CALIFORNIA LEGISLATURE—2019–2020 REGULAR SESSION

ASSEMBLY BILL No. 1850

Introduced by Assembly Member Gonzalez

January 06, 2020

An act to repeal and add Section 2750.3 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1850, as amended, Gonzalez. Employee classification: sole proprietorships. Employment relationship: Worker classification: employee and independent contractor.

Existing law requires a hiring entity, commonly known as the "hiring entity," to determine if workers are employees or independent contractors to protect the California Labor Code, the California Workers' Compensation Code, and the wage orders of the Industrial Welfare Commission. Under the ABC test, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business. Existing law changes the ABC test for purposes of certain laws, including worker classification.

Existing law exempts specified occupations and business relationships from the application of the ABC test described above. Existing law, instead, provides that these relationships are governed by the multifactor test commonly referred to as the "Borello test," as set forth in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341.

Existing exemptions include a bona fide business-to-business contracting relationship, as defined, under the specified conditions. Under existing law, the business-to-business contracting relationship does not apply to an individual worker, as opposed to a business, who performs services for a contracting business.

This bill would delete that individual worker provision.

Existing exemptions include the relationship between referral agency and a service provider, as defined, under the specified conditions. If a business entity formed as a sole proprietor, partnership, limited liability company, limited liability partnership, or corporation ("service provider") provides services to clients through a referral agency, the service provider is presumed to demonstrate that control and direction of the performance of the work for the client is performed in accordance with the requirements of the contract, requires the service provider to have a business license or business tax registration, the service provider has the required business license or business tax registration, and the service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.

This bill would add the criteria to be satisfied in order for a service provider to be deemed to exercise control and direction over the performance of the work, including that the service provider work a minimum of one time per calendar year. The bill would delete that individual worker provision.

The referral agency exemption applies if a service provider has the ability to set its own rates, offer services to other business entities, and provide invoices, including taxes.

This bill would revise the definition of "referral agency" to include a business that connects clients with service providers such as those listed in the definition. The bill would revise the definition of "service provider" to include a business that connects clients with service providers such as those listed in the definition.

Existing exemptions include persons providing professional services under specified circumstances, including services provided by grid photographers, photojournalists, freelance writers, editors, and newspaper contributors when the services are provided under specified conditions, including that the person provides professional services for a contracting business.

This bill would additionally exempt professional services of a specialized performer hired by a performing arts company or organization to teach a master class, as defined, for no more than two years, and the specified conditions.

This bill would delete the existing professional services exemptions for services provided by still photographers, photojournalists, freelance writers, editors, and newspaper contributors. The bill would, instead, provide an exemption for a professional services contract for a still photographer, videographer, or photo editor, as defined, who works under a contract that specifies certain terms in advance, as long as the individual providing the services is not replacing an employee performing the same work at the same location, the individual does not primarily perform the work at the hiring entity's business location, and the individual is not restricted from working for more than one hiring entity. The bill would also provide an exemption for services provided by a freelance writer, contributor, or newspaper columnist who works under a contract that specifies in advance the rate of compensation, that specifies that the individual is free to perform the services without direction or control, that specifies that the individual is free to perform the services at his or her own discretion, that specifies that the individual is not required to work a minimum number of days, and that specifies that the individual is not restricted from working for more than one hiring entity. This bill would also provide an exemption for services provided by a freelance writer, contributor, or newspaper columnist who works under a contract that specifies in advance the rate of compensation, that specifies that the individual is free to perform the services without direction or control, that specifies that the individual is free to perform the services at his or her own discretion, that specifies that the individual is not required to work a minimum number of days, and that specifies that the individual is not restricted from working for more than one hiring entity.

Existing law requires specified occupations and business relationships, including service providing professional services under specified circumstances, including contracting with a business to provide services through a referral agency, to be governed by the multifactor test previously adopted in the case of S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341 (Borello).

This bill would replace the aforementioned bill and related exempt still photographer, photojournalist, freelance writer, editor, and newspaper contributors from the Borello test with a provision that would, instead, provide that a still photographer, photojournalist, freelance writer, editor, and newspaper contributors from the Borello test with a provision that would, instead, provide that these exempt relationships are governed by the multifactor test previously adopted in the case of S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341.

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