

# California Amends Independent Contractor Law (Again) – New Exemptions for Music Industry Workers, Freelance Writers and Photographers

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Last Friday, September 4, Governor Newsom signed [AB 2257](#), which includes a slew of modifications to the now-infamous AB5, which went into effect this year and codified the strict ABC independent contractor test, which we have addressed previously in this [blog](#).

With this new amendment, there are now more than 100 exemptions and limitations to the original law, which was aimed at reclassifying the hundreds of thousands of Uber and Lyft drivers from independent contractors to employees. As we have reported [before](#), AB 5 was authored by California Assemblywoman Lorena Gonzalez (D-San Diego), a former CEO of the San Diego and Imperial Counties Labor Council, AFL-CIO.

Legendary former Democratic Speaker of the California Assembly and Mayor of San Francisco Willie Brown [has this to say about AB 5](#): “If there was a place to picket organized labor, I’d do it today,” Brown said. “If there was a place to picket a legislator, I’d do it,” he said. As Assembly Speaker, “I made sure that special interests, no matter who they were — labor or non labor — did not take advantage of the Legislature,” but he said it was clear this time was not the case.

Music Industry

The latest changes to AB5 is the introduction of exemptions for certain music industry workers – including recording artists, songwriters, lyricists, composers, proofers, managers of recording artists, record producers and directors, musical engineers and mixers, musicians, vocalists, photographers working in the music industry, independent radio promoters, and any other individual engaged to render creative, production, marketing, or independent music publicist services. The practical effect of the exemption is that the multi-factor Borello test, rather than the ABC test, would apply in determining whether the music industry worker qualifies as an independent contractor; and AB 2257 provides that, in all instances, any current or future collective bargaining agreements or contractual agreements between the applicable labor unions and respective employers shall govern the determination of employment status for these music industry workers.

AB 2257 specifically notes that workers in other entertainment industries (such as film and television unit production crews) do not qualify for an exemption.

#### Freelance Writers and Photographers

AB 2257 also modifies the exemption in AB 5 for freelance writers and photographers, removing the controversial 35-submission limit which had been the subject of litigation. The submission limit previously made writers and photographers who submitted more than 35 articles or projects per year ineligible for the exemption. Now such writers and photographers could be exempt from AB 5 and the ABC test, provided they meet certain requirements, including that: (i) there is a written contract that specifies rate of pay, intellectual property rights, and an obligation to pay by a defined time; (ii) the individual doesn't otherwise replace an employee; (iii) the individual does not primarily work at the location of the hiring entity; and (iv) there is no restriction preventing the individual from working for more than one entity.

#### Other Changes and Where Do We Go From Here?

These are just some of the changes introduced by [AB 2257](#). There are also several additions, changes, and clarifications to the business-to-business exemption. The new version of the B2B exemption requires that business service providers be free to provide services to other clients, rather than requiring that they provide services to more than one client. The modified exemption also allows business service providers to provide services directly to the customers of a contracting business so long as its employees are performing the services under the name of the business service provider and the business service provider regularly contracts with other businesses.

The referral agency exemption – which could apply to the relationship between an individual, on the one hand, and a business that refers that individual’s services to clients, on the other – also received an overhaul. For example, several types of services (including youth sports coaching and wedding planning) were added to the enumerated exemption list, and the phrase “including but not limited to” was added, expanding the scope of services covered. Also, like the change in the B2B exception, the referral agency exemption has been modified so that service providers now must only be free to provide services to other clients, but they are not required to maintain a varying clientele. These are just a couple of the nearly two dozen changes to this exemption.

It is also important to note that, regardless of the current status of AB 5, further change looms on the horizon. Democratic presidential nominee Joe Biden vows on his [campaign website](#) that “he will work with Congress to establish a federal standard modeled on the ABC test for all labor, employment, and tax laws.” If he is elected president and carries out this promise, AB 5’s hard-fought-for exemptions may very well fall by the wayside and all workers throughout the nation, including those in California, could be subject to a federalized ABC test, which will imperil the status of independent contractors everywhere in the country. In this dynamic legislative environment, we recommend working with counsel to determine whether your employees and contractors are (and remain) properly classified.

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