

Occupations – ABC Test Exception

Effective January 1, 2020, section 621(b) of the [California Unemployment Insurance Code \(CUIC\)](http://leginfo.legislature.ca.gov/faces/codes.xhtml) (leginfo.legislature.ca.gov/faces/codes.xhtml) was amended to apply a new standard for classifying individuals as employees. Under the new standard commonly referred to as the *ABC test*, an individual providing labor or services for remuneration is presumed to be an employee rather than an independent contractor, unless the hiring entity can demonstrate that all three conditions of the ABC test are satisfied.

The ABC test, as it specifically applies to the State of California, has been codified as section 621(b)(1)(2)(3) of the CUIC, replacing the *common law standard* previously applied by the Employment Development Department. While the ABC test is the applicable test for most workers, sections 2776 through 2784 of the [Labor Code \(LC\)](http://leginfo.legislature.ca.gov/faces/codes.xhtml) (leginfo.legislature.ca.gov/faces/codes.xhtml), establish exceptions to the ABC Test and instead require the application of the *S.G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal. 3d 341 (Borello)* test under certain exceptions.

For certain occupations, section 2783 of the LC has criteria that must be satisfied in order to apply the *Borello* test instead of the ABC test. For information on the ABC test, *Borello* test, and other ABC test exceptions, please refer to [Information Sheet: Employment \(DE 231\) \(PDF\)](#) (edd.ca.gov/pdf_pub_ctr/de231.pdf).

Requirements for the ABC Test Exception

Pursuant to section 2783 of the LC, a determination of whether an individual who provides services under a specific occupation, is an employee will be determined by the *Borello* test if **all** of the following requirements are satisfied:

- The individual is performing one of the specified occupations identified in this exception.
- The requirements of the occupation are satisfied.

If either requirement is not satisfied, the ABC test will be used to determine whether the individual is an employee or independent contractor.

Occupations Included

The individual must be performing services in one of the following occupations:

- Department of Insurance licensees, underwriting inspections, premium audits, risk management, claims adjusting, third-party administration or loss control work for the insurance and financial service industries.
- Licensed physician and surgeon, dentist, podiatrist, psychologist, or veterinarian.
- Licensed lawyer, architect, landscape architect, engineer, private investigator, or accountant.
- Securities broker-dealers or investment advisers or their agents and representatives.
- Direct sales salesperson.
- Manufactured housing salesperson.
- Commercial fisher.
- Newspaper distributors or carriers.
- International exchange visitor program.
- Competition judge including, but not limited to, an amateur umpire or referee.

If the individual's occupation is not listed, then the exception does not apply.

Occupation Requirements

In addition to the listed occupations, there are also requirements defined below that must be satisfied.

Insurance and financial service industries:

- A person or organization must be licensed by the Department of Insurance pursuant to Chapter 5 (commencing with section 1621), Chapter 6 (commencing with section 1760), or Chapter 8 (commencing with section 1831) of Part 2 of Division 1 of the [Insurance Code](http://leginfo.legislature.ca.gov/faces/codes.xhtml) (leginfo.legislature.ca.gov/faces/codes.xhtml); or
- A person who provides underwriting inspections, premium audits, risk management, claims adjusting, third-party administration or loss control work for the insurance and financial service industries.

Note: *Third-party administration* must be consistent with the use of the term third-party administrator, as defined in subdivision (cc) of section 10112.1 of Title 8 of the [California Code of Regulations](http://govt.westlaw.com/calregs/index) (govt.westlaw.com/calregs/index).

Physician and surgeon, dentist, podiatrist, psychologist, veterinarian: Must be licensed by the State of California pursuant to Division 2 (commencing with section 500) of the [Business and Professions Code](http://leginfo.legislature.ca.gov/faces/codes.xhtml) (leginfo.legislature.ca.gov/faces/codes.xhtml), performing professional or medical services provided to or by a health care entity, including an entity organized as a sole proprietorship, partnership, or professional corporation as defined in section 13401 of the [Corporations Code](http://leginfo.legislature.ca.gov/faces/codes.xhtml) (leginfo.legislature.ca.gov/faces/codes.xhtml).

Lawyer, architect, landscape architect, engineer, private investigator, and accountant: An individual must hold an active license from the State of California and is practicing one of these recognized professions.

Securities broker-dealer or investment adviser or their agents and representatives that are either of the following:

- Registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority.
- Licensed by the State of California under Chapter 2 (commencing with section 25210) or Chapter 3 (commencing with section 25230) of Division 1 of Part 3 of Title 4 of the Corporations Code.

Direct sales salesperson: As described in section 650 of the CUIIC, so long as the conditions for exclusion from employment under that section are met. For more information, refer to the [Information Sheet: Salespersons \(DE 231N\) \(PDF\)](http://edd.ca.gov/pdf_pub_ctr/de231n.pdf) (edd.ca.gov/pdf_pub_ctr/de231n.pdf).

Manufactured housing salesperson: Must be subject to all obligations under Part 2 (commencing with section 18000) of Division 13 of the [Health and Safety Code](http://leginfo.legislature.ca.gov/faces/codes.xhtml) (leginfo.legislature.ca.gov/faces/codes.xhtml), including all regulations promulgated by the Department of Housing and Community Development relating to manufactured home salespersons and all other obligations of manufactured housing salespersons to members of the public.

Commercial fisher: Working on an American vessel and the following definitions are met:

- *American vessel* as defined in section 125.5 of the CUIIC.
- *Commercial fisher* means a person who has a valid, unrevoked commercial fishing license issued pursuant to Article 3 (commencing with section 7850) of Chapter 1 of Part 3 of Division 6 of the [Fish and Game Code](http://leginfo.legislature.ca.gov/faces/codes.xhtml) (leginfo.legislature.ca.gov/faces/codes.xhtml).
- *Working on an American vessel* means the taking or the attempt to take fish, shellfish, or other fishery resources of the state by any means, and includes each individual aboard an American vessel operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, including maintaining the vessel or equipment used aboard the vessel. However, working on an American vessel does not apply to anyone aboard a licensed commercial fishing vessel as a visitor or guest who does not directly or indirectly participate in the taking.

Note: The exception for commercial fisher shall become inoperative on January 1, 2023, unless extended by the Legislature.

For more information, refer to the [Information Sheet: Commercial Fishing \(DE 231CF\) \(PDF\)](http://edd.ca.gov/pdf_pub_ctr/de231f.pdf) (edd.ca.gov/pdf_pub_ctr/de231f.pdf).

Newspaper distributor and newspaper carrier: The newspaper distributor must be working under contract with a newspaper publisher or a newspaper carrier. The following definitions must be met under this exception:

- *Newspaper* means a newspaper of general circulation, as defined in section 6000 or 6008 of the [Government Code](http://leginfo.legislature.ca.gov/faces/codes.xhtml) (leginfo.legislature.ca.gov/faces/codes.xhtml), and any other publication circulated to the community in general as an extension of or substitute for that newspaper's own publication, whether that publication be designated a *shoppers' guide*, as a zoned edition, or otherwise. It also means a publication that is published in print and that may be posted in a digital format, and distributed periodically at daily, weekly, or other short intervals, for the dissemination of news of a general or local character and of a general or local interest.

- *Publisher* means the natural or corporate person that manages the newspaper's business operations, including circulation.
- *Newspaper distributor* means a person or entity that contracts with a publisher to distribute newspapers to the community.
- *Newspaper carrier* means a person who effects physical delivery of the newspaper to the customer or reader who is not working as an app-based driver as defined in Chapter 10.5 (commencing with section 7448) of Division 3 of the Business and Professions Code, during the time when the newspaper carrier is performing the newspaper delivery services.

Note: Newspaper distributor and carrier will no longer be subject to this exception starting on January 1, 2025, unless extended by the Legislature.

International exchange visitor program: An individual who is engaged by an international exchange visitor program that has obtained and maintains full official designation by the United States Department of State under Part 62 (commencing with section 62.1) of Title 22 of the [Code of Federal Regulations](https://www.govinfo.gov/app/collection/cfr) (govinfo.gov/app/collection/cfr) for the purpose of conducting, instead of participating in, international and cultural exchange visitor programs and is in full compliance with Part 62 (commencing with section 62.1) of Title 22 of the Code of Federal Regulations.

Competition judge including, but not limited to, an amateur umpire or referee: With a specialized skill set or expertise providing services that require the exercise of discretion and independent judgment to an organization for the purposes of determining the outcome or enforcing the rules of a competition.

Additional Information

For further assistance, please contact the Taxpayer Assistance Center at 1-888-745-3886 or visit the nearest Employment Tax Office listed in the [California Employer's Guide \(DE 44\) \(PDF, 2.4 MB\)](https://edd.ca.gov/pdf_pub_ctr/de44.pdf) (edd.ca.gov/pdf_pub_ctr/de44.pdf) and on the [EDD](https://edd.ca.gov) (edd.ca.gov) website. Additional information is also available through the EDD's no-fee [payroll tax seminars](https://seminars.edd.ca.gov/payroll_tax_seminars) (seminars.edd.ca.gov/payroll_tax_seminars).

The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Requests for services, aids, and/or alternate formats need to be made by calling 1-888-745-3886 (voice) or TTY 1-800-547-9565.

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