



Bill Analysis

Author: Ortega, et al.

Sponsor:

Bill Number: AB 1514

Related Bills: See Legislative
History

Amended on June 23, 2025,
and July 2, 2025

SUBJECT

Worker Classification: Employees and Independent Contractors-Licensed Manicurists and Commercial Fishers

SUMMARY

This bill, under the Labor Code (LAB), would extend the exemptions for licensed manicurists and commercial fishers working on an American vessel, from the ABC-test for purposes of worker classification until January 1, 2029, and January 1, 2031, respectively.

This is the Franchise Tax Board's (FTB) first analysis of the bill and only addresses the provisions that would impact the FTB.

RECOMMENDATION

No position—The three-member Franchise Tax Board has not formally voted or taken a position on this bill.

SUMMARY OF AMENDMENTS

The June 23, 2025, amendments removed provisions of the bill relating to LAB, which did not impact FTB, and replaced them with the provisions discussed in this analysis.

The July 2, 2025, amendments added an extension of the ABC-test exemption for commercial fishers as well as the EDD reporting requirements for the use of unemployment insurance in the commercial fishing industry.

REASON FOR THE BILL

The reason for the bill is to extend the exemption for licensed manicurists and commercial fishers working on an American vessel from the ABC-test for worker classification.

ANALYSIS

This bill would, under LAB, extend the exemption for licensed manicurists for purposes of determining whether the individual is an employee or independent contractor, from the holding in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903 (*Dynamex*) and the ABC test, when certain factors are met, to January 1, 2029.

This bill would also extend the exemption for commercial fishers working on an American vessel for purposes of determining whether the individual is an employee or independent contractor, from the holding in *Dynamex* and the ABC-test, to January 1, 2031.

Effective/Operative Date

This bill would be effective and operative January 1, 2026.

Federal/State Law

Federal Law

To determine whether a worker should be classified as an employee or independent contractor, federal law examines facts that fall into three main categories:

- **Behavioral Control.** These facts show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to direct and control the work.
- **Financial Control.** These facts show whether there is a right to direct or control the business part of the work, including if the worker has significant investment in their work, if the worker is not reimbursed for expenses, and if the worker has an opportunity for profit or loss.
- **Relationship of the Parties.** These are facts that illustrate how the business and the worker perceive their relationship.

State Law

In *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) (*Borello*), the California Supreme Court found that whether a worker should be classified as an employee or independent contractor is heavily dependent on the facts of the case.

A significant factor to be considered is whether the person to whom service is rendered has the right to control the manner and means of the work performed.

Additional factors that may be considered include:

1. Whether the person performing services is engaged in an occupation or business distinct from that of the principal,
2. Whether or not the work is a part of the regular business of the principal or alleged employer,
3. Whether the principal or the worker supplies the instrumentalities, tools, and the place for the person doing the work,
4. The alleged employee's investment in the equipment or materials required by his or her task or his or her employment of helpers,
5. Whether the service rendered requires a special skill,
6. The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision,
7. The alleged employee's opportunity for profit or loss depending on his or her managerial skill,
8. The length of time for which the services are to be performed,
9. The degree of permanence of the working relationship,
10. The method of payment, whether by time or by the job, and
11. Whether or not the parties believe they are creating an employer-employee relationship may have some bearing on the question but is not determinative since this is a question of law based on objective tests.

All factors must be considered in light of the facts and circumstances surrounding the worker's relationship with its employer and no one factor is given more weight than another.

In *Dynamex*, the California Supreme Court found that a worker is properly considered an employee rather than an independent contractor unless the hiring entity establishes the following:

- A. 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,
- 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 for the hiring entity.

This is known as the "ABC test."

The ABC test was codified with the passage of AB 5 (Gonzalez, Chapter 296, Statutes of 2019) and recast with the passage of AB 2257 (Gonzalez, Chapter 38, Statutes of 2020) under Article 1.5 (commencing with Section 2775) of Chapter 2 of Division 3 of the LAB. Under LAB section 2775, the ABC test is used to determine worker classification. Moreover, section 2775 states that if a court of law determines that the ABC test is not applicable for reasons other than on grounds of an express exception provided by the LAB, then the determination of whether a worker is an employee or independent contractor is determined by application of *Borello*.

For licensed manicurists, among other specified contracts for professional services, the determination of whether the individual is an employee or independent contractor is governed by *Borello* until January 1, 2025, if the hiring entity demonstrates certain factors are met and certain criteria are met by the licensed manicurist.

For *Borello* to apply, the hiring entity must demonstrate the following factors:

- The individual maintains a business location, which may include the individual's residence, that is separate from the hiring entity.
- If the work is performed in a jurisdiction that requires the individual to have a business license or business tax registration, the individual has the required business license or business tax registration in order to provide the services under the contract, in addition to any required professional licenses or permits for the individual to practice in their profession.
- The individual has the ability to set or negotiate their own rates for the services performed. Outside of project completion dates and reasonable business hours, the individual has the ability to set the individual's own hours.
- The individual is customarily engaged in the same type of work performed under contract with another hiring entity or holds themselves out to other potential customers as available to perform the same type of work.
- The individual customarily and regularly exercises discretion and independent judgment in the performance of the services.

For *Borello* to apply, the licensed individual must meet the following criteria:

- Sets their own rates, processes their own payments, and is paid directly by clients.
- Sets their own hours of work and has sole discretion to decide the number of clients and which clients for whom they will provide services.
- Has their own book of business and schedules their own appointments.
- Maintains their own business license for the services offered to clients.
- If the individual is performing services at the location of the hiring entity, then the individual issues a Form 1099 to the salon or business owner from which they rent their business space.

For commercial fishers working on an American vessel, among other specified occupations, the determination of whether the individual is an employee or independent contractor is governed by *Borello*, until January 1, 2026.

The determination of whether an individual is an employee for tax purposes is governed by Article 1.5 of Chapter 2 of Division 3 of the LAB.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 504 (Ta, 2025/2026), under the LAB, would make permanent the exemption for licensed manicurists from classification as either an employee or independent contractor under the ABC test. This bill did not pass out of the Assembly Labor and Employment Committee by the constitutional deadline.

SB 527 (Alvarado-Gil, 2025/2026), under the LAB, would exclude sports coaches for an elementary or secondary private school or local education agency from the ABC test for determining whether a person is an employee or independent contractor. This bill did not pass out of the Senate Committee on Labor, Public Employment, and Retirement by the constitutional deadline.

AB 2257 (Gonzalez, Chapter 38, Statutes of 2020), under the LAB, repealed Section 2750.3, and added Sections 2775 – 2787 (collectively referred to as Article 1.5) of the LAB. The new laws provided exemptions for specified business relations and occupations from the application of the holding in *Dynamex* and instead provides that most of these exempt relationships and occupations are governed by the tests adopted in *Borello*. This bill also amended Revenue and Taxation Code (RTC) sections 17020.12, 23045.6, and 61001 and added RTC sections 18406 and 21003.5 with references to Article 1.5 (commencing with section 2775) of Chapter 2 of Division 3 of the LAB relating to the determination of employee status for the purposes of specified parts of the RTC.

AB 5 (Gonzales, Chapter 296, Statutes of 2019), under the LAB, provided that a worker is considered an employee rather than an independent contractor unless the employer demonstrates that the worker is free from the control and direction of the employer, the person is worker engages in work that is outside the usual course of the employer's business, and the worker is customarily engaged in an independently established trade, occupation, or business. If a court rules that the aforementioned 3-part test cannot be applied, then the determination of whether a worker is an employee or independent contractor is governed by the multifactor test under *Borello*.

AB 1928 (Sanchez and Patterson, 2023/2024), under the LAB would have repealed Article 1.5 of Chapter 2 of Division 3 of the LAB, which provides rules for when a worker is classified as an employee. This bill did not pass out of committee by the constitutional deadline.

AB 25 (Kiley, 2021/2022), under the LAB, would have repealed provisions exempting specified occupations from the ABC test and require the determination of whether a worker is an employee or independent contractor based on the multifactor test under *Borello*. This bill did not pass out of the first house by the constitutional deadline.

PROGRAM BACKGROUND

None noted.

OTHER STATES' INFORMATION

None noted.

FISCAL IMPACT

This bill would not significantly impact the FTB's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill as amended on July 2, 2025, does not change the way income or franchise tax is calculated under the RTC. However, it could change the amount of income and expenses reported to the FTB and would have an unknown impact on general fund revenue.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

This bill could result in some workers who are currently treated as employees being reclassified as independent contractors. This reclassification would shift responsibility for a number of business related expenses from businesses to the workers. An increase of qualified business expenses to the workers would likely decrease their tax liability, while the decrease in expenses to businesses would increase their tax liability. The net effect of these changes would depend on the marginal tax rates of the businesses involved, and any adjustment that may take place in compensation levels or related business expenses. The net effect of all these changes on tax liability is not known.

LEGAL IMPACT

None noted.

EQUITY IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Senate Committee on Labor, Public Employment and Retirement, dated July 8, 2025

Support

Alliance of Communities for Sustainable Fisheries
Apollo Charters
Augello Enterprises LLC Db. Southern Coast Trading
Blue Fisheries Inc.
Bodega Bay Fishermen's Marketing Association
Buccaneer Fishing
Cal Marine Fish Company
California Lobster & Trap Fishermen's Association
California Lovin Fisheries
California Wetfish Producers Association
Carnage Fish Company Inc.
Commercial Fishermen of Santa Barbara
Crescent City Commercial Fishermen's Association
FV Resolution LLC
F/V Verna Jean LLC
Freelance Sportfishing Inc.
Half Moon Bay Seafood Marketing Association

Humboldt Fishermen's Marketing Association
Mack Squid LLC
MacKimmie Fisheries LLC
Marina del Rey Bait Company
Morro Bay Commercial Fishermen's Organization
Ocean Angel Brand
Oceanside Bait Company
Pacific Coast Federation of Fishermen's Associations (PCFFA)
Pacific Vulture LLC
Port of San Luis Commercial Fishermen's Association
Precision Nails
Professional Beauty Federation of California (PBFC)
Salmon Troller's Marketing Association
San Diego Fishermen's Working Group
San Francisco Crab Boat Owners' Association
Santa Cruz Commercial Fishermen's Association
Silver Bay Seafoods - California, LLC

Opposition

Association of Language Companies
California Civil Liberties Advocacy
LanguageLine Solutions

ARGUMENTS

Senate Committee on Labor, Public Employment and Retirement, dated July 8, 2025

Proponents

Several fisheries are in support, including the Pacific Coast Federation of Fishermen's Associations, arguing:

"Previous extensions, passed with unanimous support in 2019 and 2022, recognized the unique structure of commercial fishing and the well-established federal and state laws that have governed this industry for more than a century. Without reauthorization, the current exemption will expire, creating significant legal and operational uncertainty for fishermen and the businesses that depend on them."

Regarding the licensed manicurists provisions, the Professional Beauty Federation of California is in support and writes:

"We played an instrumental part in drafting the language inserted into AB 5, establishing additional statutory standards for beauty/barbering establishments to lawfully utilize independent contractors (or 'booth renters' in beauty industry parlance). We believe this level of statutory clarity is helpful to all parties in our industry, including the behind-the chair professionals, the salon owners and our paying customers. We believe it is only fair to continue treating manicurists and their salon owners on equal footing as skin and hair establishments..."

There is additional support from Precision Nails asking for an amendment to expand the reporting requirements to include all beauty workers, licensed or not, writing:

"Limiting reports solely to licensed manicurists will further isolate and target this segment of our industry, present a distorted view of the scope of misclassification and discourage manicurists from filing claims out of fear of retaliation and weaponization, individually and collectively."

Opponents

California Civil Liberties Advocacy (CCLA) is opposed to the measure unless it is amended arguing,

"While we support the bill's intent to restore the independent contractor status of licensed manicurists, the current form introduces ambiguity and unnecessary burdens that undercut its stated purpose and risk retraumatizing a workforce disproportionately composed of Vietnamese-American women."

CCLA is asking for the following amendments and makes the following concluding comments:

"Unless the following changes are made, we must oppose this bill: 1. Clarify the term "certain licensed manicurists" and align the Digest with the operative language to avoid discriminatory or selective enforcement; 2. Remove the sunset date in Section 2778, subdivision (b)(1)(L)(iii), and make the exemption permanent absent specific legislative repeal; 3. Strike or severely narrow the EDD/DLSE reporting requirement. If retained, the reporting must be anonymized, prospective only, and justified by findings of systemic abuse—which do not currently exist."

There is additional opposition from LanguageLine Solutions and the Association of Language Companies who are both seeking an additional exemption from the ABC test for professional interpreters – as is currently provided for translators. As noted by the Association of Language Companies:

“California has the highest number of residents who are classified as Limited English Proficient, as well as some of the most robust protections for language access rights at the state level, starting with the Dymally-Allatore Act. Language access is a civil right under both California and US laws and regulations, and indeed, it is a gateway right in terms of LEP citizens and residents exercising their constitutional rights to due process, free speech, voting (for citizens), and may other rights. Language access is critical in healthcare, where it is required under 45 CFR 92, the enacting rule for §1557 of the Patient Protection and Affordable Care Act. Language access is the standard of care under the Joint Commission on Accreditation in the healthcare space.

However, the current interpreter exemption in AB 2257 at §2777, is unworkable. Language service companies are not ‘referral agencies’ — they recruit and vet linguists, ensure compliance with state and federal language access requirements, and assume liability for interpreting services. Under this limited exemption, which as noted above, cleaves interpreters away from translators, California has seen hundreds of interpreters leave the state, or leave the profession. Since the passage of AB 2257 in 2020, this has resulted in the loss of tax revenue to the state, but more problematically, increased difficulty for service providers in healthcare, the courts, municipal governments, and schools in providing language access – a right guaranteed under both California and Federal laws and regulations.”

LEGISLATIVE CONTACT

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