

It's NOT as Easy as A-B-C!

Can California Businesses Still 'Depend' on Independent Contractors Post AB 5?

December 5, 2019



Compliance **HR**

Littler®

This presentation is for educational purposes only. TriNet provides its clients with HR and best practices guidance. TriNet does not provide legal, tax, or accounting advice.



Lori Brown

CEO, ComplianceHR

brown@compliancehr.com

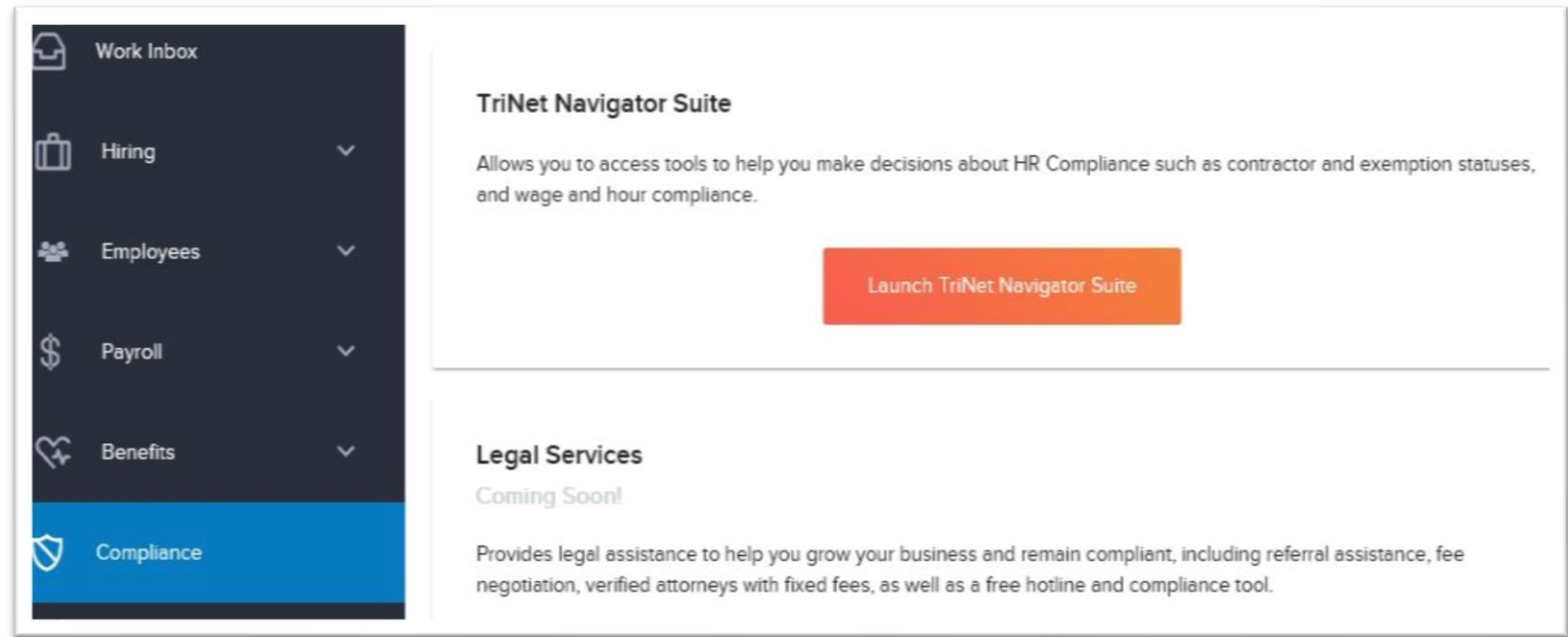
 [@labrown1419](https://twitter.com/labrown1419)

- Former Littler Shareholder
- Former General Counsel / HR Chief of Global Security Organization

Follow Us on Twitter: [@Compliance_HR](https://twitter.com/Compliance_HR)

Accessing Navigator Suite

- Under the Admin View, the TriNet Navigator Suite can be found under the “Compliance” link on the TriNet platform (login.trinet.com)
- Must have the HR Authorizer role in the TriNet platform to use Navigator Suite



Accessing Navigator Suite

Navigator IC



Independent Contractor Assessment

Delivers an actionable risk assessment, a report on how to lower the risk of misclassification, and a summary of applicable laws

[+ Create New Evaluation](#)

[🔍 View Evaluations](#)

[▶ IC Agreement](#)

Navigator OT



Exempt Status Assessment

Provides a risk assessment of each applicable exemption, suggestions on how to lower the risk of misclassification, and a summary of the federal and state exemption standards

[+ Create New Review](#)

[🔍 View Reviews](#)

[🔍 View Evaluations](#)

Navigator Pay Practices



Wage and Hour Compliance

Delivers comprehensive reports on a federal and state-by-state basis for the most common wage and hour issues

[▶ Find Minimum Wage](#)

[▶ Use Rapid Reference](#)

Navigator Onboarding



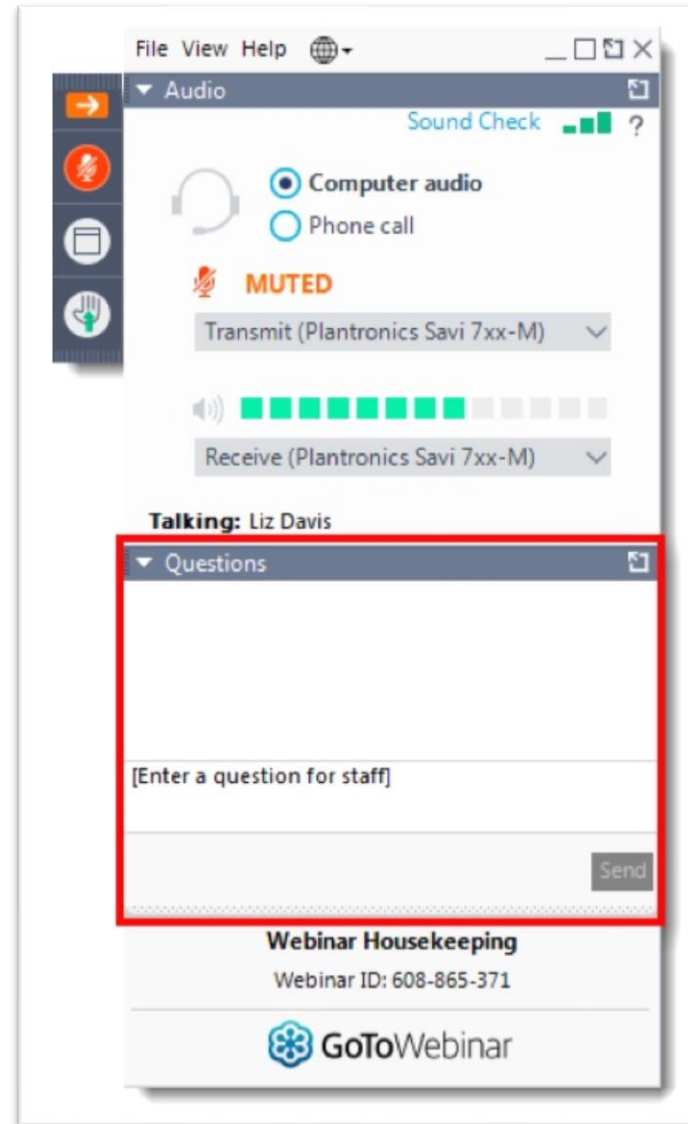
Onboarding Document Production

Produces state and federal compliant employment applications, offer letters, and employee non-disclosure documents

[+ Create New Document](#)

Answering Your Questions

Please submit your questions via the text questions pane:



What You'll Receive:

1. Full slide presentation (pdf format)
2. Link to recorded audio presentation



Agenda

1. The ABC Test as unveiled in *Dynamex*
2. AB 5 – ABC Test and Exceptions
3. A Critique of AB 5
4. Possible Legal Challenges
5. Options For California Businesses
6. Navigator IC Can Help



Bruce Sarchet

Littler Shareholder

Sacramento, CA

bsarchet@littler.com

- Has focused his entire legal career on the representation of management in labor and employment law matters
- Represents businesses of all sizes across CA in a variety of industries, including food and beverage, healthcare, transportation, technology, and construction
- Various leadership roles within Littler

The Question For Today's Webinar:

*Is This Worker An
Employee Or A Contractor?*



Where Do We Find the Answer?

- AB 5.
- In California, to find out if a worker is a contractor or an employee, use the ABC test.



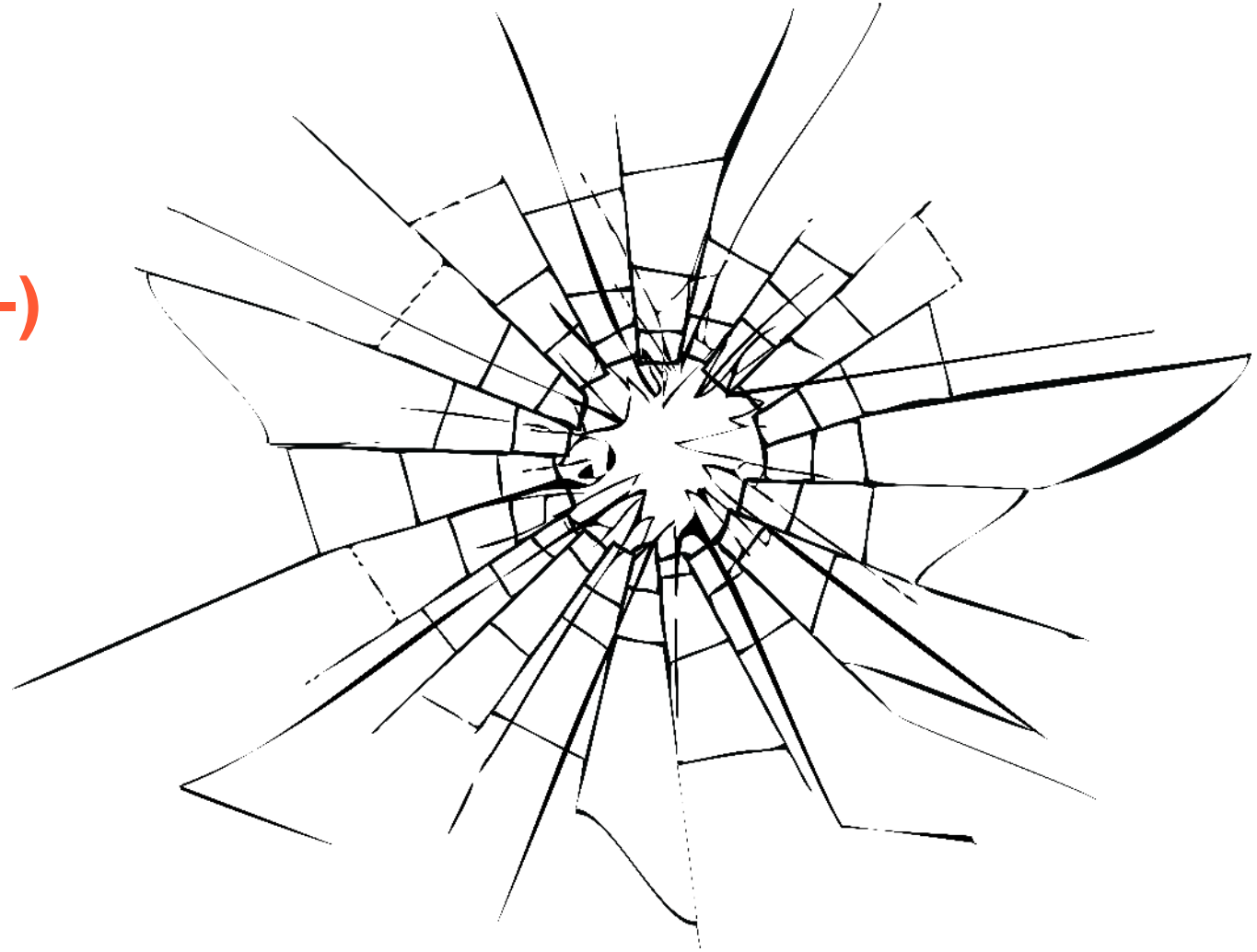
Got it, Bruce. Anything Else?

This is probably **the most important labor/employment law for this generation**, if not several generations.



Impact of AB 5

- On January 1, 2020, approximately 2 million (+/-) “independent contractors” in California will be considered employees under state law.
- As “employees,” the state’s (and city) workplace laws and regulations will apply to these workers.



Impact of AB 5

- Potential for misclassification claims:

Failure to
provide wage
statements

Failure to pay
overtime

Failure to
provide meal
and rest breaks

Waiting time
penalties

Reimbursement
of expenses

PAGA penalties

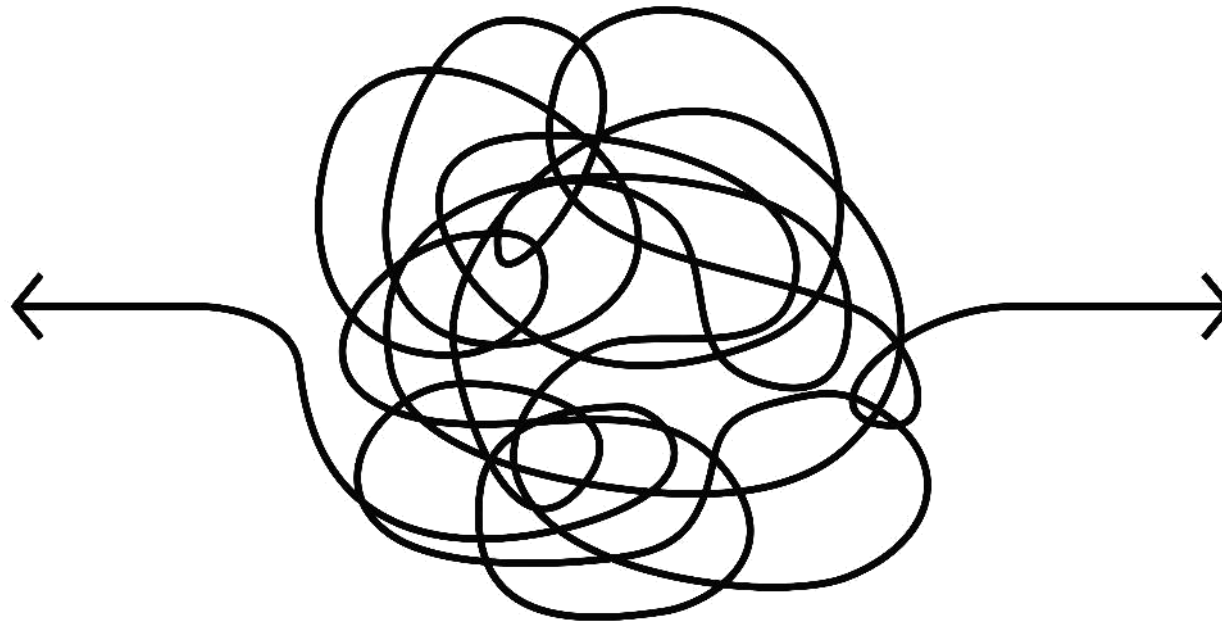
Poll Question



**Has your business
previously received a
wage and hour compliant
from an employee or
independent contractor?**

Impact of AB 5

Businesses now face very difficult choices; the options for moving forward are limited, and not appealing.



Littler Workplace Policy Institute's Response



Littler's WPI has formed a Task Force of 25 employment law attorneys.

- Have tracked AB 5 since its inception.
- Issued several publications, including our 40 page Task Force Report, issued on August 8, 2019.
- Task Force Report delivered to each legislator in California, and the Governor.
- Remain ready to assist California businesses as they grapple with the brave new world in the Golden State and beyond.

The ABC Test in California *Today*

How did we get here?



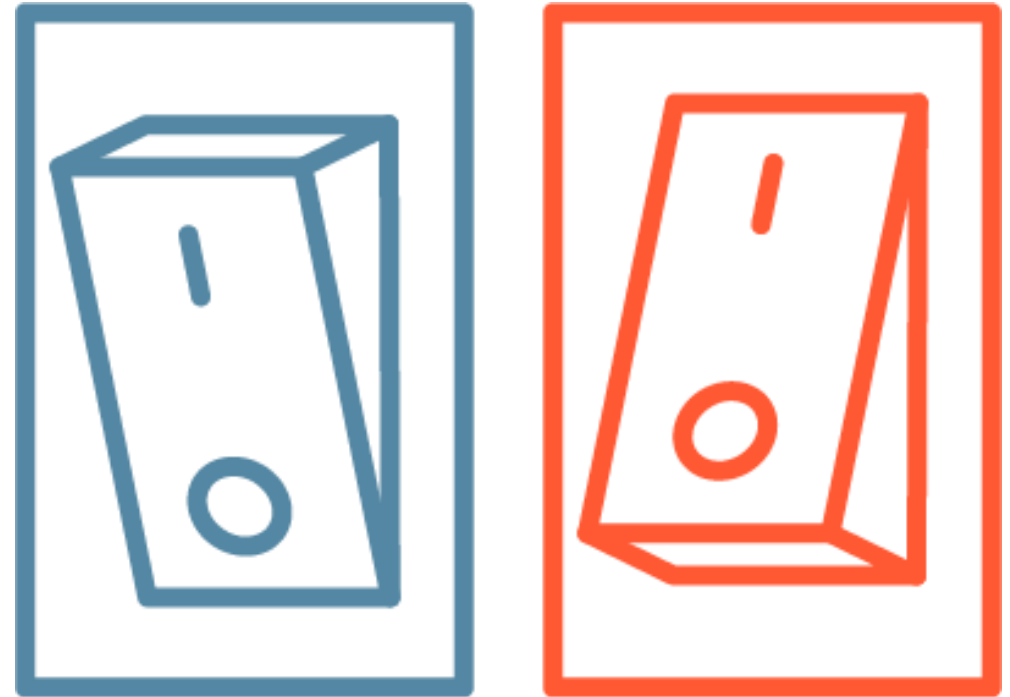
At the Delivery Company in California

- Drivers pick up stuff from retail stores.
- They deliver it to homes and offices.



Status Change

- In 2004, they are changed from “employees” to “independent contractors.”



Contractors

Provide their own vehicles.

Pay their own insurance.

Set their own schedules.

Can hire others to deliver on their behalf.

Can work for competitors.

One Day in 2005

- A driver signs a contract.
- He drives for a total of 15 days.
- He stops driving.



Off to Court!

- **Driver:** “I should be an employee.”
- **Company:** “No, you are a contractor.”



14 Years Later...

California Supreme Court adopts
the **A-B-C** test.

Dynamex Operations West v. Sup. Ct.

4 Cal. 5th 903 (2018)



A-B-C

The business has the burden of proof, and must show:

- A. Worker is free from control
- B. Worker performs work outside the usual course of hiring entity's business
- C. Worker is engaged in an independently established trade, occupation, or business



“A” Prong



- Right of control, not just the exercise of control.
- Essentially the same as the “control” factor under *Borello*.

“B” Prong

- Some ABC tests have two parts to the B prong:
 - (1) Outside the usual course of the business of the hiring entity
 - OR
 - (2) Outside all the *places of business* of the hiring entity
- California adopted (1) only



“Business” Defined In *Dynamex*

The “B” prong addresses “workers whose roles are most clearly comparable to those of employees.”



Outside plumbers and electricians = **contractors**



At-home seamstress for a dress shop, or cake decorators for a bakery = **employees**

Analysis “B” Prong

- Defining “business” is a challenge.
- For example, what if the at-home seamstress works for 12 different companies, and markets herself as an independent seamstress?



Analysis “B” Prong

- Or, what if a chain of retail stores has in-house maintenance staff who travel from store to store performing plumbing and electrical repairs. But then, the store calls “Joe’s Plumbing Service” which sends out a truck to do some work at one of the stores?



“C” Prong

- Was the individual self-employed before performing services?
 - Business license
 - Advertisements
 - Offering services to a number of customers



Analysis - “C” Prong



- Appears that the independent business must have been established first, before the engagement with the other party was entered into.
- But what if the work being done has never been done before, it is brand new?

The Business Communities Response



- You can't be serious!
- Wait a minute, Cal. Supreme Court!
- You are legislating! This is the job of the legislature, not the courts!

The California Legislature Responds



- We agree!
- Legislating **IS** the job of the legislature!
- AB 5 – codifies the rule of *Dynamex* in the California Labor Code.



AB 5: THE ABC TEST, EXCEPT...

AB 5

A three-part legislative “fix” to *Dynamex*



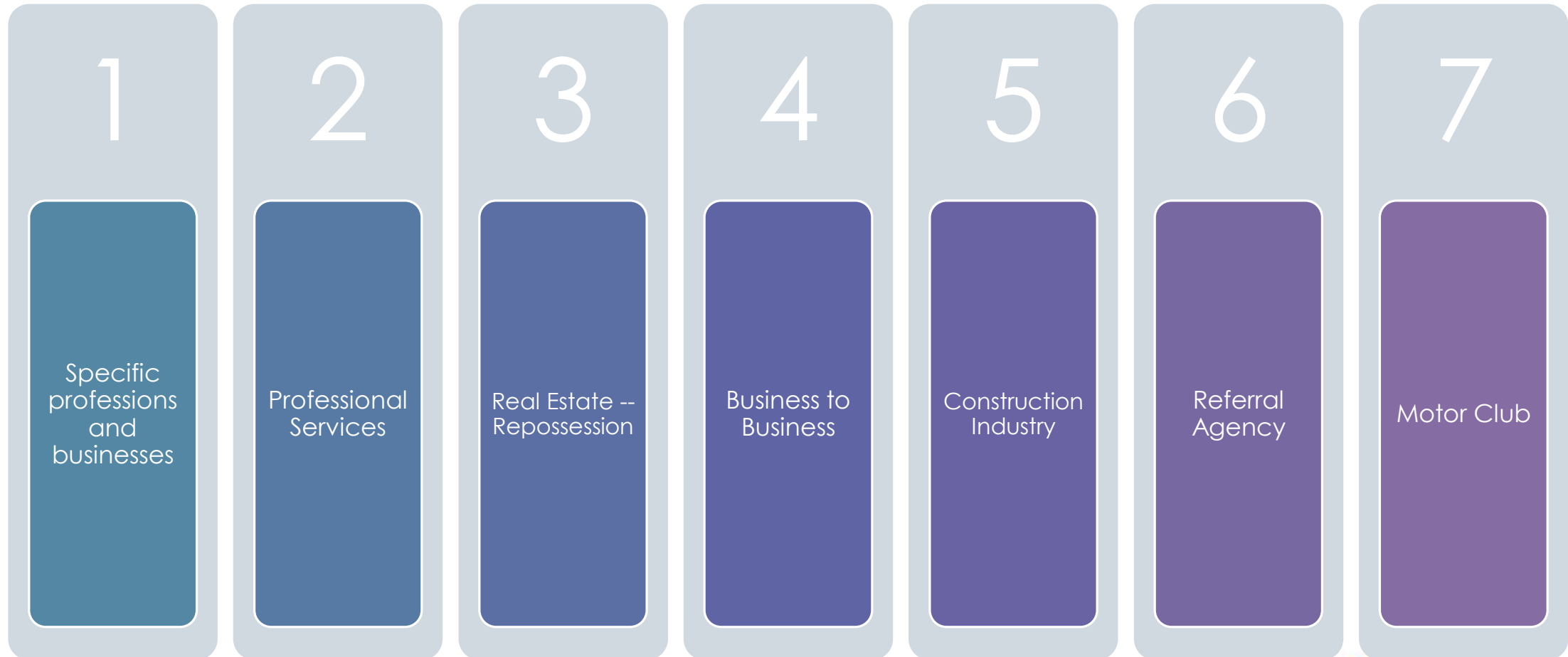
More than Just the Wage Orders

- Under AB 5, the ABC test applies to determine whether a worker is an employee or a contractor for purposes of:
 - Labor Code
 - Unemployment Insurance Code
 - California Wage Orders
 - Workers' Compensation (but not until 7-1-20)



EXCEPT...

AB 5 – Seven Categories Of Exceptions



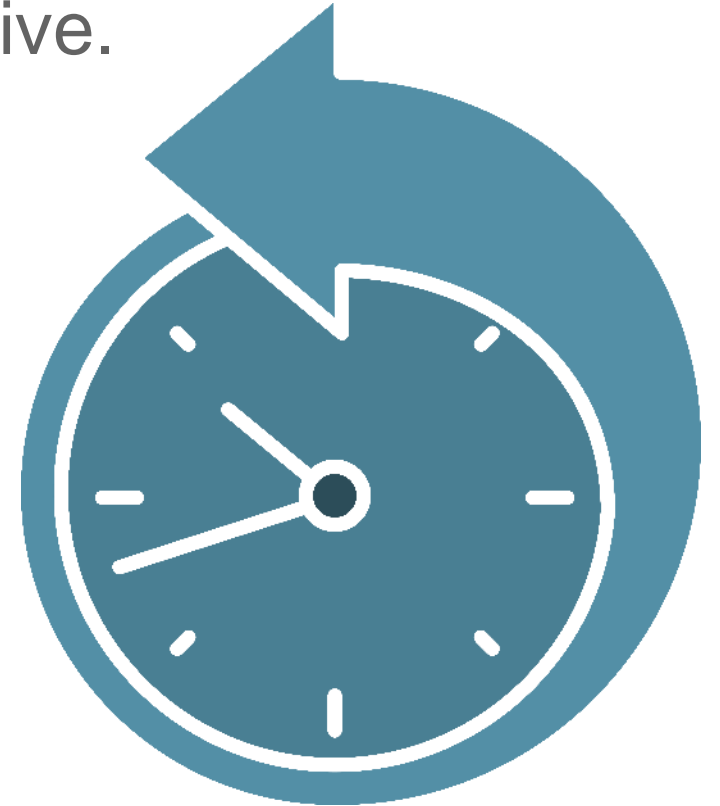
Here's a More Complete List of the Exceptions

Insurance agents, surplus line brokers, and analysts; Physicians, dentists, podiatrists, psychologists, and veterinarians; Lawyers, architects, engineers, private investigators, and accountants; Securities broker-dealers and investment advisors; Direct sales salespersons; Commercial fishermen; Newspaper carriers working under contract with a newspaper publisher; Marketing professionals; Administrators of human resources; Travel agents; Graphic designers; Grant writers; Fine artists; Enrolled treasury agents; Payment processors; Still photographers; photojournalists; Freelance writers, editors, newspaper cartoonists; Estheticians, electrologists, manicurists, barbers, cosmetologists, Real estate licensees; Business-to-business contractors; Construction subcontractors; Referral agencies; and Motor club drivers.

(41 and counting....)

Retroactivity

- The ABC test, for the wage orders, is retroactive.
- The ABC test, for the labor code and unemployment applies prospectively, effective 1-1-20.
- The ABC test, for workers' compensation applies prospectively, effective 7-1-20.
- The seven categories of exceptions apply retroactively to the extent permitted by law.



Public Enforcement

An injunction to prevent the continued misclassification of employees as independent contractors may be prosecuted against the putative employer by:

- The State Attorney General
- A City Attorney or City Prosecutor
- Upon their own complaint, in the name of the people, or upon the complaint of a board, officer, person, corporation, or association

The apparent goal of this section is to get around arbitration agreements which require that contractors arbitrate disputes, which can avoid class action litigation.

Poll Question



How many independent contractors does your business utilize to provide services directly to your customers?



A Critique of AB 5

According to the California Labor Commissioner

“The technology explosion in the last 20 years has often outpaced the ability of federal and state governments to keep up with private industry advances in conducting business.”

July 7, 2008

DLSE Opinion Letter 2008.07.07

<https://www.dir.ca.gov/dlse/opinions/2008-07-07.pdf>

The Problem With Exceptions:

“In all of these carve-outs you are picking winners and losers, so, can you walk me through the process of why you are doing it that way and how you process, who wins, and who loses. Who gets favoritism and who loses out?”

Senate Labor Committee Vice Chair, Senator Mike Morrell

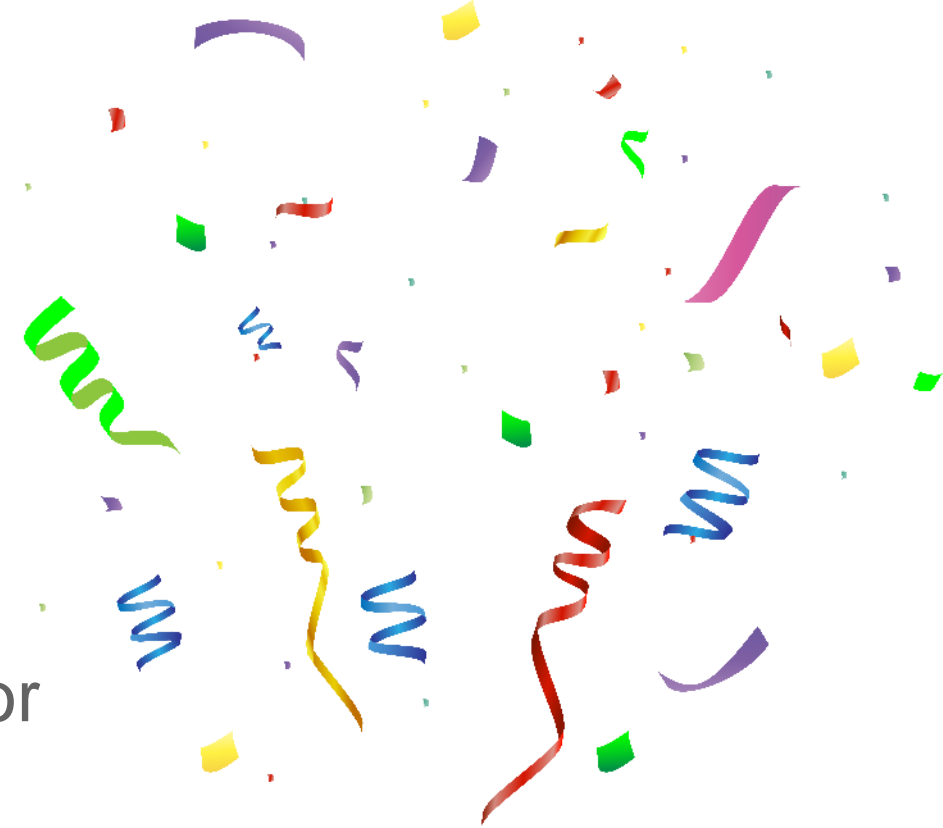
Not Expected:

- Independent Owner-Operators of trucks
- Franchisors
- TNCs and DNCs



HOORAY! We Got an Exception!

- But, the seven categories of exceptions are, to put it politely, dense legalese.
- There will be litigation over whether a particular business or occupation qualifies for an exception.
- So, we will be arguing about what test to apply (*Borello* or ABC) before we even apply the test.
- And, *Borello* has its problems as well.



Criticism of the *Borello* test:

“[B]y retaining the Borello test, these occupations remain in the messy muddle of a failed employment test that met the needs of neither employers nor workers. Should Assembly Bill 5 become law, the Legislature will need to revisit the remnants of Borello in the future.”

Winners and Losers?

- Maybe we don't have winners and losers, but rather...



Franchisor-Franchisee

- Will ABC test be used broadly as the standard for joint employment, potentially holding franchisors liable to their franchisees' workers?
- If so, could signal the end of this industry in California.
- WPI white paper addresses the legal and practical issues presented.
- *JanPro* seeks to remand to the District Court the application of the “B” prong to franchising.
- Another franchise case is pending.

Franchising and California at a Crossroads: the Dynamics of Dynamex and the ABC Test

By James A. Paretti, Jr. and Michael J. Lotito on July 18, 2019

In 2018, the Supreme Court of California turned much of the established law regarding worker classification on its head with its decision in *Dynamex Operations West Inc. v. Superior Court*.¹ *Dynamex* addressed a single, narrow question: whether certain workers were appropriately classified as independent contractors or were instead properly classified as employees for purposes of the state's wage and hour laws. In the wake of *Dynamex*, however, some have urged courts to expand the scope of the case beyond the narrow confines of independent contractor/employee classification to instead broadly redefine the law of joint employment and vicarious liability generally. If courts take up this invitation, it may sound the death knell for the franchise model of business operation in California, imposing joint liability on franchisors with little to no control over the day-to-day activities of their franchisees or of those franchisees' employees.

For legal, practical, and policy reasons, it is hoped that courts will decline to expand *Dynamex*, keep the case cabined to its facts and the narrow question presented in it, and instead rely on the well-developed body of state law setting forth standards for establishing joint employment status and vicarious liability in the franchise context. Moreover, as the state legislature entertains proposals to purportedly codify the *Dynamex* decision, it should expressly clarify that the bill is intended to address the standard for determining only whether a worker is an employee or an independent contractor, and not intended to address joint employment status broadly or change the status of franchise relationships.

Background

In *Dynamex*, the court adopted the so-called “ABC test” for determining whether an individual worker was properly classified as an employee or an independent contractor for purposes of the California's Industrial Welfare Commission's wage orders. By any measure, the ABC test is a far

Good News?


May 7 Hwy 9/13 6pm

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0080
(916) 319-2080
FAX (916) 319-2180

DISTRICT OFFICE
1350 FRONT STREET, SUITE 6022
SAN DIEGO, CA 92101
(619) 338-8090
FAX (619) 338-8099

San 9/13 @ 600pm

Assembly
California Legislature



LORENA GONZALEZ
ASSEMBLYWOMAN, EIGHTIETH DISTRICT

COMMITTEES
CHAIR: APPROPRIATIONS
CHAIR: CALIFORNIA LATINO
LEGISLATIVE CAUCUS

LABOR & EMPLOYMENT

Shubhangi Domokos
Asm. Gonzalez
(916)-319-2606

September 13, 2019

E. Dotson Wilson
Chief Clerk of the Assembly
State Capitol, Room 3196
Sacramento, California

AB 5
Gonzalez

Dear Mr. Wilson,

Good News?

Additionally, AB 5 is not intended to replace, alter or change joint employer liability between two businesses.

AB 5 is focused upon the determination whether an individual is an employee or an independent contractor.



Are We Done Yet?

- Revisiting “the remnants of *Borello*.”
- More exceptions?



AB 5: Author's Closing Statement to Senate Labor Committee:

“We probably won’t fix it for everybody this time. ... we will run out of time and I never worked harder on a bill, spent more hours on a bill. And, yet, we are not gonna get to every situation we dreamed of. And, I anticipate we’ll be working on this for a few years to get to those situations.”

Assembly member Lorena Gonzalez, Author of AB 5, Statement at July 10, 2019, hearing before the California Senate Labor, Public Employment, and Retirement Committee

Impact on Other States

“California ... frequently creates political winds that sweep across the country.”

The Economist, June 20, 2019



Possible Challenges to AB 5

Possible Challenges

- Referendum
- Initiative
- Lawsuit



Possible Challenges: Initiative

- That's great, right?
- Well:
 - *Dynamex* remains in effect.
 - The legislature will be back in session in January 2020.
 - Business & Professions Code § 17204 will still be operative



January 2020: Practical Suggestions



Step 1: Audit

- Audit and assess your current workforce.
- Review all of your 1099s for the past 12 months.
- Do you qualify for an exception to AB 5?
- Are you accurately classifying your workers under the ABC Test?
- **ComplianceHR's Navigator IC.**



Poll Question



Have you undertaken a review of your 1099 forms since learning of the passage of AB 5?

Step 2: Estimate Costs

- Calculate (estimate) the total cost of conversion of workers from independent contractor to employee status.
- Costs may include:
 - Hourly rates
 - Overtime
 - Benefits
 - Workers' Compensation
 - Unemployment Insurance
 - Increased HR support
 - Compliance with the California's detailed and cumbersome wage and hour laws.
 - Private Attorneys General Act (PAGA)



Step 2: Estimate Costs

- Consider using the attorney-client privilege to cover any review.



Step 3 (a): Reclassify?



Timing?



Communication strategies?



Risk vs. Cost?

Step 3 (b): Consider Other Options

- If the cost-benefit analysis results in a determination that reclassification is not viable, consider other options:

Do nothing
(not for the
faint of heart)

Move some
work out of
CA

Use more
robots

Move all work
out of CA

Step 3 (b): Consider Other Options

- If the cost-benefit analysis results in a determination that reclassification is not viable, consider other options:

Use
employment
agencies

Invent
something new!
(subscription-
based platforms)

Support legal
challenges to
AB 5

Step 4: Don't Forget The Other New Laws, Which:

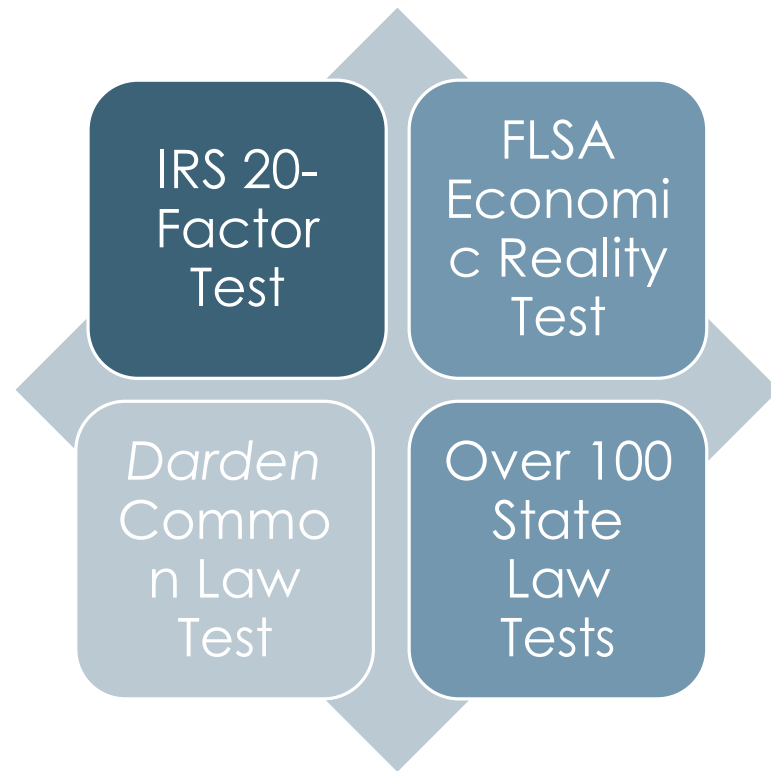


1. Triple the statute of limitations for bringing employment discrimination claims (AB 9).
2. Make the requirements of the California Consumer Privacy Act applicable to employment records after January 1, 2021 (AB 25).
3. Limit the use of arbitration agreements in employment (AB 51).
4. Prevent “no-rehire” provisions in employment severance agreements (AB 749).
5. Significantly increase lactation accommodation requirements (SB 142).



Navigator IC


Over 100 Different Legal Tests in the US



- Federal law alone has three different tests for determining IC status
- Layered on top of these, states may have up to six different tests under different laws

Giving You the Tools You Need!

Navigator IC




Independent Contractor Assessment

Delivers an actionable risk assessment, a report on how to lower the risk of misclassification, and a summary of applicable laws

[+ Create New Evaluation](#) [View Evaluations](#)

[IC Agreement](#)

Navigator OT




Exempt Status Assessment

Provides a risk assessment of each applicable exemption, suggestions on how to lower the risk of misclassification, and a summary of the federal and state exemption standards

[+ Create New Review](#) [View Reviews](#)

[View Evaluations](#)

Navigator Pay Practices




Wage and Hour Compliance

Delivers comprehensive reports on a federal and state-by-state basis for the most common wage and hour issues

[Find Minimum Wage](#) [Use Rapid Reference](#)

Navigator Onboarding



Onboarding Document Production

Produces state and federal compliant employment applications, offer letters, and employee non-disclosure documents

[+ Create New Document](#)

Navigator IC

Navigator IC



Independent Contractor Assessment

Delivers an actionable risk assessment, a report on how to lower the risk of misclassification, and a summary of applicable laws

[+ Create New Evaluation](#)

[🔍 View Evaluations](#)

[▶ IC Agreement](#)

Navigator IC Engagement Details

Welcome to Navigator IC

Create a new evaluation by entering the information below. Click the following link for information about how Navigator IC handles [industry-specific standards](#).

Type of engagement:

State where work will be performed:

Please provide the following information about the prospective contractor:

Prefix

☐ Mr. ☒ Ms.

First Name

Last Name

Company
(Optional)

Who will complete the questionnaire?

- ☒ Complete the questionnaire myself
- ☐ Assign the questionnaire to someone else

Would you also like the prospective contractor to complete a questionnaire? [More Information](#)

- ☐ Yes
- ☒ No

Navigator IC Questionnaire

Nicole Smith LLC: Computer programming work.

To what degree is the work to be performed by Nicole Smith LLC [core](#) to Abc Inc.'s business?

Somewhat, although not directly performing the core work, Nicole Smith LLC's work will be part of Abc Inc.'s primary workflow

Will Abc Inc. control where Nicole Smith LLC can perform the work under this engagement?

Yes, because the work cannot be performed elsewhere

Are Abc Inc. employees performing the same or similar work that Nicole Smith LLC is being engaged to perform?

☐ Yes ☒ No

Has Nicole Smith ever been an employee of Abc Inc.?

☐ Yes ☒ No

Please indicate the level of [instruction](#) Abc Inc. will give Nicole Smith LLC:

No instructions

Under the terms of the engagement, how much control can Abc Inc. assert over the [order](#) in which Nicole Smith LLC performs the work?

No control

Will Nicole Smith LLC's work hours be set by Abc Inc.?

No, Abc Inc. will not control Nicole Smith LLC's work hours.

Nicole Smith LLC: Computer programming work.

Will Nicole Smith LLC have the right to turn down specific jobs or assignments from Abc Inc.?

☒ Yes ☐ No

Will Abc Inc. provide Nicole Smith, her employees or subcontractors' employees with training or direction in any of the following?

- ☐ Security or safety procedures
- ☐ Use of basic equipment (two-way radios, telephones, copy machines)
- ☐ Anti-harassment, discrimination or other codes of conduct
- ☐ Software programs required to perform the work
- ☐ General work rules dictating the terms of the engagement (hours of work, lunch and rest breaks, job location, security)
- ☐ How to perform the work (whether by a manual, seminar, classroom training, video demonstration or other similar means)
- ☐ Job shadowing or on-the-job training
- ☐ Situational interviews
- ☐ Use of tools or equipment required to perform the work
- ☐ Training for workers who do not have the experience or skills needed to complete the work
- ☐ Select All
- ☒ None of the above

Does the work that Nicole Smith LLC will perform during the engagement require a high-level of expertise or any specialized skills?

☒ Yes ☐ No

Could the work required under this engagement be performed by unskilled or low skilled workers after a [minimum of training](#)?

☐ Yes ☒ No

Will Abc Inc. require Nicole Smith LLC to follow Abc Inc. [policies](#)?

☐ Yes ☒ No

Who will ultimately bear the cost of any of the following:
Select an answer for each item.

Office supplies	<input type="radio"/> Abc Inc.	<input checked="" type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input type="radio"/> Not Applicable
Uniforms or protective gear	<input type="radio"/> Abc Inc.	<input type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input checked="" type="radio"/> Not Applicable
Hand tools	<input type="radio"/> Abc Inc.	<input type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input checked="" type="radio"/> Not Applicable
Cell phone	<input type="radio"/> Abc Inc.	<input checked="" type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input checked="" type="radio"/> Not Applicable
Computer technology (desktops, laptops, tablets or similar technology)	<input type="radio"/> Abc Inc.	<input checked="" type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input type="radio"/> Not Applicable
Vehicles	<input type="radio"/> Abc Inc.	<input type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input checked="" type="radio"/> Not Applicable
Heavy machinery	<input type="radio"/> Abc Inc.	<input type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input checked="" type="radio"/> Not Applicable
Other specialized equipment required to complete the job	<input type="radio"/> Abc Inc.	<input checked="" type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input type="radio"/> Not Applicable
Repairs and maintenance	<input type="radio"/> Abc Inc.	<input checked="" type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input type="radio"/> Not Applicable
Company samples	<input type="radio"/> Abc Inc.	<input type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input checked="" type="radio"/> Not Applicable
Inventory	<input type="radio"/> Abc Inc.	<input type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input checked="" type="radio"/> Not Applicable

Will Abc Inc. provide Nicole Smith LLC, its employees or its subcontractor's employees (check all that apply):

- ☒ Keys or security passes to company property
- ☐ Company email address or access to company intranet or other systems that are provided to company employees
- ☐ Company business cards or letterhead
- ☐ A computer, cell phone, tablet or other standard company equipment
- ☐ [Other resources](#) similar to those provided to company employees
- ☐ Select All
- ☐ None of the above

Will Abc Inc. provide Nicole Smith LLC, its employees or its subcontractor's employees with any of the following? (check all that apply)

- ☐ Health insurance
- ☐ Disability insurance
- ☐ Paid vacations or holidays
- ☐ Paid sick days
- ☐ Retirement benefits
- ☐ Select All
- ☒ None of the above


Navigator IC Questionnaire

Nicole Smith LLC: Computer programming work.

Will Abc Inc. (check all that apply):

- ☐ Require Nicole Smith to wear a company uniform or a company name tag or security badge
- ☐ Require Nicole Smith to drive a vehicle or use other tools or equipment that display Abc Inc.'s logo
- ☐ Require Nicole Smith to attend regular meetings or conference calls with Abc Inc. employees
- ☐ Keep time, payroll or other records relating to Nicole Smith's work for Abc Inc.
- ☐ Grant Nicole Smith the authority to supervise or direct the work of Abc Inc. employees
- ☐ Select All
- ☒ None of the above

Is Nicole Smith required to perform the work herself?

 Check all that apply to Nicole Smith LLC's employees or subcontractors:

- ☐ Nicole Smith LLC will need Abc Inc.'s approval to hire employees or to engage subcontractors.
- ☐ Abc Inc. will control how, when or where Nicole Smith LLC's employees or subcontractors perform the work.
- ☐ Abc Inc. will reimburse Nicole Smith LLC for Nicole Smith LLC's labor costs (employees' wages) or the subcontract price.
- ☐ Abc Inc. could require Nicole Smith LLC to fire employees or to end subcontracts.
- ☐ Select All
- ☒ None of the above apply

Will Abc Inc. require Nicole Smith LLC to [frequently](#) submit [reports](#) detailing the work completed for the day or week?

☐ Yes ☒ No

Will Abc Inc. [evaluate](#) Nicole Smith LLC's performance?

Will Nicole Smith LLC be required to correct defective or unsatisfactory work without additional compensation?

☐ Yes ☒ No

Can Nicole Smith be [disciplined](#) by Abc Inc. for performance issues?

☐ Yes ☒ No

Nicole Smith LLC: Computer programming work.

What is the dollar value of this engagement?

Select the option that best describes how Nicole Smith LLC will be paid:

Will Abc Inc. reimburse Nicole Smith LLC for its [business expenses](#)?

☐ Yes ☒ No

Who will bear the cost of any losses or damages caused by Nicole Smith LLC (for example, expenses exceeding the contract amount or the

☐ Abc Inc. ☒ Nicole Smith LLC

Other than not being paid, are there any [other ways](#) for Nicole Smith LLC to incur a loss?

☒ Yes ☐ No

Will Nicole Smith LLC be paid out of the same payroll accounts as employees?

☐ Yes ☒ No

Nicole Smith LLC: Computer programming work.

Is there a written independent contractor agreement?

☒ Yes ☐ No

What is the anticipated length of this engagement between Nicole Smith LLC and Abc Inc.?

Before the work is completed, when does Abc Inc. have a right to terminate its relationship with Nicole Smith LLC?

Before the work is completed, when does Nicole Smith LLC have a right to terminate the relationship with Abc Inc.?

Is this Nicole Smith LLC's first engagement with Abc Inc.?

☐ Yes ☒ No

 Select the answer that best applies to Abc Inc.'s previous engagements with Nicole Smith LLC:

Nicole Smith LLC: Computer programming work.

What percentage of Nicole Smith LLC's income this year will come from Abc Inc.?

Which best describes Nicole Smith LLC's expected relationship with Abc Inc. during this engagement?

How many other clients has Nicole Smith LLC performed work for during the last six months?

Has Nicole Smith LLC already made [significant investments](#) in its business?

☐ Yes ☒ No

Does Nicole Smith LLC (check all that apply):

- ☒ Maintain a business location accessible by the public
- ☒ Advertise services on the open market
- ☐ Have a web page
- ☐ Select All
- ☐ None of the above


How many employees does Nicole Smith LLC have?

Does Nicole Smith LLC provide its employees with (check all that apply):

- ☒ Workers' compensation benefits
- ☐ Unemployment insurance
- ☐ None of the above

Are Nicole Smith LLC or its employees required to maintain a [professional or occupational license or certification](#) to perform the type of work required in this engagement?

☒ Yes ☐ No

 Are the required professional or occupational licenses or certifications current?


☒ Yes ☐ No


Does Nicole Smith LLC do any of the following (check all that apply):


- ☒ Pay any business-related taxes
- ☒ Maintain a formal business structure (other than a sole proprietorship)
- ☒ Use a Federal Employer Identification Number (EIN) for tax purposes (not a Social Security Number)
- ☒ Operate under a business name different from its own name
- ☒ Maintain the licenses, registrations or permits required to operate a business
- ☒ Maintain business insurance
- ☐ Maintain records or documents relating to expenses, assets, income and liabilities
- ☐ Have a bank account (separate from an individual or family account) for the purpose of depositing business revenues and paying business expenses
- ☐ Maintain a business office not located in the family home
- ☐ Select All
- ☐ None of the above

Navigator IC Results & On-Screen Summary


Independent Contractor Risk Report for Abc Inc.

**CONTRACTOR**
Ms. Nicole Smith

**ENGAGEMENT**
Computer programming work.

**JURISDICTIONS**
California
Federal
[View Risk by Jurisdiction](#)


What is the risk of classifying Nicole Smith LLC as an independent contractor?





Under the facts that you have provided, it is unlikely that Nicole Smith LLC will be found to be an employee.

FOR MORE INFORMATION ABOUT YOUR RESULTS PLEASE SEE THE RESOURCES BELOW:

- ▶ [How to Lower Your Risk Level](#)
- ▶ [Summary of Independent Contractor Laws](#)
- ▶ [Transcript of Your Questions and Answers](#)
- ▶ [Disclaimer](#)

PRINT THIS REPORT: 

Risk by Jurisdiction

California	 It is unlikely that Nicole Smith LLC will be found to be an employee.
Federal	 It is highly unlikely that Nicole Smith LLC will be found to be an employee.

Additional Report Resources

Question	Response
Has Nicole Smith ever been an employee of Abc Inc.?	No
Are Abc Inc. employees performing the same or similar work that Nicole Smith LLC is being engaged to perform?	No
To what degree is the work to be performed by Nicole Smith LLC core to Abc Inc.'s business?	Somewhat, although not directly performing the core work, Nicole Smith LLC's work will be part of Abc Inc.'s primary workflow
Will Abc Inc. control where Nicole Smith LLC can perform the work under this engagement?	Yes, because the work cannot be performed elsewhere
Please indicate the level of instruction Abc Inc. will give Nicole Smith LLC:	No instructions
Under the terms of the engagement, how much control can Abc Inc. assert over the order in which Nicole Smith LLC will perform the work?	No control
Will Nicole Smith LLC's work hours be set by Abc Inc.?	No, Abc Inc. will not control Nicole Smith LLC's work hours.
Will Nicole Smith LLC have the right to turn down specific jobs or assignments from Abc Inc.?	Yes
Will Abc Inc. provide Nicole Smith, her employees or subcontractors' employees with training or direction in any of the following areas (check all that apply):	No
Does the work that Nicole Smith LLC will perform during the engagement require a high-level of expertise or any specialized skills?	Yes
Could the work required under this engagement be performed by unskilled or low skilled workers after a minimum of training ?	No
Will Abc Inc. require Nicole Smith LLC to follow Abc Inc. policies ?	No
Who will bear the cost of any of the following:	<ul style="list-style-type: none"> Cell phone: Nicole Smith LLC Computer technology: Nicole Smith LLC Vehicles: Not Applicable Heavy machinery: Not Applicable Other specialized equipment: Nicole Smith LLC Repairs and maintenance: Nicole Smith LLC Company samples: Not Applicable Inventory: Not Applicable

Risk Factors

The Contractor's Economic Dependence on the Company

Steps to Lower Risk

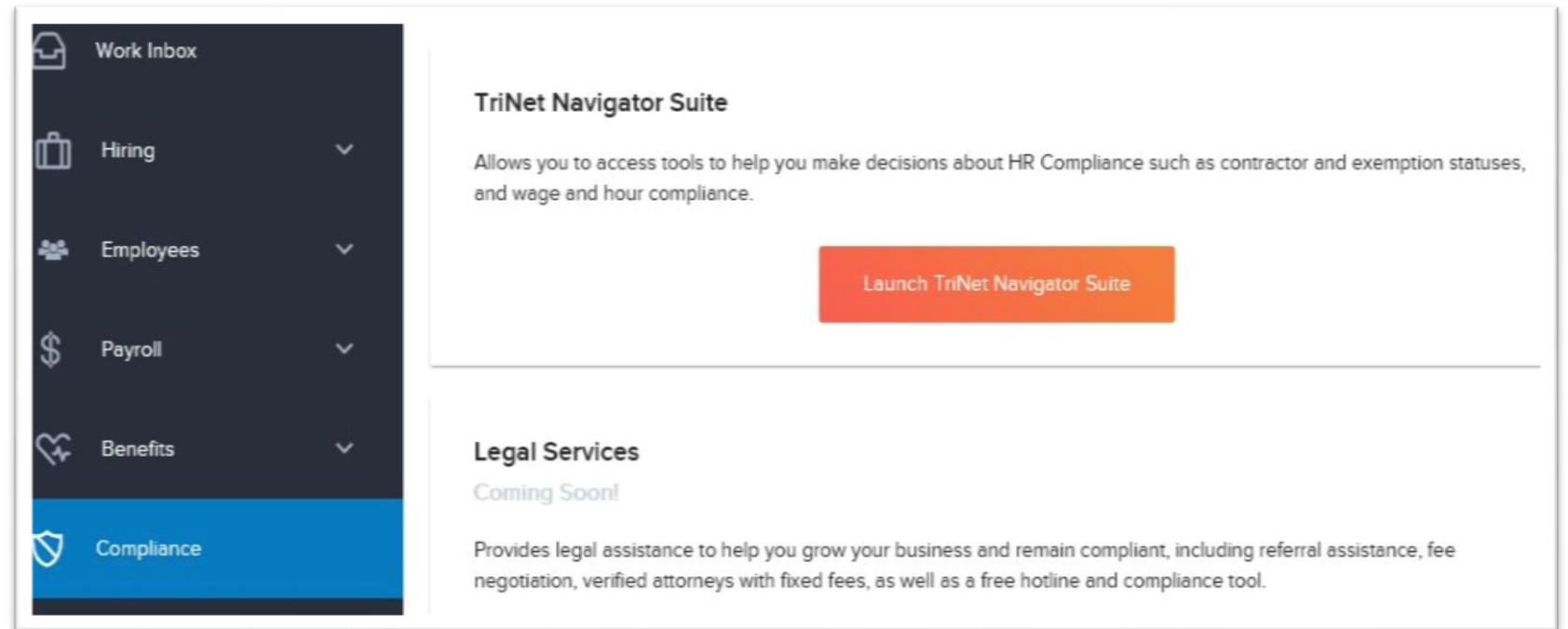
An independent contractor is not economically dependent on the engaging company; it operates independently of the engaging company. The success of the contractor's business is not dependent on its continued relationship with the company. An independent contractor's business will continue to exist independently of and apart from the contract, and will survive the termination of the contract. Abc Inc. may be able to reduce its risk score by ensuring that the dollar value of this engagement will not be a high percentage of Nicole Smith LLC's business.

Will Abc Inc. provide Nicole Smith LLC, its employees or its subcontractor's employees (check all that apply):	<ul style="list-style-type: none"> Keys or security passes to company property
Will Abc Inc. provide Nicole Smith LLC, its employees or its subcontractor's employees with any of the following? (check all that apply)	None
Will Abc Inc. (check all that apply): <ul style="list-style-type: none"> Require the contractor to wear a company uniform or a company name tag or security badge Require the contractor drive a vehicle or use other tools or equipment that display the company's logo Require the contractor to attend regular meetings or conference calls with company employees Keep time, payroll or other records relating to contractor's work for company Grant contractor the authority to supervise or direct the work of company employees 	None
Is Nicole Smith required to perform the work herself?	No, Nicole Smith LLC can hire employees or subcontractors
Check all that apply to Nicole Smith LLC's employees or subcontractors:	None
Will Abc Inc. require Nicole Smith LLC to frequently submit reports detailing the work completed for this engagement?	No

Before the work is completed, when does Nicole Smith LLC have a right to terminate the relationship with Abc Inc.?	Only as allowed under the terms of a contract (for example, if one of the parties breaches the contract)
Is this Nicole Smith LLC's first engagement with Abc Inc.?	No
Select the answer that best applies to Abc Inc.'s previous engagements with Nicole Smith LLC:	The previous engagements were for different or distinct projects
What is the dollar value of this engagement?	\$25,001 to \$50,000
Select the option that best describes how Nicole Smith LLC will be paid:	Per task, job or project (a lump sum payable upon completion)

Accessing Navigator Suite

- Under the Admin View, the TriNet Navigator Suite can be found under the “Compliance” link on the TriNet platform (login.trinet.com)
- Must have the HR Authorizer role in the TriNet platform to use Navigator Suite



Questions?

Thank You!



Compliance **HR**

Littler®