

AMENDED IN ASSEMBLY FEBRUARY 25, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 71

Introduced by Assembly ~~Member~~ *Members Melendez and Kiley*

December 3, 2018

An act to amend Section 2750.5 of, and to add Section 2750.7 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 71, as amended, Melendez. Employment standards: independent contractors and employees.

Existing law prescribes comprehensive requirements relating to minimum wages, overtime compensation, and standards for working conditions for the protection of employees applicable to an employment relationship. Existing law makes it unlawful for a person or employer to avoid employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor. Existing law authorizes the Labor and Workforce Development Agency to take specified actions against violators of these provisions, authorizes civil penalties, and authorizes the Labor Commissioner to enforce those provisions pursuant to administrative authority or by civil suit.

Existing case law establishes a three-part test, known as the “ABC” test, for determining whether a worker is considered an independent contractor for purposes of specified wage orders. Under this test, a worker is properly considered an independent contractor only if the hiring entity establishes; 1) that 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 performance of the work and in fact; 2) that the worker performs work outside the usual course of the hiring entity’s

business; and 3) that 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.

This bill would, instead, require a determination of whether a person is an employee or an independent contractor to be based on a specific multifactor test, including whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired, and other identified factors. The bill would make related, conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2750.5 of the Labor Code is amended to
2 read:

3 2750.5. There is a rebuttable presumption affecting the burden
4 of proof that a worker performing services for which a license is
5 required pursuant to Chapter 9 (commencing with Section 7000)
6 of Division 3 of the Business and Professions Code, or who is
7 performing ~~such~~ *those* services for a person who is required to
8 obtain such a license is an employee rather than an independent
9 contractor.

10 In addition to the factors contained in Section 2750.7, any person
11 performing any function or activity for which a license is required
12 pursuant to Chapter 9 (commencing with Section 7000) of Division
13 3 of the Business and Professions Code shall hold a valid
14 contractors' license as a condition of having independent contractor
15 status.

16 For purposes of workers' compensation law, this presumption
17 is a supplement to the existing statutory definitions of employee
18 and independent contractor, and is not intended to lessen the
19 coverage of employees under Division 4 and Division 5.

20 SEC. 2. Section 2750.7 is added to the Labor Code, to read:

21 2750.7. (a) Notwithstanding any other law, a determination
22 of whether a person is an employee or an independent contractor
23 for the purposes of this division shall be based on the multifactor
24 test set forth in *S.G. Borello & Sons, Inc. v. Department of*
25 *Industrial Relations*.

26 (b) These factors include, but are not limited to, the following:

- 1 (1) Whether the person to whom service is rendered has the
2 right to control the manner and means of accomplishing the result
3 desired, which is the principal factor.
- 4 (2) Whether the one performing services is engaged in a distinct
5 occupation or business.
- 6 (3) The kind of occupation, with reference to whether, in the
7 locality, the work is usually done under the direction of the
8 principal or by a specialist without supervision.
- 9 (4) The skill required in the particular occupation.
- 10 (5) Whether the principal or the worker supplies the
11 instrumentalities, tools, and the place of work for the person doing
12 the work.
- 13 (6) The length of time for which the services are to be
14 performed.
- 15 (7) The method of payment, whether by the time or by the job.
- 16 (8) The right to discharge at will, without cause.
- 17 (9) Whether or not the work is part of the regular business of
18 the principal.
- 19 (10) Whether or not the parties believe they are creating the
20 relationship of employer-employee.
- 21 (c) The individual factors set forth in subdivision (b) above shall
22 not be applied mechanically as separate tests, but shall be
23 intertwined.
- 24 (d) The test set forth in this section shall apply to any
25 determinations before an administrative agency or court.