



California AB 5 Codifies "Dynamex" Worker Classification Restrictions

On September 13, 2019, the California Senate and Assembly passed [AB 5, Worker Status: Employees and Independent Contractors](#). Governor Newsom signed the bill on September 18, which becomes effective on January 1, 2020. The bill establishes the more restrictive "Dynamex" worker classification rules in state law. Under these rules, some workers previously classified as independent contractors may now qualify as employees.

The bill adopts in statute a three-part test adopted by the California Supreme Court in its 2018 Dynamex decision to determine whether a worker is an employee, which generally makes it harder to qualify workers as independent contractors. Workers would be considered an employee by default unless the hiring entity can demonstrate that:

- (1) The individual 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.
- (2) The individual performs work that is outside the usual course of the hiring entity's business.
- (3) The individual is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Classification as an employee is viewed as beneficial to workers, who receive various workplace protections not afforded to independent contractors, such as workers' compensation, unemployment and disability insurance, paid sick days and family leave. Wages are also subject to withholding and various employment taxes.

The bill lists several exemptions for specific occupations, such as licensed insurance agents, certain health care professionals, registered securities broker-dealers or investment advisers, direct sales salespersons, real estate licensees, commercial fishermen, barbers and cosmetologists; certain professionals including attorneys, architects, engineers, investigators and accountants, among others.

The new California law has no effect on federal rules. However, treatment as an employee for state purposes would certainly make it more likely that the IRS would also consider a worker to be an employee. Most payroll and tax reporting systems also generally apply any worker classification decisions at both federal and state level.



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What California Employers Should Do Now in Preparation for AB 5

Businesses with independent contractors in California may need to re-determine whether contractors continue to qualify as such under the new rules, and consider establishing or revising formal policies and practices to minimize risk. For example:

- (1) Consult with appropriate Legal and Human Resource professionals for assistance
- (2) Create a systematic process for evaluating worker classification
- (3) Avoid engaging independent contractors that provide services that are integral to the organization's normal course of business, or to augment current staff
- (4) Avoid exercising control over independent contractors

- (5) Verify that independent contractors are operating as an independent business
- (6) Monitor for applicable changes to laws and regulations. Many state laws feature some variation of the tests discussed above. The laws in this area are expected to continue to evolve.

For additional information, see [AB 5, Worker Status: Employees and Independent Contractors](#); also found at <http://leginfo.legislature.ca.gov/> (search for "AB 5").

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