

---

## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anna Caballero, Chair  
2025 - 2026 Regular Session

---

**AB 1514 (Committee on Labor and Employment) - Worker classification: employees and independent contractors: licensed manicurists: commercial fishers**

**Version:** July 2, 2025

**Urgency:** No

**Hearing Date:** August 18, 2025

**Policy Vote:** L., P.E. & R. 5 - 0

**Mandate:** No

**Consultant:** Robert Ingenito

**Bill Summary:** AB 1514 would (1) extend the exemption for commercial fishers in American vessels from the ABC test under Dynamex (AB 5, 2019) until January 1, 2031 and instead apply the Borello test, (2) reapply and extend, to January 1, 2029, a previously expired AB 5 exemption for licensed manicurists meeting specified criteria, and (3) require the Employment Development Department (EDD) and the Division of Labor Standards Enforcement (DLSE) to submit specified information to the Legislature regarding claims filed by licensed manicurists, as specified.

### **Fiscal Impact:**

- Administrative costs to the Department of Industrial Relations (DIR) have yet to be determined, but could exceed \$150,000 annually (Labor Enforcement and Compliance Fund).
- The Franchise Tax Board (FTB) indicates that this bill would not change the way income or franchise tax is calculated under current law. However, it could change income and expense amounts report to FTB, which would have an unknown impact on General Fund revenues (see Staff Comments).
- EDD would incur minor and absorbable costs to implement its provisions of the bill.

**Background:** New business models and communications technologies have led many workers to supply their labor outside of the traditional employment relationship in recent years. An incentive exists for employers to misclassify their employees as independent contractors and illegally avoid paying the cost of benefits. Misclassified employees often are denied access to critical benefits and protections they are entitled to by law, such as the minimum wage, overtime compensation, family and medical leave, unemployment insurance, and safe workplaces. Employee misclassification generates substantial losses to the federal government and state governments in the form of lower tax revenues, as well as to state unemployment insurance and workers' compensation funds. Thus, the misclassification of employees represents a cost-shift from an employer to the employee and state taxpayers. Empirical evidence suggests the use of independent contractors has become more pervasive; one study concluded that the number of workers classified as independent contractors rose 30 percent during the years 2005 to 2015.

With respect to classification of employees, the primary court precedent was less than precise on who was an independent contractor and who was not. Specifically, in *S. G. Borello & Sons, Inc. v Dept. of Industrial Relations* (1989) 48 Cal.3d 341, the California Supreme Court created an 11 point “economic realities” test on whether someone could lawfully be considered an independent contractor. Outside of particularly clear-cut instances, this made determining who was or was not an independent contractor complicated, expensive, and prone to litigation, resulting in considerable frustration for both worker and employer stakeholders.

In early 2019, the California Supreme Court revisited the independent contractor issue in *Dynamex Operations West v. Superior Court* (2018), and concluded that certain package delivery drivers were misclassified as independent contractors rather than employees under a California wage order specific to the transportation industry. Thus, under *Dynamex*, the test for whether a worker is an independent contractor or an employee is greatly simplified to a three-prong test: (A) the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact, (B) the worker performs work that is outside the usual course of the hiring entity’s business, and (C) the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity. In 2019,

AB 5 (Gonzalez, 2019) codified the *Dynamex* decision requiring that employers prove that their workers can meet the ABC test in order to be lawfully classified as independent contractors, and exempted from the test certain professions and business-to-business relationships. AB 5 also provided specified industrial categories where the long-standing *Borello* test would remain the standard for determining who is an employee. Under *Borello*, in *S. G. Borello & Sons, Inc. v Dept. of Industrial Relations* (1989) 48 Cal.3d 341, the California Supreme Court created an 11 point “economic realities” test on whether someone could lawfully be considered an independent contractor.

Also in 2019, AB 170 (Gonzalez, Chapter 415, Statutes of 2019) provided newspaper distributors an exemption from the ABC test under *Dynamex* and specified that instead, the determination of employee or independent contractor status would be governed by *Borello*. The exemption was set to sunset January 1, 2021. In 2020, AB 323 (Rubio, Chapter 341, Statutes of 2020), among other things, extended the sunset date on the newspaper distributors exemption from January 1, 2021, to January 1, 2022.

Also in 2020, AB 2257 (Gonzalez, Chapter 38, Statutes of 2020) recast and clarified the business-to-business referral agency, and professional services exemption to the 3-part ABC test and exempted additional occupations and business relationships including licensed manicurists (with a sunset date of January 1, 2022) and a commercial fisher working on an American vessel (with a sunset date of January 1, 2023 and a required report on the use of Unemployment Insurance in the commercial fishing industry).

Since then, several bills have been enacted extending the sunset dates on some of the AB 5 exemption provisions that had been part of the AB 5 negotiations. For licensed manicurists, the exemption was extended again in 2021 through AB 1561 (Committee on Labor and Employment, 2021) from January 1, 2022 to January 1, 2025. For

commercial fisheries, in 2022 AB 2955 (Committee on Labor and Employment, 2022) extended the exemption from January 1, 2023 to January 1, 2026.

According to the March 1, 2024 report by EDD on the use of the unemployment insurance (UI) system by commercial fishermen, per existing law, from January 1 2023 – December 31, 2023: (1) the number who applied for UI benefits: 284 (down from 441 in 2020), (2) the number of claims disputed: 2 (down from 7 in 2020), (3) the number of claims denied: 1 (up from 0 in 2020), (4) the number who received UI benefits: 238 (down from 391 in 2020), and (5) the total amount of UI benefits paid: \$1,763,160 (down from \$5,613,933.50 in 2020)

**Proposed Law:** This bill would do the following:

- Extend from January 1, 2026 to January 1, 2031, the sunset date on the exemption from the application of the ABC test for commercial fishers working on an American vessel.
- Additionally extend the requirement that EDD issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry, including the total number of commercial fishers that are applying for, and receiving, UI benefits.
- Reapply and extend, until January 1, 2029, the exemption from the application of the ABC test for licensed manicurists meeting the specified conditions.
- Require EDD and DLSE to report to the Legislature by June 1, 2026, the annual number of claims filed by licensed manicurists against business or establishment owners since January 1, 2020, involving allegations of misclassification or other violations of the Labor Code, including the number of investigations undertaken, the number of workers impacted, and the number and outcomes of enforcement actions initiated, per business or establishment owner.

**Related Legislation:**

- AB 224 (Rubio, Chapter 298, Statutes of 2024) extended the exemption for newspaper distributors and carriers from the ABC test under Dynamex (AB 5) until January 1, 2030 and instead applied the Borello test, and required newspaper distributors and carriers to submit specified information to the Labor Workforce and Development Agency.
- AB 2955 (Committee on Labor and Employment, Chapter 443, Statutes of 2022) extended from January 1, 2023, to January 1, 2026, the sunset date on the exemption from the application of the ABC test for commercial fishers working on an American vessel.
- AB 1561 (Committee on Labor and Employment, Chapter 422, Statutes of 2021) extended from January 1, 2022 to January 1, 2025, the sunset date on the exemption from the application of the ABC test for licensed manicurists and construction trucking subcontractors. This bill also clarified the scope of the exemption previously granted to a data aggregator and a research subject who

willingly engages with a data aggregator to provide individualized feedback, as specified, and clarified that the exemption previously granted to occupations in the insurance industry also extends to an individual providing claims adjusting or third party administration work.

- AB 1506 (Kalra, Chapter 328, Statutes of 2021) extended for three years an existing exemption for newspaper distributors and carriers from the ABC Test and required them to submit specified information to the LWDA on the number of carriers for which the publisher or distributor paid and did not pay payroll taxes for, as well as the wage rates and information to demonstrate compliance of their carriers with the Borello test.
- AB 2257 (Gonzalez, Chapter 38, Statutes of 2020) recast and clarified the business-to-business referral agency, and professional services exemption from the ABC test for employment status and exempted additional occupations and business relationships.
- AB 323 (Rubio, Chapter 341, Statutes of 2020) extended an existing exemption for newspaper distributors and carriers from the ABC test from January 1, 2021 to January 1, 2022, and required an assessment of the effectiveness of contracts to conduct outreach and marketing to specified communities.
- AB 170 (Gonzalez, Chapter 415, Statutes of 2019) provided an exemption for newspaper distributors and carriers from the ABC test, as specified, until January 1, 2021.
- AB 5 (Gonzalez, Chapter 296, Statutes of 2019) codified the decision of the California Supreme Court in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) requiring that employers prove that their workers can meet a 3 part (ABC) test in order to be lawfully classified as independent contractors, and exempted from the test certain professions and business-to-business relationships.

**Staff Comments:** As noted above, this bill could result in some workers who are currently treated as employees being reclassified as independent contractors. FTB notes that such as reclassification would shift responsibility for a number of business-related expenses from businesses to the workers. According to FTB, an increase of qualified business expenses to the workers would likely decrease their tax liability, while the decrease in expenses to businesses would increase their tax liability. The net effect of these changes would depend on (1) the marginal tax rates of the businesses involved, and (2) any changes that may take place in compensation levels or related business expenses. The net effect of all these changes on tax liability, and resulting revenues to the General Fund, is unknown.

-- END --