

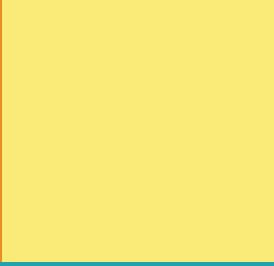
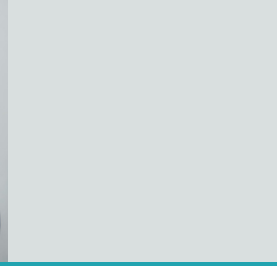
AB 5: The Aftermath of California's Experiment to Eliminate Independent Contractors Offers a Cautionary Tale for Other States

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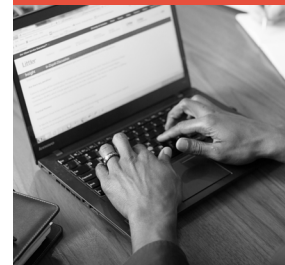


Executive Summary

Since its enactment last fall, California’s AB 5—legislation adopting the so-called “ABC test” for purposes of determining whether a worker is an independent contractor or statutory employee—has dominated not only the legal landscape in California, but also the broader discussion of what the shape of the U.S. workforce will look like as we enter the third decade of the 21st century. It has raised questions of the changing nature of work, so-called “gig” employment, the on-demand economy, and whether and to what extent government should put its thumb on the scale to favor more traditional models of employment over more innovative and flexible models.

By many measures, AB 5—and the ensuing debate in other states and nationally about worker “reclassification”—stands as one of the most significant developments in labor and employment law in decades, alongside the general erosion of at-will employment, enactment of the landmark Americans with Disabilities Act, and the addition of compensatory and punitive damages and jury trials to Title VII by way of the Civil Rights Act of 1991. Its effect and policy implications cannot be understated.¹

This Insight discusses first the dramatic impact AB 5—adopted barely six months ago, and effective for less than half that time—has had to date on the California workforce, and the efforts of state legislators on both sides of the aisle to address its fallout. It then reviews actions in the courts—some successful, others less so—in challenging AB 5’s application both broadly and narrowly. Next, it examines political responses both within California, where a ballot initiative to repeal AB 5 with respect to many gig workers is likely to be put before the voters in November, and outside the state, with a number of statehouses entertaining proposals to adopt similar legislation, and Congress wading into the fray. Finally, it concludes with a warning to policymakers to heed the experience of California and proceed with extreme caution before following suit. For convenience, an Appendix of legislation to repeal or amend AB 5 pending in the California state legislature follows.



¹ Littler’s Workplace Policy Institute® (WPI™) has been tracking AB 5 since its inception, and has published extensively on the topic. For more information, please see <https://www.littler.com/wpi/ab5>.

AB 5: A Brief Refresher

By way of brief background, in September 2019, the California legislature passed, and California Governor Gavin Newsom (D) signed into law, AB 5—legislation [adopting the so-called “ABC test”](#) for determining whether a given worker is an independent contractor or statutory employee under the California Labor Code. By design, the ABC test results in many more workers—perhaps up to two million independent contractors in California—being reclassified as employees for wage and hour laws and other purposes. The effects of California’s experiment—both intended and unanticipated—continue to reverberate across the legal landscape.

Under the ABC test as adopted by AB 5, any person providing labor or services for remuneration shall be considered an employee, rather than an independent contractor, unless the “hiring entity” demonstrates that all of the following conditions are satisfied:

- A. The person 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.
- B. The person performs work that is outside the usual course of the hiring entity’s business.²
- C. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

AB 5 imposes this test for all purposes under California’s wage orders (which govern, among other things, minimum wage payment, daily and weekly overtime pay, and meal and rest breaks). The law also applies the ABC test to the California Labor Code, which includes, among other things, penalties for willful misclassification as an independent contractor and a requirement that employees be reimbursed for necessary business expenses. The law also applies the ABC test to California’s Unemployment Insurance Code, and, later this year, to the state’s workers’ compensation laws. Notably, while the law broadly adopts the ABC test (setting forth the standard in a scant 130 words), the bulk of the bill—some 3,400+ words in addition—proceeds to carve out exceptions and establish different standards and tests for select occupations and industries, an effort which, as discussed below, may be its undoing.

AB 5 Wreaks Havoc on California’s Workforce

Almost immediately upon its passage, the effects of AB 5 began to be felt across the California workforce. In December, before the law was even effective, a popular online publisher made headlines when it announced it would no longer be using freelance writers or content providers in California in response to the limits and liability imposed by AB 5. There is likewise concern that venture capital firms—key drivers of California’s economy—may pull back from the state, with the uncertainty imposed by AB 5’s impact on the economy leaving investors to hedge their bets—or at least to hold for now.

The long-term impacts of AB 5 have only begun to be seen—and are yet impossible to predict. Even if California’s economic health appears rosy, underlying trouble spots abound, including a severely underfunded public pension system, unaffordable housing, the volatility of a state revenue stream heavily dependent on personal income taxes tied to capital gains, weakened infrastructure, a declining system of public education, and on and on.

Full employment in California makes it easy to mask many of these underlying challenges. But the longest economic expansion in our history must certainly come to an end; many believe that will be sooner rather than later. The current state budget-operating surplus could easily disappear in the wake of a single economic shock, such as a wholesale change in how hundreds of thousands of workers are classified. There is little room for error.

This makes the adoption of AB 5 without any serious attempt to undertake a full economic examination of its consequences all the more troubling. Indeed, as attempts on the national level to federalize the ABC test (discussed further below) continue, the need for robust economic analysis is critical. While lawmakers in states considering AB 5-style legislation would do well to examine their own states’ exigencies, a comprehensive analysis across states and regions—perhaps undertaken by the U.S. Department of Labor through the Bureau of Labor Statistics, or with other federal resources, is best-suited to the task at hand.

² Many other states have also adopted the ABC test, but in a vast majority of those states, there are two separate parts to the “B” prong: whether the services performed are outside the usual course of business of the hiring entity **OR** whether the work is performed outside all of the places of business of the employer. It is much easier to establish independent contractor status under this version of the ABC test. So far, only two states have adopted the more narrow version of the ABC test, with a single element in the “B” prong—California and Massachusetts.



In the absence of hard data on AB 5's impact on the workforce, there is no shortage of anecdotal evidence of disruption in all segments (hardly surprising, since the law potentially reclassifies two million workers). California Assemblyman Kevin Kiley has collected [hundreds of reports](#) from workers who are facing lost income and job opportunities because of AB 5, as companies scale back or eliminate completely their use of independent contractors in the state. Just a small sampling of these accounts makes clear the havoc that AB 5 has already wreaked:

- Ryan: "I am the owner of a pediatric therapy company. We provide work to approximately 40 ICs who want to see a few clients in addition to their full time jobs. This law would force me to let go of all 40 ICs as I cannot afford to pay them."
- Jan: "I'm an older woman with two teaching credentials living in a small county who cannot find employment outside of independent contractor online teaching jobs. One company has already announced they will no longer contract with California teachers. I care for a disabled husband. I will lose my home if I cannot work for those companies."
- Ernie: "I'm retired and at age 75 the freelance writing I do for several publications is an important supplemental income source for me and my family. I'm good at what I do and produce about 200 articles a year. Yesterday I was notified that my work is being cut in half and I am losing one column entirely because I submit more than the arbitrary 35 to that publication."
- Cori: "AB 5 is detrimental to my small blog. Hiring contractors to do small things for me here and there is how I make it work. I cannot ask all of those contractors to become employees. It is unsustainable. I will have to look out of state for help."
- Hope: "This bill will devastate the services the Deaf community receive. Almost all of the American Sign Language Interpreters that work in the community are Independent Contractors. We get the bulk of our work through agencies that work like clearinghouses that send out the work. We set our pay and take the work if we want or don't want."
- Donna: "I am a bandleader and work with 20 different musicians through the course of the year. Some I will use once some 15-20 times. The costs of making them employees, work comp, payroll costs etc. will put me out of business."
- Andrea: "I'm a freelance writer who writes dozens of pieces for various clients each month. I did my writing through a content mill, which has now blocked California writers from communicating with any new clients and is limiting us to 34 articles per year for the clients we already had. For perspective, I often wrote more than 34 articles per MONTH for ONE of my clients alone. I am now losing these clients, many of whom I've worked with for years. I was incredibly happy with my work life prior to AB 5. I made enough money to satisfy my needs, and I was able to work when I wanted and take time off when I wanted, something I needed due to my chronic health problems."
- Susan: "I am a tax preparer. I prepare corporate and partnership returns for mostly entertainment clients. If they are forced to become employees of the studios, I lose my business. I've had some of my clients for 30 years."
- Marsha: "I lost my job of 12 years as a medical transcriptionist because of AB 5. Many in this profession value the flexibility in hour and working from home more than employee status. Now I have no money at all."
- Andi: "Just lost my ability to earn a living because of California Assembly Bill 5. My freelance brokerage company says that they have to let California authors go. Almost a decade of hard work gone in an instant. I can't stop crying. Right before Christmas."

Despite these facts, the state shows no sign of pumping the breaks on the enforcement of AB 5. As discussed further below, already the state's attorney general has brought suit seeking to reclassify independent contractors in the gig economy as statutory employees. Moreover, Governor Newsom's budget includes an additional \$22 million, including funds for the state's Department of Industrial Relations to assume an increased workload relating to alleged worker misclassification suits and additional wage and hour claims, as well as money to train staff to administer the ABC test, and more than three-quarters of a million dollars set aside to address increased legal enforcement actions expected under AB 5.

California Legislature Swamped with Proposals to Change AB 5

"I anticipate we'll be working on this for a few years..."

—Assemblywoman Lorena Gonzales (D), author of AB 5, at July 10, 2019 hearing before the California Senate Labor, Public Employment, and Retirement Committee.

Perhaps truer words were never spoken than those of the lead sponsor of AB 5—though the recognition that AB 5 contained many fundamental flaws did nothing to slow her effort to advance the bill through the legislature and ultimately to the governor's desk. Now, as the state grapples with these issues, and attempts to deal with the economic and political fallout, efforts to "fix" AB 5 abound.

One of the key criticisms of the bill was the arbitrary fashion in which some industries—often constituencies with powerful political allies—were granted exemptions from AB 5, while others were left out in the cold. This led scores of industries to seek "equal treatment" under the law, demanding an exemption from the law's broad application.

It is hardly surprising then, that in the wake of the chaos caused by AB 5, nearly three dozen bills have been introduced in the California Assembly to amend, repeal, or replace the law—suggesting that even California lawmakers realize they have a problem on their hands.

Scores of bills have been introduced to exempt specific industries from the AB 5 test, and restore the common-law test (known as the *Borello* test, named for the 1989 case in which the California Supreme Court handed down the standard) for determining independent contractor status. Legislative efforts to exempt workers ranging from Little League umpires to marriage therapists to freelance writers to wedding musicians are all pending in the state's Assembly and Senate (an appendix of current bills amending AB 5 is included at the end of this report).

The law is also subject to broad-based attack by lawmakers. Legislation has been introduced to fully repeal AB 5 and restore the *Borello* standard; another would propose an amendment cementing the *Borello* test into the state's constitution. Yet another bill—one of the few sponsored by a Democratic legislator—would create a new class of "independent worker" entitled to certain benefits, but not considered a statutory employee for other purposes under California state law.

Almost all of these amendments have been introduced by Republican legislators, which makes their legislative fate unclear. To date, the Democratic supermajority in the California Legislature has rebuffed efforts to revisit the law. On February 27, 2020, an attempt in the Assembly to suspend AB 5 was rejected 50-15 along party lines. Ironically, on that same day, Assemblywoman Gonzales announced her intent to offer amendments to AB 5 relating to freelance writers, photographers, and editors that would remove the "cap" on the number of submissions a freelancer could provide to a single company before being classified as an employee. That the sponsor of the bill now is among those seeking to amend its core provisions speaks volumes.

Legal Challenges to AB 5 Mount

“In all of these carve-outs you are picking winners and losers, so, can you walk me through the process of why you are doing it that way and how you process, who wins, and who loses. Who gets favoritism and who loses out?”

—Senate Labor Committee Vice Chair, Senator Mike Morrell

While the state legislature attempts to find a path forward with respect to AB 5, courts have already begun to weigh in on the validity of the law. Less than six months since the legislature passed the law, it is already subject to numerous legal challenges in courts across the state. One element that has been repeatedly highlighted in these challenges is that which was pointed out during Assembly debate: namely, that by adopting a broad rule but then handing out exemptions to favored constituencies on an *ad hoc* basis, the law violates basic tenets of equal protection under the law.

Broad-based challenges to the law have been filed, as well as targeted, industry specific suits. To date, results have varied:

- The California Trucking Association successfully sued California to block enforcement of AB 5 with respect to motor carriers in California that are subject to regulation by the federal Department of Transportation. In its decision, the court explained that it was likely that the CTA would prevail on the merits of its argument that AB 5 is preempted by federal law regulating the trucking industry.
- Gig-economy giants, joined by individual drivers and deliverers, likewise sued to enjoin AB 5’s application to them, arguing that the law violates, among other things, the Equal Protection and Contracts Clauses of the U.S. Constitution. In February, the trial court declined to grant injunctive relief, although it did recognize that the threat of AB 5 enforcement posed irreparable harm to the plaintiffs. The case will now proceed on its merits.
- Court reporters and freelance journalists have also filed challenges to AB 5, claiming that its “cap” on the number of submissions an independent contractor content-provider can make before being reclassified as an employee is arbitrary, capricious, and violates the First Amendment. These cases are making their way through state and federal courts.

At the same time that businesses are challenging the validity of AB 5, the State of California has already been aggressively attempting to force employers to reclassify independent contractors as employees. In a high-profile case in San Diego, the state’s attorney general has sued an online grocery delivery service, alleging that the company’s in-store shoppers should be classified as employees rather than independent contractors.

On February 18, 2020, the trial court concluded that California was likely to prevail on its argument that the service’s in-store shoppers should properly be classified as employees (and thus eligible to the full panoply of remedies under California’s wage and hour laws). In so ruling, the court noted that while “there is room for debate on the wisdom” of California’s “unapologetically pro-employee” labor policies, it was beyond the court’s power to ignore them. The court stayed enforcement of its injunction, however, and the defendant has already noticed its appeal of the lower court’s decision. As that appeal proceeds, the case is certain to continue to generate close attention.





Will Voters Ultimately Decide the Fate of AB 5?

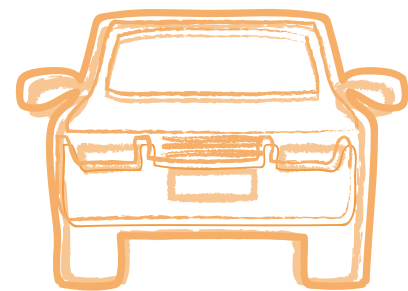
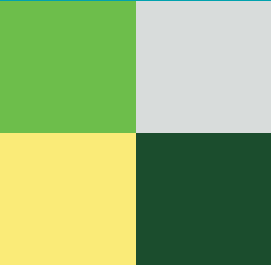
Lest one think that it is only the courts and the legislature that will decide the fate of AB 5 and worker classification law in California, it is possible that the issue of how AB 5 applies to certain app-based workers [may be put to California voters](#) in this November's elections.

A number of app-based providers have [sponsored an initiative](#) to overturn AB 5 with respect to app-based transportation providers and delivery drivers.

The initiative, if approved by voters, would establish new criteria for determining whether app-based transportation (rideshare) and delivery drivers are "employees" or "independent contractors" under state law. If approved, the ballot measure would protect the right of app-based drivers to work as independent contractors, as long as they control their own hours and their ability to work when they choose. Companies with independent contractor drivers would be required to provide specified alternative benefits, including minimum compensation and healthcare subsidies based on engaged driving time, as well as vehicle insurance, safety training, and sexual harassment policies. The initiative would also restrict local regulation of app-based drivers.

To put the measure on the ballot in November 2020, supporters are required to collect nearly 625,000 verified signatures by June 30, 2020 (although as a practical matter, proponents seek to collect the requisite number of signatures far in advance of the deadline, to allow for verification and the like). On January 28, 2020, initiative supporters certified to the California Secretary of State that they had collected more than 25% of the required signatures—under California state law, this means the legislature must now schedule joint hearings on the measure no later than 131 days prior to the election.

Most recently, on February 28, 2020, initiative supporters announced that they had collected more than one *million* signatures in support of the measure, suggesting it is almost certain to be put to voters in the fall.



The Shadow of AB 5 Looms Large: Where Next?

California's experience should raise a red flag to employers nationally—it is not only Golden State employers that should be concerned. Efforts around the country to adopt variations of the ABC test for use broadly are already well underway.³ Given the upheaval California's law has brought in short order, lawmakers may wish to think long and hard before forging down this path.

In New Jersey, efforts to [adopt an AB 5](#) test very similar to California's stalled in the state's lame duck legislative session last fall. Legislation has already been introduced by the leader of the New Jersey State Senate to revisit the issue—although, as of this writing, this effort (despite the concerted efforts of organized labor within the Garden State), seems, at least for now, to have slowed (perhaps suggesting that Trenton lawmakers are taking note of what's going on in Sacramento).

Similar legislation to broadly adopt the ABC test has been introduced in the state legislature in neighboring New York. At the same time, Governor Cuomo's recent executive budget proposal for the 2021 fiscal year included proposed legislation to create the Digital Marketplace Worker Classification Task Force, which would be charged with making recommendations to the legislature on how New York might regulate independent contractors in the gig economy in a manner akin to California. Efforts to adopt the ABC test by way of state legislation are also currently pending in [Rhode Island](#), [Pennsylvania](#), and [Washington](#). On March 2, 2020, Minnesota became the latest state to jump into the fray, with legislation adopting the broadest version of the ABC test introduced in its state House of Representatives.

We fully expect these trends, particularly in so-called "trifecta" states, where all branches of government are controlled by Democratic majorities, to continue and spread (including, beyond those discussed above, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Nevada, New Mexico, Oregon, and Virginia).

Nor is this effort confined to statehouses. Organized labor has made the issue of worker misclassification a central priority, for obvious reasons—independent contractors are not able to organize and bargain collectively under federal labor law, while employees can. Unions see potentially millions of reclassified "new" employees—and potential dues-paying members. And as a presidential election nears and candidates court organized labor for its support, we can safely expect more of them to feel pressure to toe labor's line. In fact, federal legislation has passed the U.S. House of Representatives—the so-called "Protecting the Right to Work" or "PRO" Act—that would adopt the ABC test on a nation-wide basis under federal labor law. The PRO Act has become the *de facto* litmus test for Democrats seeking the support of organized labor.

Where Do We Go From Here?

The debate over so-called "worker misclassification" is certain to continue, both as California lawmakers attempt to untangle the knotty web of AB 5, and other states (perhaps) enter the ring—although it is hoped that these states slow their race to the finish, in light of the dramatic uncertainty California's "experiment" has revealed.

As the legal landscape continues to develop, companies facing the potential application of the ABC test to their workforce may wish to proactively (a) identify the number of contractors who potentially would be reclassified under the law; (b) analyze carefully the facts and circumstances of work performed for each position with the ABC test in mind; (c) assess the costs (both direct and indirect) as well as the logistics (scheduling, operational challenges, workflow challenges) of potential reclassification; and (d) where reclassification may not be possible, consider the possibility of limiting in-state activities or exporting work to states with friendlier legal climates. Littler has produced a [detailed report of strategies and analyses](#) such employers may wish to undertake.

Developments related to independent contractors and worker classification, and the larger context of the challenges and opportunities presented by the fast-changing workforce, will surely continue. As federal and state courts and legislatures addresses these issues, Littler's Workplace Policy Institute will continue to keep you apprised.

³ A thorough examination of the development of the ABC test, and its application (in various forms) in other states, was completed earlier this year by the U.S. Chamber of Commerce, and may be found at: <https://www.uschamber.com/report/ready-fire-aim-how-state-regulators-are-threatening-the-gig-economy-and-millions-of-workers>.

APPENDIX A: LEGISLATION TO AMEND OR REPEAL AB 5

The appendix below lists state legislation introduced to amend or repeal AB 5. Note that a number of bills (particularly those which, as introduced, do not make substantive changes to the law) may have been introduced as “placeholders,” which may be substantively amended during the legislative session.

Bill	Summary
ACA-19	Right to Earn a Living Act (Assembly Members Kiley (R), Melendez (R), Fong (R), Gallagher (R); Senators Jones (R), Moorlach (R)). Proposes an amendment to the California State Constitution to effectively repeal AB 5 by requiring use of prior-law <i>Borello</i> test for determining independent contractor status.
AB-1850	Employee classification (Assembly Member Gonzalez (D)). Recodifies the ABC test, and makes non-substantive organizational changes to the statute.
AB-1928	Employment standards: independent contractors and employees (Assembly Members Kiley (R), Melendez (R), Fong (R), Gallagher (R); Senators Jones (R), Moorlach (R)). Repeals AB 5 and adopts prior-law <i>Borello</i> test for determining independent contractor status.
AB-2457	Worker status: independent contractors: pharmacists (Assembly Members Choi (R), Lackey (R)). Provides an exemption from ABC test for pharmacists.
AB-2458	Worker status: independent contractors: physical therapists (Assembly Members Choi (R), Lackey (R)). Provides an exemption from ABC test for physical therapists.
AB-2465	Worker status: independent contractors (Assembly Member Gonzalez (D)). Would reorganize the exemptions for a person licensed as an esthetician, electrologist, manicurist, barber, or cosmetologist; would also require Board of Barbering and Cosmetology, by July 1, 2022, to adopt regulations for the development of a booth renter permit and a biennial fee for a person licensed as an esthetician, licensed electrologist, licensed manicurist, licensed barber, or licensed cosmetologist, for purposes of the ABC test.
AB-2489	Worker status: independent contractors: franchiser and franchisees (Assembly Members Choi (R), Brough (R), Lackey (R), Mathis (R)). Provides that a franchisee shall not be deemed the employee of a franchisor unless the franchisor exerts control over franchisee or its employees beyond that necessary to protect franchisor’s trade and service marks, or to control the quality of products or services.
AB-2497	Worker status: independent contractors: transportation network companies (Assembly Members Bigelow (R); Lackey (R)). Makes non-substantive language changes.
AB-2750	Worker status: independent contractors (Assembly Member Bigelow (R)). Makes non-substantive language changes.
AB-2572	Worker status: independent contractors (Assembly Member Dahle (R)). Provides an exemption from ABC test for timber operators, registered forest professionals, geologists, geophysicists, and land surveyors who meet certain statutory licensing requirements.
AB-2793	Worker status: independent contractors (Assembly Members Mathis (R), Brough (R), Choi (R), Lackey (R), Voepel (R)). Provides an exemption from ABC test for licensed marriage and family therapists.
AB-2794	Worker status: independent contractors (Assembly Members Mathis (R), Brough (R), Choi (R), Lackey (R), Voepel). Would exempt from ABC test health facilities that contract with companies that employ health care providers who provide services to patients at those facilities.
AB-2796	Worker status: independent contractors (Assembly Members Fong (R), Lackey (R)). Would make existing exemption for newspaper distributors and newspaper carriers, scheduled to expire on January 1, 2021, permanent.

AB-2822	Worker status: independent contractors (Assembly Members Waldron (R), Lackey (R)). Would exempt transportation network companies from ABC test.
AB-2823	Worker status: independent contractors (Assembly Members Waldron (R), Lackey (R)). Would exempt individuals holding an active license from the State of California and practicing as a land surveyor, landscape architect, geologist, or geophysicist; includes construction managers or planners.
AB-2979	Assembly Members Brough (R), Choi (R), Gallagher (R), Lackey (R), Mathis (R), Waldron (R); Senators Bates (R), Wilk (R)). Provides exemption from ABC test for court and other certified interpreters and translators.
AB-3136	Worker status: independent contractors (Assembly Members Voepel (R); Brough (R), Choi (R), Gallagher (R), Lackey (R), Mathis (R), Waldron (R); Senator Bates (R)). Provides exemption from ABC test for certified shorthand reporters.
AB-3185	Worker status: independent contractors (Assembly Members Lackey (R), Brough (R), Choi (R), Fong (R), Gallagher (R), Mathis (R), Voepel (R), Waldron (R); Senator Wilk (R)). Provides exemption from ABC test for referees or umpires for an independent youth sports organization.
AB-3281	Worker status: independent contractors (Assembly Members Brough (R), Gallagher (R), Lackey (R), Mathis (R), Voepel (R), Waldron (R); Senator Bates (R)). Amends AB 5's business-to-business exception with respect to contracting businesses and businesses subject to specified tax provisions relating to sole proprietorships or limited partnerships.
SB-806	Worker status: independent contractors (Senators Grove (R); Bates (R), Borgeas (R), Chang (R), Dahle (R), Jones (R), Moorlach (R), Morrell (R), Nielsen (R), Wilk (R)). Amends B-prong of ABC test to provide that a worker may be considered an independent contractor if the person performs work that is outside the usual course of the hiring entity's business, or the work performed is outside the place of business of the hiring entity, or the worker is responsible for the costs of the place of business where the work is performed.
SB-867	Worker status: independent contractors (Senators Bates (R); Borgeas (R), Chang (R), Dahle (R), Grove (R), Jones (R), Moorlach (R), Morrell (R), Nielsen (R), Wilk (R)). Would amend AB 5 to make existing exemption for newspaper distributors or newspaper carriers (currently set to expire on January 1, 2021) permanent.
SB-868	Worker status: independent contractors (Senators Bates (R); Borgeas (R), Chang (R), Dahle (R), Grove (R), Jones (R), Moorlach (R), Morrell (R), Nielsen (R), and Wilk (R)). Would amend AB 5 to eliminate the numerical "cap" on content submission for all freelance journalists (under AB 5, a freelance journalist who submits more than 35 submissions to a single source in a year does not qualify as an independent contractor under the ABC test).
SB-875	Worker status: independent contractors (Senators Grove (R), Jones (R), Bates (R), Borgeas (R), Chang (R), Dahle (R), Moorlach (R), Morrell (R), Nielsen (R), Wilk (R); Assembly Members Gallagher (R), Lackey (R)). Provides exemption from ABC test for interpreters and translators; independent contractor status to be determined under prior-law <i>Borello</i> test.



SB-881	Worker status: independent contractors (Senators Jones (R), Bates (R), Borgeas (R), Chang (R), Dahle (R), Grove (R), Moorlach (R), Morrell (R), Nielsen (R), Wilk (R)). Provides an exemption from ABC test for musicians and music industry professionals.
SB-963	Worker status: independent contractors (Senators Morrell (R), Bates (R), Borgeas (R), Chang (R), Dahle (R), Grove (R), Jones (R), Moorlach (R), Nielsen (R), Wilk (R)). Provides an exemption from the ABC test for referees or umpires for an independent youth sports organization.
SB-965	Worker status: independent contractors (Senator Nielsen (R), Bates (R), Borgeas (R), Chang (R), Dahle (R), Grove (R), Jones (R), Moorlach (R), Morrell (R), Wilk (R)). Exempts from ABC test health facilities that contract with companies that employ health care providers who provide services to patients at those facilities.
SB-966	Worker status: independent contractors (Senators Nielsen (R), Bates (R), Borgeas (R), Chang (R), Dahle (R), Grove (R), Jones (R), Moorlach (R), Morrell (R), Wilk (R)). Exempts licensed pharmacists from the ABC test.
SB-967	Worker status: independent contractors (Senators Borgeas (R), Bates (R), Dahle (R), Grove (R), Jones (R), Moorlach (R), Morrell (R), Nielsen (R), Wilk (R)). Would prohibit franchisees from being deemed employees of a franchisor, and would require that they be considered independent contractors, unless a court of competent jurisdiction determines specified requirements are met.
SB-975	Worker status: independent contractors (Senators Dahle (R), Senators Bates (R), Borgeas (R), Chang (R), Grove (R), Jones (R), Moorlach (R), Morrell (R), Nielsen (R), and Wilk (R)). Would exempt licensed timber operators, registered professional foresters, licensed geologists, geophysicists, land surveyors, contractors, engineers, and pest control operators, when those persons are performing work on forested landscapes, from AB 5 test.
SB-990	Worker status: independent contractors (Senators Moorlach (R), Bates (R), Borgeas (R), Chang (R), Dahle (R), Grove (R), Jones (R), Morrell (R), Nielsen (R), and Wilk (R)). Would exempt transportation network companies from ABC test.
SB-1039	(Senator Galgani (D)). Would set forth legislative findings regarding the intent of the Legislature to develop a modern policy framework that facilitates independent work for those who voluntarily choose it by creating a third classification of workers with basic rights and protections relative to work opportunities, including minimum wage and occupational accident coverage.
SB-1236	Worker status: independent contractors (Senator Stern (D)). Makes non-substantive language changes to AB 5.

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WPI and our business allies work together to define and shape labor and employment policy on the state and national levels. By overturning burdensome labor regulations, successfully advocating for clients embroiled in government investigations and litigation, and positively impacting recent legislative initiatives, WPI continues to be a strong voice for employers and their workplace.

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At Littler, we understand that workplace issues can't wait. With access to more than 1,500 employment attorneys in over 80 offices around the world, our clients don't have to. We aim to go beyond best practices, creating solutions that help clients navigate a complex business world. What's distinct about our approach? With deep experience and resources that are local, everywhere, we are fully focused on your business. With a diverse team of the brightest minds, we foster a culture that celebrates original thinking. And with powerful proprietary technology, we disrupt the status quo — delivering groundbreaking innovation that prepares employers not just for what's happening today, but for what's likely to happen tomorrow. For over 75 years, our firm has harnessed these strengths to offer fresh perspectives on each matter we advise, litigate, mediate, and negotiate. Because at Littler, we're fueled by ingenuity and inspired by you.

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