

Governor Signs Law Creating “Bona Fide Business-to-Business Contracting” Exemption to AB 5 for Public Agencies

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ATTORNEYS

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Governor Newsom has signed **AB 2257**, creating exemptions to the “ABC test” for independent contractor status codified by AB 5. Since AB 5 went into effect on January 1, 2020, the ABC test has been used to determine whether a worker is an employee or independent contractor under the Labor Code and Unemployment Insurance Code. AB 2257 loosens the definition of an independent contractor somewhat, making the ABC test no longer applicable to certain “bona fide business-to-business contracting relationships” for public agencies. Instead, the determination of employment status under those contracting relationships will once again be governed by the more flexible, multifactor “*Borello*” test.

Under AB 2257, whether a business service provider (including a sole proprietor) contracting with a public agency is an employee or independent contractor is determined by the *Borello* test if 12 enumerated conditions are met. Those conditions include the business service provider’s use of its own tools and equipment; availability to contract with other clients; maintenance of a separate business location; and ability to negotiate its own hours, rates, and location of work. Additionally, to avoid analysis under the rigid ABC test, the business service provider must provide services directly to the public agency and not to its customers, unless such services are provided solely under the business’s name, and the business is regularly contracting with other entities.

AB 2257 does not free public agency contracts from all scrutiny with regard to the determination of independent contractor status. Contracts with individuals who are not business entities, as well as any contracts that do not meet all of the conditions for a “bona fide business-to-business” agreement, as set forth in Labor Code section 2776, remain subject to the ABC test. Additionally, any contracts exempted from the ABC test must still meet the *Borello* standard to avoid the creation of an employer-employee relationship.

AB 2257 takes effect immediately.

If you have any questions about AB 2257 or any other workplace issues, please contact **Rebecca Green** or any other member of our **Labor and Employment Department**.