

# What Is the ABC Test?

## Definition & Examples of the ABC Test

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The ABC test is a guide for employers to determine whether a worker is considered an [independent contractor](#) or an [employee](#) in the eyes of the government. With the rise of the gig economy, the ABC test has become more prominent in business.

Learn more about the ABC test to know your rights as a contractor or your obligations as an employer.

## What Is the ABC Test?

The ABC test is a test employers must pass to classify a worker as an independent contractor in many states and according to the U.S. Department of Labor. Employers are responsible for the correct categorization of workers or could face costly fines.

The designation is important because it determines the payment of Social Security and worker's compensation benefits. Depending on the state where the work is performed, the ABC test may also apply to wage and work hour laws. Some states base the availability of unemployment insurance on the status, while others use the test only in specific industries. Additionally, some states use only parts of the ABC test, while still others use the common law test, which also consists of three parts and is utilized by the IRS.

Be sure to check with your state's employment authorities if you have any questions regarding worker classification.

The IRS and states assume that a worker is an employee unless proven otherwise.

## How the ABC Test Works

The ABC test was codified by Assembly Bill 5 (AB 5) in California in response to the California Supreme Court's April 2018 decision in *Dynamex Operations West, Inc. v. Superior Court*. Subsequently, the state legislature passed AB 2257, which made exemptions for many types of contract workers, and the voters of California approved Proposition 22, which declared drivers and delivery people to be independent contractors.

## **AB 5**

In September 2019, California put into place AB 5, which stated that a worker should be considered an independent contractor only if they met each of these three criteria:

- The worker is free from the control and direction of the hiring entity in connection with the work's performance, both under the contract for the performance of the work and in fact.
- The worker performs work that is outside the usual course of the hiring entity's business.
- The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.<sup>1</sup>

The use of control and direction is a long-standing measurement for independent contractors and is key to the common law test used by the IRS. This test looks at **three factors of control**: behavioral, financial, and relationship type. No one control factor is considered defining; even if a contract exists with the worker, it is not proof of an independent contractor relationship.<sup>2</sup>

The work-outside-the-usual-course-of-business criterion in AB 5's ABC test was a new twist to classification that began with the **gig economy** and ridesharing businesses. For example, even if the driver's control and direction requirement is met, it looks like an Uber driver is doing work that is within the usual course of Uber's business. Uber is about driving people, and Uber drivers drive people. If Uber hired people to handle customer service, those workers might be considered to fall outside of the usual scope of Uber's business.

Workers who have duties outside the core functions of a specific business include the types of jobs that are frequently [outsourced](#), such as maintenance workers, those in financial support roles like payroll and accounting, and IT and call center staffers.

The customary engagement requirement further limits the possibility of workers being considered as independent contractors. The types of workers who would fit into this category would be professionals—particularly licensed ones. They might have their own practices or work for various customers within the scope of their professional duties.

These independent professionals consist of a wide range of occupations, including barbers, massage therapists, certified public accountants, chiropractors, and construction contractors and subcontractors.

## **AB 2257**

In September 2020, California Governor Gavin Newsom signed AB 2257. The legislation's main purpose was to expand the types of workers who were exempt from the ABC test. Under AB 2257, many entertainers, including musicians, comedians, and magicians, and associated professionals, like songwriters, promoters, and publicists, are now considered to be contractors. In addition, those in media-related freelance jobs, such as writers, photographers, copy editors, and cartoonists, are able to take on as many assignments as they want for a certain publication without being classified as an employee; under AB 5, they were limited to 35 a year.<sup>3</sup>

The law also added more job categories to AB 5's list of independent professionals, including media producers, real estate appraisers, foresters, and home inspectors, and allows more flexibility in business-to-business arrangements than AB 5 did. For example, a company may now offer its services directly to customers rather than only to the other company with which it had a contract.<sup>4</sup>

## **Proposition 22**

In November 2020, California voters approved Proposition 22, App-Based Drivers as Contractors and Labor Policies Initiative, which further increased the number of workers

in the state who are not considered to be employees. Specifically, it defined app-based transportation and delivery drivers, such as those who work for DoorDash, Lyft, and Uber, as independent contractors.

The initiative to place Proposition 22 on the ballot was funded by those three companies. The \$203 million campaign to advocate for its passage was paid for by those companies as well as by contributions from InstaCart and Postmates. Various unions contributed to the campaign against Proposition 22, with about \$20 million total spent to advocate for its defeat.<sup>5</sup>

## Do I Need to Perform the ABC Test?

Although several states have adopted the ABC test as law, other states may be using it for only specific situations, like determining unemployment insurance eligibility.

Regardless of how much of the test is applicable in your state, the responsibility falls to the employer and not the worker to check off the boxes. Employers must be able to answer yes to all three qualifications to classify a worker as an independent contractor.

If an employer answered no to any of the questions, then the worker is an employee. As such, they require a [W-2](#), a set work schedule, and the withholding of various taxes from their paychecks.

It's confusing when federal and state laws conflict, and it leaves employers wondering which rules they should follow. In general, employers should adhere to whichever law is most generous to the worker.

If you think your business might need to re-examine the status of some of its workers, start by getting an employment law attorney. You will need to look at your state's current employment laws and have your attorney keep you advised of issues and changes. If you fail to classify a worker correctly, you could face fines and penalties.