



Bill Analysis

Author: Ta and Macedo

Sponsor:

Bill Number: AB 504

Related Bills: See Legislative History

Introduced: February 10, 2025

SUBJECT

Worker Classification: Employees and Independent Contractors-Licensed Manicurist

SUMMARY

This bill would, under the Labor Code (LAB), permanently exempt licensed manicurists from the 3-part test, commonly known as the "ABC" test for purposes of worker classification.

RECOMMENDATION

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

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for the bill is to permanently exempt licensed manicurists from the "ABC" test for worker classification.

ANALYSIS

This bill, under the LAB would, permanently exempt licensed manicurists from the application of the 3-part "ABC" test under *Dynamex Operations West, Inc. v. Superior Court (Dynamex)*. Under this bill, manicurists would be subject to the multi-factor test under *S. G. Borello & Sons, Inc. v. Department of Industrial Relations (Borello)* if the hiring entity can demonstrate specified factors.

Effective/Operative Date

If this bill is chaptered in 2026, it would be effective and operative on January 1, 2027.

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 *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 of the 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 all of 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 (Ch. 296, Statutes of 2019) and recast with the passage of AB 2257 (Ch. 38, Statutes of 2020) under Article 1.5 (commencing with Section 2775) of Chapter 2 of Division 3 of the LAB. Under California 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.

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 1514 (Ortega, et al., Chapter 305, Statutes of 2025), under the LAB, extended 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.

SB 527 (Alvarado-Gil, 2025/2026) this bill 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 was referred to the Senate Labor, Public Employment and Retirement Committee and set for hearing on April 30, 2025. The hearing was canceled at the request of the author.

AB 2257 (Gonzalez, Chapter 38, Statutes of 2020) repealed Section 2750.3, and added Sections 2775 – 2787 (collectively referred to as Article 1.5) of the LAB. The new law provided exemptions for specified business relations and occupations from the application of the holding in *Dynamex* and instead provided 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 this bill 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*.

PROGRAM BACKGROUND

None noted.

OTHER STATES' INFORMATION

None noted.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

ECONOMIC IMPACT*Revenue Estimate*

This bill as introduced on February 10, 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 Franchise Tax Board 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

None on file.

ARGUMENTS

None on file.

LEGISLATIVE CONTACT

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