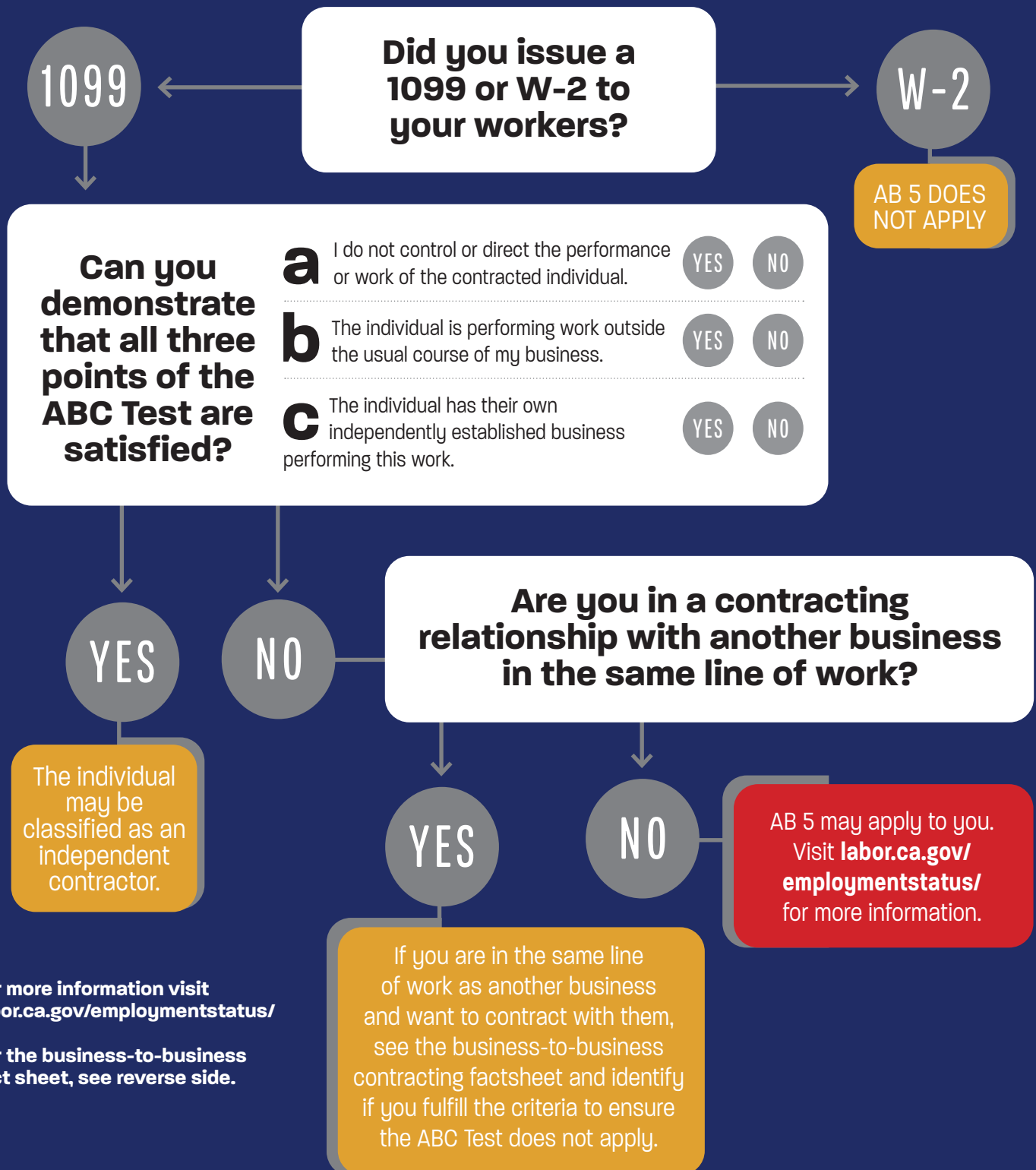


WHAT IS AB5?

A Guide for Employers

AB 5 protects workers and law-abiding businesses in California. When working people are misclassified, they lose out on essential worker protections like paid family and sick leave, unemployment insurance, workers' compensation for job-related injuries, and protections against harassment or discrimination. AB 5 aims to stop worker misclassification that costs California taxpayers billions of dollars.

Here is how to tell if the law applies to you:



For more information visit labor.ca.gov/employmentstatus/

For the business-to-business fact sheet, see reverse side.



AB 5 – CONTRACTS BETWEEN BUSINESSES

BACKGROUND

In April of 2018, the California Supreme Court issued the unanimous landmark *Dynamex* decision, which established a three part “ABC” test. Under the ABC test, an individual can only be classified as an independent contractor if they are: (A) free from the control and direction of the hiring company, (B) if the worker performs work that’s outside of the hiring company’s usual course of business, and (C) if the worker has their own independently established trade or business performing that work. AB 5 codified this decision and clarified certain circumstances when individuals are subject to the *Borello* standard that existed prior to the *Dynamex* decision.

AB 5 CLARIFIES THAT *DYNAMEX* DOES NOT APPLY TO CONTRACTS BETWEEN BUSINESSES

In the case of a business contracting with another business, *Dynamex* and the ABC test does not apply. Given that the contracting business entity can demonstrate the business providing the service meets the criteria listed below, then the *Borello* test is applied.

- 1) The business service provider is an entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation.
- 2) The business service provider has a business license or business tax registration, if the services are provided in a jurisdiction that requires such licensing or tax registration.
- 3) The business service provider has a written contract with the contracting business.
- 4) The business service provider is engaged in an independently established business of the same nature as the work performed under the contract.
- 5) The business service provider advertises and holds itself out to the public as available to provide the same or similar services.
- 6) The business service provider actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from the hiring entity.
- 7) The business service provider provides services directly to the contracting business itself, instead of its customers.
- 8) The business service provider can negotiate its own rates. Consistent with the nature of the work, the business service provider can set its own hours and location of work. The business service provider maintains a business location separate from the location of the contracting business.
- 9) The business service provider provides its own tools, vehicles, and equipment to perform the services.
- 10) The business service provider is free from control and direction from the contracting business.
- 11) The business service provider is not performing the type of work that requires a license from the Contractor’s State License Board.

FOR COMPLIANCE ASSISTANCE

Labor and Workforce Development Agency’s AB 5 Portal: www.labor.ca.gov/employmentstatus

FOR MORE INFORMATION

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Disclaimer: The information provided on this document does not, and is not intended to, constitute legal advice.