



FREE HR COMPLIANCE RESOURCE

California Independent Contractor Classification Guide

Employee vs. Independent Contractor
A Step-by-Step Guide for Employers

Need help reviewing your contractor relationships?

Book a free 20-minute consultation: team@thehrsuperheroes.com

MEET THE FOUNDER

Hi, I'm Sommer.

After more than 25 years in Human Resources, I saw the same challenges repeated. Growing businesses needed experienced HR support, but often didn't have the budget of need for a full time HR hire.

That's why I created HR Superheroes: to provide practical, senior-level HR guidance that businesses can rely on without the cost or complexity of a large HR firm.

Today, I continue to work directly with our clients while leading a small and experienced team of HR professionals who share the same philosophy and commitment to helping businesses succeed.

Great HR shouldn't feel corporate or overwhelming. It should give leaders confidence that they're doing things the right way.

Come say hi and let's connect on [LinkedIn](#).



[Get Started](#)

WORK WITH ME

HR challenges can slow you down and create risk.

I provide practical, senior-level guidance you can act on fast.



Trusted HR Partner

25+ years of hands-on experience across industries and business sizes.



Reduce Risk

Navigate California employment laws and avoid costly compliance mistakes.



Practical Solutions

Straightforward advice and tools tailored to your business and your team.



Focus on Growth

Confidently manage your people so you can focus on what matters most.

Let's build HR that supports your business.

Not sure where to start? Book a free 20-minute consultation.

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California Independent Contractor Classification Guide

Employee vs. Independent Contractor — A Step-by-Step Guide for Employers

California law presumes that every worker is an employee. If you treat someone as an independent contractor, the burden is on YOUR business to prove that classification is correct — not the other way around. Work through this checklist for each worker or role you are evaluating. This is a starting point for understanding the framework, not a substitute for a formal classification review.

This checklist shows you the framework—not the final answer.

Worker classification is one of the highest-risk areas of California employment law, with penalties ranging from \$5,000 to \$25,000 per violation, plus back taxes and benefits liability. Exemptions are narrow, fact-specific, and frequently misapplied.

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Classification starts as employee

California presumes employee status unless the business can prove the correct test is satisfied.

Burden sits on your business

Contracts help, but the actual working relationship is what determines risk.

What's inside

STEP 1

Check for statutory exemptions

STEP 2

Apply the ABC Test

STEP 3

Decide the classification result

STEP 4

Use Borello for exempt occupations

STEP 1

Check for a Statutory Exemption First

Before applying the ABC Test, determine whether the worker's occupation falls under one of California's recognized exemptions. If an exemption applies, the ABC Test does not apply — instead, the older Borello multi-factor test is used. An exemption does NOT automatically mean the worker is a contractor; it simply changes which test applies.

**1a. Does the work qualify under the Business-to-Business exemption? (Labor Code 2776)**

This exemption applies when your company contracts with another genuine business — a sole proprietor, LLC, partnership, or corporation — rather than an individual worker. The contracting business must demonstrate that ALL 12 of the following conditions are met:

1. The service provider is free from the control and direction of your business in performing the work, both under contract and in fact.
2. The service provider is providing services directly to your business, not to your customers (with limited exceptions).
3. The contract is in writing and specifies the payment amount, rate of pay, and payment due date.
4. If a business license or tax registration is required for the work, the service provider has it.
5. The service provider maintains a business location separate from yours (a home office qualifies).
6. The service provider is customarily engaged in an independently established business of the same nature as the work performed.
7. The service provider can contract with other businesses for the same or similar services without restriction from you.
8. The service provider advertises and holds itself out to the public as available to provide these services.
9. The service provider supplies its own tools, vehicles, and equipment (excluding proprietary materials needed for the contract).
10. The service provider can negotiate its own rates.
11. The service provider can set its own hours and location of work, consistent with the nature of the work.
12. The service provider is not performing work that requires a Contractors' State License Board license.



Next step: If YES to all 12 - Skip to Step 4 (Borello Test). If NO → Continue to Step 1b.

**1b. Does the work qualify under the Professional Services exemption? (Labor Code 2778)**

This exemption covers a specific list of professional services, provided the worker also meets independence criteria (separate business location, own business license where required, sets own rates, and is not restricted from working for other clients). Qualifying services include:

1. Marketing professionals who provide original and creative content.
2. Human resources administrators.
3. Graphic designers and grant writers.
4. Fine artists (creators of original drawings, paintings, sculptures, or similar work).
5. Freelance writers, translators, editors, copy editors, illustrators, and newspaper cartoonists working under a written contract specifying pay rate, IP rights, and payment timing.

6. Still photographers, photojournalists, videographers, and photo editors (with restrictions for motion picture, broadcast, and music video work).
7. Licensed estheticians, electrologists, manicurists (subject to a 2029 sunset date), and barbers/cosmetologists who set their own rates and schedule.
8. Appraisers, home inspectors, and professional foresters.
9. Services arranged through a referral agency (such as graphic design, web design, tutoring, event planning, minor home repair, moving, or pet care).



If YES → Skip to Step 4 (Borello Test). If NO → Continue to Step 2 (ABC Test).

STEP 2

Apply the ABC Test (Default Standard)

If no exemption applies, California law presumes the worker is an EMPLOYEE. To classify the worker as an independent contractor, your business must be able to prove ALL THREE of the following are true. If even one fails, the worker is legally an employee.



Prong A - Is the worker free from your control and direction?

This must be true both in your written contract AND in actual day-to-day practice. If you set the worker's hours, require them to use company equipment, dictate how the work is performed, or supervise them like staff, this prong fails — regardless of what any contract says.



Fails if: You control schedule, methods, tools, or supervise the work directly.



Prong B - Is the work outside your company's usual business?

If the worker performs tasks that are central to what your company does — for example, a software startup hiring a contract engineer to build its core product, this prong likely fails. Work that is incidental or unrelated to your core business is more likely to pass.



Fails if: The worker performs the same type of work your business is built around.

☐ **Prong C - Does the worker have their own independent business?**

The worker should have their own business license or registration, market their services to other clients (not just you), set their own rates, carry their own insurance, and have invested in their own tools, equipment, or business infrastructure.



Fails if: The worker only works for you, has no other clients, or has no independent business presence.

STEP 3 Result of the ABC Test☐ **Did the worker pass ALL THREE prongs (A, B, and C)?**

All three conditions must be met, there is no partial credit. The burden of proof is entirely on your business, not the worker, to demonstrate that all three prongs are satisfied.



Classification result: If YES to all 3 - Worker may be classified as an independent contractor. If NO to any → Worker MUST be classified as an employee.

STEP 4 Borello Test (For Exempt Occupations Only)

If the worker's occupation qualifies for an exemption identified in Step 1, use this flexible, multi-factor test instead. Unlike the ABC Test, no single factor is automatically disqualifying — all factors are weighed together based on the overall economic reality of the relationship.

☐ **Does your business have the right to control the manner and means of the work?**

This is the most heavily weighted factor under Borello. The less control you exercise over how, when, and where the work gets done, the more likely the relationship supports contractor status.



Weigh against: All factors below before reaching a conclusion.

☐ **Is the worker engaged in a distinct occupation or business of their own?**

Does the worker operate under their own business name, hold relevant licenses, and offer the same services to other clients in the marketplace?



Supports contractor status if: Yes, the worker runs an independent operation.

☐ **Who supplies the tools, equipment, and place of work?**

Independent contractors typically use their own equipment and may work from their own location. If your company provides the laptop, software licenses, and workspace, this points toward employee status.



Supports contractor status if: The worker supplies their own tools and workspace.

☐ **How is the worker paid, and is there a risk of profit or loss?**

Contractors are typically paid by the project or job, can earn more by working efficiently, and can lose money on a job that runs over budget. Hourly pay with no profit/loss risk looks more like employment.



Supports contractor status if: Paid by project with genuine profit/loss potential.

☐ **Do both parties believe they are creating an independent contractor relationship?**

While not determinative on its own, the parties' intent — as reflected in a written agreement — is one factor considered alongside the others. It cannot override the actual working relationship.



Note: A contract calling someone a 'contractor' does not make it legally true.

Sources

- EDD (California Employment Development Department) — Employee or Independent Contractor
- California Labor Code Sections 2775-2785 — Full text of all exemption categories (Article 1.5, Worker Status: Employees)
- California Labor Code Section 2776 — Business-to-Business Exemption (12 conditions)
- California Labor Code Section 2778 — Professional Services Exemption
- Dynamex Operations West, Inc. v. Superior Court (2018) 4 Cal.5th 903
- S.G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341
- Shouse Law Group — The ABC Test in California: How It Works
- Holland & Knight — New California Law Codifies and Expands Strict ABC Test (AB 5 exemption categories)

Need a second set of eyes on contractor classification?

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