifically named occupations

As already noted, there are many detailed requirements that must be met in order to use these exemptions. Please contact our office to discuss the details as they relate to your business.

Changing employees to independent contractors is not allowed – Employers are prohibited from reclassifying an individual who was an employee on January 1, 2019 to an independent contractor due to the enactment of this new law. Even if a worker may qualify for an exemption, if they were treated as an employee as of January 1, 2019 they may not be reclassified.

Penalties for misclassification – Employers who misclassify workers are liable for unpaid withholding tax and payroll taxes as well as penalties and interest. In addition, California allows an additional penalty for willful misclassification of \$5,000 - \$25,000 for *each* misclassification.

Please contact our office ASAP if you have any independent contractors so we can discuss whether they are properly classified, or whether you need to make changes before the beginning of 2020.

Respectfully,

Mike Habib, EA