



# Information Sheet

## Barbering and Cosmetology Industry

This information sheet provides guidance to help determine if a licensed professional is performing services as an employee or an independent contractor. In the barbering and cosmetology industry, an individual performing services for a principal may be an employee under the *ABC test*, an employee under the *Borello test*, or an independent contractor.

### What is a Licensed Professional?

A *licensed professional* is an individual licensed by the Department of Consumer Affairs and includes, but is not limited to, barbers, cosmetologists, manicurists, electrologists, and estheticians.

### What is a Principal?

A *principal* is a cosmetology business operator or salon owner, or their agent or manager.

Licensed professionals provide services in various businesses, including but are not limited to:

- Barber colleges
- Barber shops
- Beauty and barber shops combined
- Beauty culture schools
- Beauty shops or salons
- Clinics for skin care
- Cosmetology schools
- Cosmetology shops or salons
- Facial salons
- Hairdressers
- Hairstylists
- Manicure and pedicure shops
- Nail salons
- Spas

### Which Test Do I Use?

The ABC test is used by employers to determine if a worker is classified as an employee or an independent contractor.

However, if certain requirements are met, an exception to the ABC test would apply and the Borello test is used to determine a worker's employment status.

Both the ABC test and the Borello test assume that the worker is an employee, and the hiring entity must demonstrate that the worker is an independent contractor.

To determine which test to use, apply the *Industry-Specific Requirements* and the *Six Specific Factors* to the licensed professional's situation.

If all Industry-Specific Requirements and the Six Specific Factors are not met, **apply the ABC test** to determine if the services provided are as an employee or independent contractor.

### Step 1:

Review and apply the Industry Specific Requirements to the licensed professional's situation.

If all the requirements are met, move on to **Step 2**. If the requirements are not met, **apply the ABC test** to the licensed professional's situation.

### Industry-Specific Requirements

The individual must meet all the following criteria:

1. Sets their own rates, processes their own payments, and is paid directly by clients.
2. Sets their own hours of work and has sole discretion to decide the number of clients and the services provided to those clients.
3. Has their own book of business and schedules their own appointments.
4. Maintains their own business license for the services offered to clients.
5. Performs services at the location of the hiring entity, then the individual issues a Form 1099 to the salon or business owner from which they rent their business space.

\*Licensed manicurists will no longer be subject to this exception starting on January 1, 2025, unless extended by the Legislature.

### Step 2:

If the worker's relationship meets all the **Industry Specific requirements**, then apply the Six Specific Factors to the worker's relationship and move on to **Step 3**.

### Six Specific Factors

All the following factors must be met:

1. The individual maintains a business location, which may include the individual's residence, that is separate from the hiring entity. However, the individual may choose to perform services at the location of the hiring entity.
2. If the work is performed more than six months after January 1, 2020, and the work is performed in a jurisdiction that requires the individual to have a business license or business tax registration, the individual has the required business license or business tax registration in order to provide the services under the contract, in addition to any required professional licenses or permits for the individual to practice in their profession.

3. The individual has the ability to set or negotiate their own rates for services performed.
4. Outside of project completion dates and reasonable business hours, the individual has the ability to set the individual's own hours.
5. The individual is customarily engaged in the same type of work performed under contract with another hiring entity or holds themselves out to other potential customers as available to perform the same type of work.
6. The individual customarily and regularly exercises discretion and independent judgment in the performance of the services.

### Step 3:

If the workers relationship meets all Six Specific Factors, then **apply the Borello test**. If all Six Specific Factors are not met, then **apply the ABC test** to determine whether the services are being provided as an employee or independent contractor.

### Applying the ABC Test

Under the ABC test<sup>1</sup> an individual providing labor or services for pay has the status of an employee rather than an independent contractor unless the hiring entity demonstrates the individual meets all three conditions of the ABC test:

- a. Free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- b. Does work that is not part of the hiring entity's regular business.
- c. Regularly engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

### Applying the Borello Test

The Borello test<sup>2</sup> uses multiple factors to determine whether a worker is an employee. One factor is whether the potential employer has control over how the work gets done. Such

control may be indirect and need not be exercised or detailed. The control factor alone does not decide the worker's status. A worker cannot be deemed an independent contractor based on a lack of control. Instead, the control factor must be considered along with the following:

1. Whether the worker performing services holds themselves out as being engaged in an occupation or business distinct from that of the employer
2. Whether the work is a regular or integral part of the employer's business.
3. Whether the employer or the worker supplies the instrumentalities, tools and the place for the worker doing the work.
4. Whether the worker has invested in the business, such as in the equipment or materials required by their task.
5. Whether the service provided requires a special skill.
6. The kind of occupation, and whether the work is usually done under the direction of the employer or by a specialist without supervision.
7. The worker's opportunity for profit or loss depending on their managerial skill.
8. The length of time for which the services are to be performed.
9. The degree of permanence of the working relationship.
10. The method of payment, whether by time or by the job.
11. Whether the worker hires their own employees.
12. Whether the employer has a right to fire at will or whether a termination gives rise to an action for breach of contract; and
13. Whether or not the worker and the potential employer believe they are creating an employer-employee relationship. This may be relevant, but the legal determination of employment status is not based on whether the parties believe they have an employer-employee relationship.

## References

<sup>1</sup> Effective January 1, 2020, [section 621\(b\) of the California Unemployment Insurance Code \(CUIC\)](#) ([leginfo.ca.gov/faces/codes.xhtml](http://leginfo.ca.gov/faces/codes.xhtml)) was amended to apply a new standard for classifying individuals as employees.

<sup>2</sup> The California Supreme Court established the Borello test in *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341.

## Additional Information

For more help:

- **Call:** The Taxpayer Assistance Center at 1-888 745-3886.
- **Website:** Visit the nearest [Employment Tax Office](#) ([edd.ca.gov/Office\\_Locator/](http://edd.ca.gov/Office_Locator/)). Additional information is also available through [EDD's no-cost payroll tax seminars](#) ([seminars.edd.ca.gov/payroll\\_tax\\_seminars](http://seminars.edd.ca.gov/payroll_tax_seminars)).

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