



AB 5 Citations and Further Research

- Before *Dynamex*:
 - Common Law / IRS:
<https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>
 - Department of Labor:
https://www.dol.gov/whd/opinion/FLSA/2019/2019_04_29_06_FLSA.pdf
 - Borello Test:
<https://scocal.stanford.edu/opinion/s-g-borello-sons-inc-v-department-industrial-relations-30880>
- *Dynamex Operations v. Superior Court* (2018):
 - <https://scocal.stanford.edu/opinion/dynamex-operations-west-inc-v-superior-court-34584>
 - “New California AB 5 Law Expands Independent Contractor ABC Test.” September 19, 2019.
<https://www.dwt.com/blogs/employment-labor-and-benefits/2019/09/california-ab5-employment-law>
- AB 5 Law: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB5
- Workers as Employees:
 - Can’t write off unreimbursed business expenses: <https://www.irs.gov/instructions/i2106>
 - Works Made for Hire/How to Protect your IP:
 - Labor Code:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=L§ionNum=3351.5
 - Matthew Swanlund, Work Made for Hiring, L.A. Lawyer, March 2016:
<https://www.lacba.org/docs/default-source/lal-magazine/2016-test-articles/march2016testarticle.pdf>
 - Works Made for Hire: <https://www.copyright.gov/circs/circo9.pdf>
 - Licensing your ideas: Richard Stim, PROFIT FROM YOUR IDEA 261 (NOLO 6TH ED. 2008).
 - Get wage and hour laws protection (minimum wage, overtime, meal and rest breaks) <https://www.workplacefairness.org/wage-hour-claim-CA>
 - Mandatory Benefits =
 - Worker’s Compensation:
https://www.edd.ca.gov/disability/Employer_Workers_Compensation.htm;
 - SDI: <https://legalaidatwork.org/factsheet/state-disability-insurance-sdi/>;
 - State Unemployment:
<https://legalaidatwork.org/factsheet/lost-your-job-your-rights-and-benefits/>;
 - Paid Sick Leave CA: https://www.dir.ca.gov/dlse/paid_sick_leave.htm;
 - FMLA: “The FMLA is a federal law that provides job-protected, unpaid leave



AB 5 Citations and Further Research

from work for certain family and serious medical reasons.”

<https://www.dol.gov/sites/dolgov/files/OASP/legacy/files/PaidLeaveFinalRuleComparison.pdf>

- Employer-reimbursable expenses: https://www.edd.ca.gov/pdf_pub_ctr/de202.pdf
- Workers as Independent Contractors
 - See the Text of AB5 for Exemptions
 - Even if exempt from AB5, *Borello* test still applies: <https://socal.stanford.edu/opinion/s-g-borello-sons-inc-v-department-industrial-relations-30880>
- What Changes for Hiring Entities / Organizations
 - The Fair Labor Standards Act (FLSA) = <https://www.dol.gov/whd/regs/compliance/wh1282.pdf>
 - The Americans with Disabilities Act = https://www.ada.gov/ada_title_I.htm
 - The Civil Rights Act = <https://www.eeoc.gov/laws/statutes/titlevii.cfm>
 - Fair Employment and Housing Act (FEHA) = <https://www.dfeh.ca.gov/employment/>
 - CROWN Act = <https://www.thecrownact.com/> ; https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB188
 - SB 1343 = https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1343
 - California Fair Chance Act = <https://www.dfeh.ca.gov/resources/frequently-asked-questions/criminalhistoryinfoemploymentfaqs/>
 - Payroll withholdings: https://www.edd.ca.gov/pdf_pub_ctr/de202.pdf
- How to avoid hiring more employees
 - Independent Contractors only within exemptions: see text of AB5 for exemptions
 - Business-to-Business exemption only with all requirements: see text of AB5.
 - Professional employer organizations: <https://www.napeo.org/what-is-a-peo/selecting-a-peo/faqs>
- Penalties for misclassification
 - CA Labor Commissioner, part of the Division of Labor Standards Enforcement (“DLSE”), under the larger umbrella of Dept. of Industrial Relations (“DIR”) <https://www.dir.ca.gov/dlse/HowToFileWageClaim.htm>
 - DIR/EDD may audit business sector if they observe/anticipate violations https://www.edd.ca.gov/pdf_pub_ctr/de231ta.pdf
 - Retaliation <https://www.dir.ca.gov/dlse/dlseRetaliation.html>
- California Lawyers for the Arts: <https://www.calawyersforthearts.org/>