

Estimating the Coverage of California’s New AB 5 Law: Supplemental Technical Appendix

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The following tables describe how we assign workers into our three categories using American Community Survey (ACS) data. Table 1 includes the list from AB 5 of independent contractors that *the ABC test will not apply to* and the corresponding occupation or industry categories that we used to identify these workers in our ACS data. Table 2 includes the list from AB 5 of independent contractors that *the ABC test will not apply to unless strict criteria are met* and the corresponding occupation or industry categories that we used to identify these workers in our ACS data. We include all other independent contractors in our “ABC test applies” category.

There are two limitations to this portion of our analysis. First, the occupations in our American Community Survey (ACS) data do not always match the occupations listed in AB 5. When an occupation listed in AB 5 is only a subset of the corresponding occupation category in our ACS data, we likely overstate somewhat the proportion of workers where the ABC test will not apply or the ABC test applies except when strict criteria are met. Second, there are some groups of workers that AB 5 says are exempt from the ABC test that we are unable to identify in our ACS data (see Table 3). In these cases, we are likely underestimating the number of workers who the ABC test will not apply to.

Table 1: ABC test does not apply

Text in AB5	ACS Occupation/Industry Category
A person or organization who is licensed by the Department of Insurance	Insurance Sales Agents
A physician and surgeon, dentist, podiatrist, psychologist, or veterinarian licensed by the State of California	Physicians and Surgeons
	Dentists
	Podiatrists
	Psychologists
An individual who holds an active license from the State of California and is practicing one of the following recognized professions: Lawyer	Veterinarians
	Lawyers, and judges, magistrates, and other judicial workers
	Judicial law clerks, Lawyers, Miscellaneous legal support workers

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Table 1: ABC test does not apply

Text in AB5	ACS Occupation/Industry Category
An individual who holds an active license from the State of California and is practicing one of the following recognized professions: Architect	Architects, Except Naval
An individual who holds an active license from the State of California and is practicing one of the following recognized professions: Engineer	Aerospace Engineers
	Biomedical and agricultural engineers
	Chemical Engineers
	Civil Engineers
	Computer Hardware Engineers
	Electrical and Electronics Engineers
	Environmental Engineers
	Industrial Engineers, including Health and Safety
	Marine Engineers and Naval Architects
	Materials Engineers
	Mechanical Engineers
	Petroleum, mining and geological engineers, including mining safety engineers
	Miscellaneous engineers including nuclear engineers
Architectural and engineering managers	
An individual who holds an active license from the State of California and is practicing one of the following recognized professions: Private Investigator	Private Detectives and Investigators
An individual who holds an active license from the State of California and is practicing one of the following recognized professions: Accountant	Accountants and auditors
A securities broker-dealer or investment adviser or their agents and representatives that are registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or licensed by the State of California	Personal Financial Advisors
	Securities, Commodities, and Financial Services Sales Agents
A commercial fisherman working on an American vessel (other conditions apply)	Fishing and hunting workers
Real estate licensee	Real Estate Brokers and Sales Agents

Table 2: ABC test applies except when strict criteria are met

Text in AB5	ACS Occupation/Industry Category
<p>A direct sales salesperson as described in Section 650 of the Unemployment Insurance Code, so long as the conditions for exclusion from employment under that section are met.</p>	Sales Representatives, Services, All Other
	Sales Representatives, Wholesale and Manufacturing
	Models, Demonstrators, and Product Promoters
	Marketing and sales managers
	Door-to-Door Sales Workers, News and Street Vendors, and Related Workers
<p>the relationship between a contractor and an individual performing work pursuant to a subcontract in the construction industry</p>	Construction Industry
<p>subcontractor providing construction trucking services for which a contractor’s license is not required provided that 1) subcontractor is a business entity (sole proprietorship, LLC, etc), 2) registered with Dept of Industrial Relations as a public works contractor, 3) utilizes its own employees to perform the construction trucking services, 4) negotiates and contracts with, and is compensated directly by the licensed contractor</p>	Construction Industry
<p>“Professional Services”: <u>Marketing</u>, provided that the contracted work is original and creative in character and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the contracted work.</p>	Marketing and sales managers
	Market research analysts and marketing specialists
<p>“Professional Services”: <u>Administrator of human resources</u>, provided that the contracted work is predominantly intellectual and varied in character and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.</p>	Human resource workers
	Compensation, benefits, and job analysis specialists
	Training and development specialists
<p>“Professional Services”: <u>Travel agent</u> services (conditions apply)</p>	Travel Agent
<p>“Professional Services”: Graphic Design</p>	Designers
<p>“Professional Services”: Grant writer</p>	Fundraisers
<p>“Professional Services”: Fine artist</p>	Artists and Related Workers
<p>“Professional Services”: an enrolled agent who is licensed by the United States Department of the Treasury to practice before the Internal Revenue Service</p>	Tax examiners and collectors, and revenue agents
	Tax preparers

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Table 2: ABC test applies except when strict criteria are met

Text in AB5	ACS Occupation/Industry Category
"Professional Services": Services provided by a still photographer or photojournalist who does not license content submissions to the putative employer more than 35 times per year	Photographers
"Professional Services": Services provided by a freelance writer, editor, or newspaper cartoonist who does not provide content submissions to the putative employer more than 35 times per year	Editors
	Technical Writers
	Writers and Authors
"Professional Services": Licensed esthetician, licensed electrologist, licensed manicurist, licensed barber, or licensed cosmetologist provided that the individual: (I) sets their own rates, processes their own payments, and is paid directly by clients, (II) Sets their own hours of work and has sole discretion to decide the number of clients and which clients for whom they will provide services, (III) Has their own book of business and schedules their own appointments, (IV) Maintains their own business license for the services offered to clients, (V) If the individual is performing services at the location of the hiring entity, then the individual issues a Form 1099 to the salon or business owner from which they rent their business space. (VI) This subdivision shall become inoperative, with respect to licensed manicurists, on January 1, 2022.	Barbers
	Hairdressers, Hairstylists, and Cosmetologists
	Miscellaneous Personal Appearance Workers

Table 3: Additional groups of workers exempted from the ABC test that we were unable to identify in ACS data

Payment processing agent through an independent sales organization
Repossession agencies
A bona fide business-to-business contracting relationship
Referral agency... a business that connects clients with service providers that provide graphic design, photography, tutoring, event planning, minor home repair, moving, home cleaning, errands, furniture assembly, animal services, dog walking, dog grooming, web design, picture hanging, pool cleaning, or yard cleanup.
Motor club holding certificate of authority