STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Alvarado-Gil, et al.	Sponsor:	Bill Number: SB 527
	Related Bills: See Legislative History	Introduced February 20, 2025, and Amended April 7, 2025

SUBJECT

Worker Classification: Employees and Independent Contractors – Athletic Coaches

SUMMARY

This bill would, under the Labor Code (LAB), exempt sports coaches from the ABC test for purposes of worker classification.

This is the Franchise Tax Board's (FTB) first analysis of the bill.

RECOMMENDATION

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

SUMMARY OF AMENDMENTS

The April 7, 2025, amendments added coauthors and made other nonsubstantive changes.

REASON FOR THE BILL

The reason for the bill is to exempt sports coaches from the ABC test for purposes of worker classification.

ANALYSIS

This bill would, under the LAB, exempt the relationship between a sports coach and an elementary or secondary private school or local educational agency from the holding in *Dynamex Operations W. v. Superior Court (2018) 4 Cal.5th 903 (Dynamex)* and the ABC test if the sports coach does not perform any additional services beyond coaching athletic programs. The determination of employee or independent contractor status would be determined by *S.G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal. 3d 342 (Borello*).

This bill would define the following terms:

- "Local educational agency" means any school district, county office of education, charter school, or state special school.
- "Sports coach" means natural person paid by a private school or local educational agency to coach an athletic program.

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:

A. **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.

B. **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.

C. **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 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 generally determined by application of *Borello*.

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.

AB 1514 (Ortega, Chapter 302, Statutes of 2025), under the LAB, extends the exemption for licensed manicurists from classification as either an employee or independent contractor under the ABC test to January 1, 2029. This bill also requires the Employee Development Department to report to the legislature the annual number of claims filed by licensed manicurists involving allegations of misclassification.

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 RTC sections 17020.12, 23045.6, and 61001 and added Revenue and Taxation Code (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*.

PROGRAM BACKGROUND

None noted.

OTHER STATES' INFORMATION

None noted.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

This bill as introduced on February 20, 2025, and amended on April 7, 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.

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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