

## ABC Test

This test is used to evaluate and determine employment status. It has three (3) main prongs or conditions, all of which must be met for an individual to be considered an independent contractor, for workers' compensation. It consists of a series of questions that get to the core of the employer-individual-relationship.

### START DATE

The ABC test applies as of July 1, 2020 (per AB 5), excluding certain conditionally exempted occupations. Employment status of individuals in these conditionally exempted occupations may be eligible for evaluation using a different test known as the Borello test.

### TAKE THE TEST

#### Prong A - "Free from control"

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.

#	Factor Question	Factor Insight
1	Does the hiring entity have the right to control the manner and means of accomplishing the desired results?	This factor looks at the totality of the operations, overall, when asking if the individual or hiring entity have most of the right and control over the manner and means of accomplishing the desired results.
2	Is the work usually done under the direction of the employer or by a specialist without supervision?	It's important to understand that supervision and direction provided to an individual can also come from a supervisor, manager, or other employee. The key to this question is drilling down on whether the hiring entity has <u>the right to</u> provide direction and supervision over the individual?
3	Does the employer of the individual performing the service supply the instrumentalities, tools, and place of work?	Reimbursement of any kind to an individual for the necessary tools required to do the desired work is a high indicator of the hiring entities right to control.
4	Is the length of time for which the individual is to perform the services continuous or fixed?	Typically, a continuous employment relationship with no <u>reasonably</u> planned or estimated termination of employment is a high indicator of the hiring entities right to control.

5	Does the individual have opportunity for profit or loss?	An independent contractor is usually financially liable for the work being performed and the quality of the final product.
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**Prong B - "Outside the usual course of business"**

The individual performs work that is outside the usual course of the hiring entity's business.

#	Factor Question	Factor Insight
1	Are the individual's duties a regular part of the hiring entity's business operations?	It's important to identify whether the individual's operations/duties are crucial to the business's overall success. Example: a restaurant server is crucial for a restaurant to operate efficiently; a cook is also crucial for a restaurant to operate efficiently.

**Prong C - "Customarily engaged in business of the same nature"**

The individual is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

#	Factor Question	Factor Insight
1	Does the individual hold all proper Licenses/Insurances required for the work being performed?	This factor is fairly direct; employees typically do not hold the necessary licenses required for the work, and are usually not responsible for holding proper insurances such general liability insurance.
2	Does the individual have the right to offer the same services to others, and does in fact?	Independent contractors hold the right to offer the same type of services, or any other services, to other businesses. The important detail in this factor is that the independent Contractor is not reliant on any (1) one entity for income.
3	Does the individual have opportunity for profit or loss?	An independent contractor is usually financially liable for the work being performed and the quality of the final product.
4	Does the individual advertise him/herself?	Since independent contractors typically operate their own business, it's common to see advertisement for the services they offer in effort to gain work from potential customers.

5	Does the individual have a separate business location?	Since independent contractors typically operate their own business it's common that there is a specific business location associated with the independent contractor's legal entity.
6	Who pays the individual for services provided, and by what means is the payment distributed between the hiring party and individual?	It's important to note that various scenarios can be considered here. Example: typically, an independent contractor will set their own rates and will bill the hiring entity upon completion of the work performed, in turn the hiring entity will pay the independent contractor directly.
7	Does the individual hold a distinct occupation or business?	Independent contractors typically operate a business of their own separately from that of a hiring entity and do not financially rely on any one specific entity for income.

