



Business-to-Business Contracting ABC Test Exception

The ABC test¹ is generally used to determine if a worker is an employee or an independent contractor. However, for certain specified occupations and business relationships, an exception to the ABC test applies only if certain requirements are met. If the ABC test exceptions are met, then the Borello test² will be used to determine a worker's employment status.

This information sheet lists the requirements to determine if an ABC test exception applies to a business-to-business contracting relationship.

Conditions for the ABC Test Exception

To determine if the ABC test exception is met in a business-to-business contracting relationship, **all** of the following conditions must be met:

1. The individual operates a business entity as a business service provider. See **Business Entity Requirement**.
2. The individual contracts to provide services to a contracting business. See **Contracting Business Requirement**.
3. The contracting business must meet all 12 criteria in [section 2776\(a\) of the Labor Code](https://leginfo.ca.gov/faces/codes.xhtml) (leginfo.legislature.ca.gov/faces/codes.xhtml). See **Twelve Required Criteria**.

If any of the conditions are not met and there are no additional applicable exceptions, then the ABC test is used to determine if the worker is an employee or an independent contractor.

Business Entity Requirement

The business service provider is an individual acting as a sole proprietor or a business entity formed as one of the following:

- Partnership
- Limited Liability Company
- Limited Liability Partnership
- Corporation

Contracting Business Requirement

The business service provider contracts to provide services to a contracting business.

A contracting business is one of the following:

- Another business entity.
- Public agency as defined in [section 3501\(c\) of the Government Code](https://leginfo.ca.gov/faces/codes.xhtml) (leginfo.legislature.ca.gov/faces/codes.xhtml).
- Quasi-Public Corporation - a privately formed organization created by law to perform state functions.

1. Effective January 1, 2020, [section 621\(b\) of the California Unemployment Insurance Code \(CUIC\)](https://leginfo.ca.gov/faces/codes.xhtml) (leginfo.legislature.ca.gov/faces/codes.xhtml) was amended to apply a new standard for classifying individuals as employees.
2. The California Supreme Court established the Borello test in *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341

Twelve Required Criteria

In addition to the business entity and contracting business requirements, the contracting business must show that **all** 12 criteria are satisfied as defined in section 2776(a) of the Labor Code.

1. The business service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
2. The business service provider is providing services directly to the contracting business rather than to customers of the contracting business. This subparagraph does not apply if the business service provider's employees are solely performing the services under the contract under the name of the business service provider and the business service provider regularly contracts with other businesses.
3. The contract with the business service provider is in writing and specifies the payment amount, including any applicable rate of pay, for services to be performed, as well as the due date of payment for such services.
4. If the work is performed in a jurisdiction that requires the business service provider to have a business license or business tax registration, the business service provider has the required business license or business tax registration.
5. The business service provider maintains a business location which may include the business service provider's residence that is separate from the business or work location of the contracting business.
6. The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.
7. The business service provider can contract with other businesses to provide the same or similar services and maintain a clientele without restrictions from the hiring entity.
8. The business service provider advertises and holds itself out to the public as available to provide the same or similar services.
9. Consistent with the nature of the work, the business service provider provides its own tools, vehicles, and equipment to perform the services, not including any proprietary materials that may be necessary to perform the services under the contract.
10. The business service provider can negotiate its own rates.
11. Consistent with the nature of the work, the business service provider can set its own hours and location of work.
12. The business service provider is not performing the type of work for which a license from the Contractors' State License Board is required, pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the [Business and Professions Code](http://leginfo.legislature.ca.gov/faces/codes.xhtml) (leginfo.legislature.ca.gov/faces/codes.xhtml).

Which Test to Use

ABC Test	Borello Test
If any of the conditions are not met, then apply the ABC test to determine whether the services are provided by an employee or an independent contractor.	If the individual meets the business entity requirement, contract requirement, and satisfies all 12 criteria, then apply the Borello test.

Both the ABC test and the Borello test assume the worker is an employee. The hiring entity must demonstrate that the worker is an independent contractor.

The ABC Test

Under the ABC test, an individual providing labor or services for pay has the status of an employee and not an independent contractor unless the hiring entity meets all three conditions:

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

The Borello Test

The Borello test uses multiple factors to determine whether the worker is an employee or independent contractor. One key factor is whether the hiring entity has control over how the work gets done. Control may be indirect and need not be exercised or detailed. The control factor alone does not decide the worker's status. A worker cannot be considered an independent contractor based on a lack of control. The control factor must be considered along with the following:

1. Whether the worker performing services holds themselves out as being engaged in an occupation or business distinct from that of the employer.
2. Whether the work is a regular or integral part of the employer's business.
3. Whether the employer or the worker supplies the instrumentalities, tools, and the place for the worker doing the work.
4. Whether the worker has invested in the business, such as in the equipment or materials required by their task.
5. Whether the service provided requires a special skill.
6. The kind of occupation, and whether the work is usually done under the direction of the employer or by a specialist without supervision.
7. The worker's opportunity for profit or loss depending on their 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.
11. Whether the worker hires their own employees.
12. Whether the employer has a right to fire at will or whether a termination gives rise to an action for breach of contract.
13. Whether or not the worker and the potential employer believe they are creating an employer-employee relationship. This may be relevant, but the legal determination of employment status is not based on whether the parties believe they have an employer-employee relationship.

For More Help

- Call the Taxpayer Assistance Center at 1-888-745-3886.
- Visit the nearest [Employment Tax Office](http://edd.ca.gov/Office_Locator/) (edd.ca.gov/Office_Locator/).
- Access EDD's free [payroll tax webinars](http://edd.ca.gov/payroll-tax-webinars) (edd.ca.gov/payroll-tax-webinars).

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