

3 Things to Know About AB 5 and Independent Contractor Classification

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Effective January 1, 2020 California-based companies will have to pay more attention to employee and contractor classifications.

California Governor Gavin Newsom recently signed Assembly Bill 5, also known as AB 5, with the hope of ending misclassification of employees as independent contractors and bolstering economic security through minimum wage, sick pay, insurance benefits protections and more.

As you begin to navigate this new law, here are three things to consider:

1. For California-based companies to now classify employees as “independent contractors” they must pass the “ABC Test.” Essentially, AB 5 underscores the “A, B, Cs” as being the defining factors when determining if an individual is an independent contractor or employee. Someone can be classified as an independent contractor, if all three requirements are met:
 - a. The hiring entity does not control nor direct the worker in performing the work in fact or under the terms of a contract.
 - b. The work performed is outside of the “usual course” of the hiring entity’s business.
 - c. The worker is customarily engaged in an independently established trade, occupation or business of the same nature as involved in the work performed.

You should also know, AB 5 also specifically exempts over 50 professions, or types of businesses, from this new law. Some of these include doctors, dentists, insurance agents, attorneys, accountants, real estate agents and hairstylists.

2. Why is it important to properly classify your employees?

- Misclassified employees often are denied access to critical benefits and protections to which they are entitled, such as the minimum wage, overtime compensation, family and medical leave, unemployment insurance, vacation and paid sick leave.
- Employee misclassification generates substantial losses to the federal and state governments in the form of lower tax revenues, as well as to state unemployment insurance and workers' compensation funds. It hurts taxpayers and the economy.

Improper classification could also lead to significant liability for the hiring entity beyond tax issues, including wage and hour issues, like unpaid overtime, missed meal and rest breaks, expense reimbursement, and the like. There is a big risk here to you, the employer.

3. Organizations can be exposed to fines and penalties, if they are caught misclassifying workers. Often these are complaint-driven (either by the affected worker or by a whistleblower) and an individual complaint can trigger a response from a variety of California agencies that oversee wage compliance issues. Additionally, the IRS and the Department of Labor have been known to carry out their own audits. The ramifications can vary, depending on whether the IRS or the DOL have deemed the misclassification to be willful or not.

BPM's HR and People Services team is available to help organizations navigate the new legislation going into 2020. Find out how we can help by visiting <https://www.bpmcpa.com/HR> or by contacting Jill Pappenheimer at 925-296-1058.

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