

AMENDED IN ASSEMBLY FEBRUARY 14, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1850**

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**Introduced by Assembly Member Gonzalez**

January 6, 2020

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An act to repeal and add Section 2750.3 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1850, as amended, Gonzalez. Employee classification.

Existing law, as established in the case of *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903 (*Dynamex*), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the “ABC” test, to determine if workers are employees or independent contractors for purposes of specified wage orders.

Existing *statutory* law establishes that, for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that ~~the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity’s business, and the person is customarily engaged in an independently established trade, occupation, or business.~~ This test is commonly known as the “ABC”-test. *test is*

*met.* Existing law charges the Labor Commissioner with the enforcement of labor laws, including worker classification.

Existing law exempts specified occupations and business relationships from the application of Dynamex and these provisions. Existing law instead provides that these exempt relationships are governed by the *multifactor* test *previously* adopted in *the case of* S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341.

~~This bill would declare the intent of the Legislature to enact legislation that would further clarify the application of the California Supreme Court’s decision in Dynamex and recently-enacted requirements under the Labor Code; recast and reorganize those statutory provisions and would make nonsubstantive changes.~~

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

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

1     ~~SECTION 1. Section 2750.3 of the Labor Code is repealed.~~  
 2     ~~2750.3.—(a) (1) For purposes of the provisions of this code~~  
 3     ~~and the Unemployment Insurance Code, and for the wage orders~~  
 4     ~~of the Industrial Welfare Commission, a person providing labor~~  
 5     ~~or services for remuneration shall be considered an employee rather~~  
 6     ~~than an independent contractor unless the hiring entity demonstrates~~  
 7     ~~that all of the following conditions are satisfied:~~  
 8     ~~(A) The person is free from the control and direction of the~~  
 9     ~~hiring entity in connection with the performance of the work, both~~  
 10    ~~under the contract for the performance of the work and in fact.~~  
 11    ~~(B) The person performs work that is outside the usual course~~  
 12    ~~of the hiring entity’s business.~~  
 13    ~~(C) The person is customarily engaged in an independently~~  
 14    ~~established trade, occupation, or business of the same nature as~~  
 15    ~~that involved in the work performed.~~  
 16    ~~(2) Notwithstanding paragraph (1), any exceptions to the terms~~  
 17    ~~“employee,” “employer,” “employ,” or “independent contractor,”~~  
 18    ~~and any extensions of employer status or liability, that are expressly~~  
 19    ~~made by a provision of this code, the Unemployment Insurance~~  
 20    ~~Code, or in an applicable order of the Industrial Welfare~~  
 21    ~~Commission, including, but not limited to, the definition of~~  
 22    ~~“employee” in subdivision 2(E) of Wage Order No. 2, shall remain~~  
 23    ~~in effect for the purposes set forth therein.~~

1 ~~(3) If a court of law rules that the three-part test in paragraph~~  
2 ~~(1) cannot be applied to a particular context based on grounds other~~  
3 ~~than an express exception to employment status as provided under~~  
4 ~~paragraph (2), then the determination of employee or independent~~  
5 ~~contractor status in that context shall instead be governed by the~~  
6 ~~California Supreme Court's decision in *S. G. Borello & Sons, Inc.*~~  
7 ~~*v. Department of Industrial Relations* (1989) 48 Cal.3d 341~~  
8 ~~(*Borello*).~~

9 ~~(b) Subdivision (a) and the holding in *Dynamex Operations*~~  
10 ~~*West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903~~  
11 ~~(*Dynamex*), do not apply to the following occupations as defined~~  
12 ~~in the paragraphs below, and instead, the determination of~~  
13 ~~employee or independent contractor status for individuals in those~~  
14 ~~occupations shall be governed by *Borello*.~~

15 ~~(1) A person or organization who is licensed by the Department~~  
16 ~~of Insurance pursuant to Chapter 5 (commencing with Section~~  
17 ~~1621), Chapter 6 (commencing with Section 1760), or Chapter 8~~  
18 ~~(commencing with Section 1831) of Part 2 of Division 1 of the~~  
19 ~~Insurance Code.~~

20 ~~(2) A physician and surgeon, dentist, podiatrist, psychologist,~~  
21 ~~or veterinarian licensed by the State of California pursuant to~~  
22 ~~Division 2 (commencing with Section 500) of the Business and~~  
23 ~~Professions Code, performing professional or medical services~~  
24 ~~provided to or by a health care entity, including an entity organized~~  
25 ~~as a sole proprietorship, partnership, or professional corporation~~  
26 ~~as defined in Section 13401 of the Corporations Code. Nothing in~~  
27 ~~this subdivision shall apply to the employment settings currently~~  
28 ~~or potentially governed by collective bargaining agreements for~~  
29 ~~the licensees identified in this paragraph.~~

30 ~~(3) An individual who holds an active license from the State of~~  
31 ~~California and is practicing one of the following recognized~~  
32 ~~professions: lawyer, architect, engineer, private investigator, or~~  
33 ~~accountant.~~

34 ~~(4) A securities broker-dealer or investment adviser or their~~  
35 ~~agents and representatives that are registered with the Securities~~  
36 ~~and Exchange Commission or the Financial Industry Regulatory~~  
37 ~~Authority or licensed by the State of California under Chapter 2~~  
38 ~~(commencing with Section 25210) or Chapter 3 (commencing with~~  
39 ~~Section 25230) of Division 1 of Part 3 of Title 4 of the~~  
40 ~~Corporations Code.~~

1     ~~(5) A direct sales salesperson as described in Section 650 of the~~  
2 ~~Unemployment Insurance Code, so long as the conditions for~~  
3 ~~exclusion from employment under that section are met.~~  
4     ~~(6) A commercial fisherman working on an American vessel~~  
5 ~~as defined in subparagraph (A) below:~~  
6     ~~(A) For the purposes of this paragraph:~~  
7     ~~(i) “American vessel” has the same meaning as defined in~~  
8 ~~Section 125.5 of the Unemployment Insurance Code.~~  
9     ~~(ii) “Commercial fisherman” means a person who has a valid,~~  
10 ~~unrevoked commercial fishing license issued pursuant to Article~~  
11 ~~3 (commencing with Section 7850) of Chapter 1 of Part 3 of~~  
12 ~~Division 6 of the Fish and Game Code.~~  
13     ~~(iii) “Working on an American vessel” means the taking or the~~  
14 ~~attempt to take fish, shellfish, or other fishery resources of the state~~  
15 ~~by any means, and includes each individual aboard an American~~  
16 ~~vessel operated for fishing purposes who participates directly or~~  
17 ~~indirectly in the taking of these raw fishery products, including~~  
18 ~~maintaining the vessel or equipment used aboard the vessel.~~  
19 ~~However, “working on an American vessel” does not apply to~~  
20 ~~anyone aboard a licensed commercial fishing vessel as a visitor~~  
21 ~~or guest who does not directly or indirectly participate in the taking.~~  
22     ~~(B) For the purposes of this paragraph, a commercial fisherman~~  
23 ~~working on an American vessel is eligible for unemployment~~  
24 ~~insurance benefits if they meet the definition of “employment” in~~  
25 ~~Section 609 of the Unemployment Insurance Code and are~~  
26 ~~otherwise eligible for those benefits pursuant to the provisions of~~  
27 ~~the Unemployment Insurance Code.~~  
28     ~~(C) On or before March 1, 2021, and each March 1 thereafter,~~  
29 ~~the Employment Development Department shall issue an annual~~  
30 ~~report to the Legislature on the use of unemployment insurance in~~  
31 ~~the commercial fishing industry. This report shall include, but not~~  
32 ~~be limited to, reporting the number of commercial fishermen who~~  
33 ~~apply for unemployment insurance benefits, the number of~~  
34 ~~commercial fishermen who have their claims disputed, the number~~  
35 ~~of commercial fishermen who have their claims denied, and the~~  
36 ~~number of commercial fishermen who receive unemployment~~  
37 ~~insurance benefits. The report required by this subparagraph shall~~  
38 ~~be submitted in compliance with Section 9795 of the Government~~  
39 ~~Code.~~

1 ~~(D) This paragraph shall become inoperative on January 1, 2023,~~  
2 ~~unless extended by the Legislature.~~

3 ~~(7) A newspaper distributor working under contract with a~~  
4 ~~newspaper publisher, as defined in subparagraph (A), and a~~  
5 ~~newspaper carrier working under contract either with a newspaper~~  
6 ~~publisher or newspaper distributor.~~

7 ~~(A) For purposes of this paragraph:~~

8 ~~(i) "Newspaper" means a newspaper of general circulation, as~~  
9 ~~defined in Section 6000 of the Government Code, and any other~~  
10 ~~publication circulated to the community in general as an extension~~  
11 ~~of or substitute for that newspaper's own publication, whether that~~  
12 ~~publication be designated a "shoppers' guide," as a zoned edition,~~  
13 ~~or otherwise.~~

14 ~~(ii) "Publisher" means the natural or corporate person that~~  
15 ~~manages the newspaper's business operations, including~~  
16 ~~circulation.~~

17 ~~(iii) "Newspaper distributor" means a person or entity that~~  
18 ~~contracts with a publisher to distribute newspapers to the~~  
19 ~~community.~~

20 ~~(iv) "Carrier" means a person who effects physical delivery of~~  
21 ~~the newspaper to the customer or reader.~~

22 ~~(B) This paragraph shall become inoperative on January 1, 2021,~~  
23 ~~unless extended by the Legislature.~~

24 ~~(e) (1) Subdivision (a) and the holding in Dynamex do not~~  
25 ~~apply to a contract for "professional services" as defined below;~~  
26 ~~and instead the determination of whether the individual is an~~  
27 ~~employee or independent contractor shall be governed by Borello~~  
28 ~~if the hiring entity demonstrates that all of the following factors~~  
29 ~~are satisfied:~~

30 ~~(A) The individual maintains a business location, which may~~  
31 ~~include the individual's residence, that is separate from the hiring~~  
32 ~~entity. Nothing in this subdivision prohibits an individual from~~  
33 ~~choosing to perform services at the location of the hiring entity.~~

34 ~~(B) If work is performed more than six months after the effective~~  
35 ~~date of this section, the individual has a business license, in~~  
36 ~~addition to any required professional licenses or permits for the~~  
37 ~~individual to practice in their profession.~~

38 ~~(C) The individual has the ability to set or negotiate their own~~  
39 ~~rates for the services performed.~~

1 ~~(D) Outside of project completion dates and reasonable business~~  
2 ~~hours, the individual has the ability to set the individual's own~~  
3 ~~hours.~~

4 ~~(E) The individual is customarily engaged in the same type of~~  
5 ~~work performed under contract with another hiring entity or holds~~  
6 ~~themselves out to other potential customers as available to perform~~  
7 ~~the same type of work.~~

8 ~~(F) The individual customarily and regularly exercises discretion~~  
9 ~~and independent judgment in the performance of the services.~~

10 ~~(2) For purposes of this subdivision:~~

11 ~~(A) An "individual" includes an individual providing services~~  
12 ~~through a sole proprietorship or other business entity.~~

13 ~~(B) "Professional services" means services that meet any of the~~  
14 ~~following:~~

15 ~~(i) Marketing, provided that the contracted work is original and~~  
16 ~~creative in character and the result of which depends primarily on~~  
17 ~~the invention, imagination, or talent of the employee or work that~~  
18 ~~is an essential part of or necessarily incident to any of the~~  
19 ~~contracted work.~~

20 ~~(ii) Administrator of human resources, provided that the~~  
21 ~~contracted work is predominantly intellectual and varied in~~  
22 ~~character and is of such character that the output produced or the~~  
23 ~~result accomplished cannot be standardized in relation to a given~~  
24 ~~period of time.~~

25 ~~(iii) Travel agent services provided by either of the following:~~  
26 ~~(I) a person regulated by the Attorney General under Article 2.6~~  
27 ~~(commencing with Section 17550) of Chapter 1 of Part 3 of~~  
28 ~~Division 7 of the Business and Professions Code, or (II) an~~  
29 ~~individual who is a seller of travel within the meaning of~~  
30 ~~subdivision (a) of Section 17550.1 of the Business and Professions~~  
31 ~~Code and who is exempt from the registration under subdivision~~  
32 ~~(g) of Section 17550.20 of the Business and Professions Code.~~

33 ~~(iv) Graphic design.~~

34 ~~(v) Grant writer.~~

35 ~~(vi) Fine artist.~~

36 ~~(vii) Services provided by an enrolled agent who is licensed by~~  
37 ~~the United States Department of the Treasury to practice before~~  
38 ~~the Internal Revenue Service pursuant to Part 10 of Subtitle A of~~  
39 ~~Title 31 of the Code of Federal Regulations.~~

1 (viii) ~~Payment processing agent through an independent sales~~  
2 ~~organization.~~

3 (ix) ~~Services provided by a still photographer or photojournalist~~  
4 ~~who do not license content submissions to the putative employer~~  
5 ~~more than 35 times per year. This clause is not applicable to an~~  
6 ~~individual who works on motion pictures, which includes, but is~~  
7 ~~not limited to, projects produced for theatrical, television, internet~~  
8 ~~streaming for any device, commercial productions, broadcast news,~~  
9 ~~music videos, and live shows, whether distributed live or recorded~~  
10 ~~for later broadcast, regardless of the distribution platform. For~~  
11 ~~purposes of this clause a “submission” is one or more items or~~  
12 ~~forms of content produced by a still photographer or photojournalist~~  
13 ~~that: (I) pertains to a specific event or specific subject; (II) is~~  
14 ~~provided for in a contract that defines the scope of the work; and~~  
15 ~~(III) is accepted by and licensed to the publication or stock~~  
16 ~~photography company and published or posted. Nothing in this~~  
17 ~~section shall prevent a photographer or artist from displaying their~~  
18 ~~work product for sale.~~

19 (x) ~~Services provided by a freelance writer, editor, or newspaper~~  
20 ~~cartoonist who does not provide content submissions to the putative~~  
21 ~~employer more than 35 times per year. Items of content produced~~  
22 ~~on a recurring basis related to a general topic shall be considered~~  
23 ~~separate submissions for purposes of calculating the 35 times per~~  
24 ~~year. For purposes of this clause, a “submission” is one or more~~  
25 ~~items or forms of content by a freelance journalist that: (I) pertains~~  
26 ~~to a specific event or topic; (II) is provided for in a contract that~~  
27 ~~defines the scope of the work; (III) is accepted by the publication~~  
28 ~~or company and published or posted for sale.~~

29 (xi) ~~Services provided by a licensed esthetician, licensed~~  
30 ~~electrologist, licensed manicurist, licensed barber, or licensed~~  
31 ~~cosmetologist provided that the individual:~~

32 (I) ~~Sets their own rates, processes their own payments, and is~~  
33 ~~paid directly by clients.~~

34 (II) ~~Sets their own hours of work and has sole discretion to~~  
35 ~~decide the number of clients and which clients for whom they will~~  
36 ~~provide services.~~

37 (III) ~~Has their own book of business and schedules their own~~  
38 ~~appointments.~~

39 (IV) ~~Maintains their own business license for the services~~  
40 ~~offered to clients.~~

1 ~~(V) If the individual is performing services at the location of~~  
2 ~~the hiring entity, then the individual issues a Form 1099 to the~~  
3 ~~salon or business owner from which they rent their business space.~~

4 ~~(VI) This subdivision shall become inoperative, with respect to~~  
5 ~~licensed manicurists, on January 1, 2022.~~

6 ~~(d) Subdivision (a) and the holding in Dynamex do not apply~~  
7 ~~to the following, which are subject to the Business and Professions~~  
8 ~~Code:~~

9 ~~(1) A real estate licensee licensed by the State of California~~  
10 ~~pursuant to Division 4 (commencing with Section 10000) of the~~  
11 ~~Business and Professions Code, for whom the determination of~~  
12 ~~employee or independent contractor status shall be governed by~~  
13 ~~subdivision (b) of Section 10032 of the Business and Professions~~  
14 ~~Code. If that section is not applicable, then this determination shall~~  
15 ~~be governed as follows: (A) for purposes of unemployment~~  
16 ~~insurance by Section 650 of the Unemployment Insurance Code;~~  
17 ~~(B) for purposes of workers compensation by Section 3200 et seq.;~~  
18 ~~and (C) for all other purposes in the Labor Code by Borello. The~~  
19 ~~statutorily imposed duties of a responsible broker under Section~~  
20 ~~10015.1 of the Business and Professions Code are not factors to~~  
21 ~~be considered under the Borello test.~~

22 ~~(2) A repossession agency licensed pursuant to Section 7500.2~~  
23 ~~of the Business and Professions Code, for whom the determination~~  
24 ~~of employee or independent contractor status shall be governed~~  
25 ~~by Section 7500.2 of the Business and Professions Code, if the~~  
26 ~~repossession agency is free from the control and direction of the~~  
27 ~~hiring person or entity in connection with the performance of the~~  
28 ~~work, both under the contract for the performance of the work and~~  
29 ~~in fact.~~

30 ~~(e) Subdivision (a) and the holding in Dynamex do not apply~~  
31 ~~to a bona fide business-to-business contracting relationship, as~~  
32 ~~defined below, under the following conditions:~~

33 ~~(1) If a business entity formed as a sole proprietorship,~~  
34 ~~partnership, limited liability company, limited liability partnership,~~  
35 ~~or corporation (“business service provider”) contracts to provide~~  
36 ~~services to another such business (“contracting business”), the~~  
37 ~~determination of employee or independent contractor status of the~~  
38 ~~business services provider shall be governed by Borello, if the~~  
39 ~~contracting business demonstrates that all of the following criteria~~  
40 ~~are satisfied:~~



- 1     (A) The business service provider is free from the control and  
2 direction of the contracting business entity in connection with the  
3 performance of the work, both under the contract for the  
4 performance of the work and in fact.
- 5     (B) The business service provider is providing services directly  
6 to the contracting business rather than to customers of the  
7 contracting business.
- 8     (C) The contract with the business service provider is in writing.
- 9     (D) If the work is performed in a jurisdiction that requires the  
10 business service provider to have a business license or business  
11 tax registration, the business service provider has the required  
12 business license or business tax registration.
- 13     (E) The business service provider maintains a business location  
14 that is separate from the business or work location of the  
15 contracting business.
- 16     (F) The business service provider is customarily engaged in an  
17 independently established business of the same nature as that  
18 involved in the work performed.
- 19     (G) The business service provider actually contracts with other  
20 businesses to provide the same or similar services and maintains  
21 a clientele without restrictions from the hiring entity.
- 22     (H) The business service provider advertises and holds itself  
23 out to the public as available to provide the same or similar  
24 services.
- 25     (I) The business service provider provides its own tools,  
26 vehicles, and equipment to perform the services.
- 27     (J) The business service provider can negotiate its own rates.
- 28     (K) Consistent with the nature of the work, the business service  
29 provider can set its own hours and location of work.
- 30     (L) The business service provider is not performing the type of  
31 work for which a license from the Contractor's State License Board  
32 is required, pursuant to Chapter 9 (commencing with Section 7000)  
33 of Division 3 of the Business and Professions Code.
- 34     (2) This subdivision does not apply to an individual worker, as  
35 opposed to a business entity, who performs labor or services for  
36 a contracting business.
- 37     (3) The determination of whether an individual working for a  
38 business service provider is an employee or independent contractor  
39 of the business service provider is governed by paragraph (1) of  
40 subdivision (a).

1     ~~(4) This subdivision does not alter or supersede any existing~~  
2 ~~rights under Section 2810.3.~~

3     ~~(f) Subdivision (a) and the holding in Dynamex do not apply to~~  
4 ~~the relationship between a contractor and an individual performing~~  
5 ~~work pursuant to a subcontract in the construction industry, and~~  
6 ~~instead the determination of whether the individual is an employee~~  
7 ~~of the contractor shall be governed by Section 2750.5 and by~~  
8 ~~Borello, if the contractor demonstrates that all the following criteria~~  
9 ~~are satisfied:~~

10     ~~(1) The subcontract is in writing.~~

11     ~~(2) The subcontractor is licensed by the Contractors State~~  
12 ~~License Board and the work is within the scope of that license.~~

13     ~~(3) If the subcontractor is domiciled in a jurisdiction that requires~~  
14 ~~the subcontractor to have a business license or business tax~~  
15 ~~registration, the subcontractor has the required business license or~~  
16 ~~business tax registration.~~

17     ~~(4) The subcontractor maintains a business location that is~~  
18 ~~separate from the business or work location of the contractor.~~

19     ~~(5) The subcontractor has the authority to hire and to fire other~~  
20 ~~persons to provide or to assist in providing the services.~~

21     ~~(6) The subcontractor assumes financial responsibility for errors~~  
22 ~~or omissions in labor or services as evidenced by insurance, legally~~  
23 ~~authorized indemnity obligations, performance bonds, or warranties~~  
24 ~~relating to the labor or services being provided.~~

25     ~~(7) The subcontractor is customarily engaged in an~~  
26 ~~independently established business of the same nature as that~~  
27 ~~involved in the work performed.~~

28     ~~(8) (A) Paragraph (2) shall not apply to a subcontractor~~  
29 ~~providing construction trucking services for which a contractor's~~  
30 ~~license is not required by Chapter 9 (commencing with Section~~  
31 ~~7000) of Division 3 of the Business and Professions Code, provided~~  
32 ~~that all of the following criteria are satisfied:~~

33     ~~(i) The subcontractor is a business entity formed as a sole~~  
34 ~~proprietorship, partnership, limited liability company, limited~~  
35 ~~liability partnership, or corporation.~~

36     ~~(ii) For work performed after January 1, 2020, the subcontractor~~  
37 ~~is registered with the Department of Industrial Relations as a public~~  
38 ~~works contractor pursuant to Section 1725.5, regardless of whether~~  
39 ~~the subcontract involves public work.~~

1 ~~(iii) The subcontractor utilizes its own employees to perform~~  
2 ~~the construction trucking services, unless the subcontractor is a~~  
3 ~~sole proprietor who operates their own truck to perform the entire~~  
4 ~~subcontract and holds a valid motor carrier permit issued by the~~  
5 ~~Department of Motor Vehicles.~~

6 ~~(iv) The subcontractor negotiates and contracts with, and is~~  
7 ~~compensated directly by, the licensed contractor.~~

8 ~~(B) For work performed after January 1, 2020, any business~~  
9 ~~entity that provides construction trucking services to a licensed~~  
10 ~~contractor utilizing more than one truck shall be deemed the~~  
11 ~~employer for all drivers of those trucks.~~

12 ~~(C) For purposes of this paragraph, “construction trucking~~  
13 ~~services” mean hauling and trucking services provided in the~~  
14 ~~construction industry pursuant to a contract with a licensed~~  
15 ~~contractor utilizing vehicles that require a commercial driver’s~~  
16 ~~license to operate or have a gross vehicle weight rating of 26,001~~  
17 ~~or more pounds.~~

18 ~~(D) This paragraph shall only apply to work performed before~~  
19 ~~January 1, 2022.~~

20 ~~(E) Nothing in this paragraph prohibits an individual who owns~~  
21 ~~their truck from working as an employee of a trucking company~~  
22 ~~and utilizing that truck in the scope of that employment. An~~  
23 ~~individual employee providing their own truck for use by an~~  
24 ~~employer trucking company shall be reimbursed by the trucking~~  
25 ~~company for the reasonable expense incurred for the use of the~~  
26 ~~employee-owned truck.~~

27 ~~(g) Subdivision (a) and the holding in Dynamex do not apply~~  
28 ~~to the relationship between a referral agency and a service provider,~~  
29 ~~as defined below, under the following conditions:~~

30 ~~(1) If a business entity formed as a sole proprietor, partnership,~~  
31 ~~limited liability company, limited liability partnership, or~~  
32 ~~corporation (“service provider”) provides services to clients through~~  
33 ~~a referral agency, the determination whether the service provider~~  
34 ~~is an employee of the referral agency shall be governed by Borello,~~  
35 ~~if the referral agency demonstrates that all of the following criteria~~  
36 ~~are satisfied:~~

37 ~~(A) The service provider is free from the control and direction~~  
38 ~~of the referral agency in connection with the performance of the~~  
39 ~~work for the client, both as a matter of contract and in fact.~~

1 ~~(B) If the work for the client is performed in a jurisdiction that~~  
2 ~~requires the service provider to have a business license or business~~  
3 ~~tax registration, the service provider has the required business~~  
4 ~~license or business tax registration.~~

5 ~~(C) If the work for the client requires the service provider to~~  
6 ~~hold a state contractor’s license pursuant to Chapter 9 (commencing~~  
7 ~~with Section 7000) of Division 3 of the Business and Professions~~  
8 ~~Code, the service provider has the required contractor’s license.~~

9 ~~(D) The service provider delivers services to the client under~~  
10 ~~service provider’s name, rather than under the name of the referral~~  
11 ~~agency.~~

12 ~~(E) The service provider provides its own tools and supplies to~~  
13 ~~perform the services.~~

14 ~~(F) The service provider is customarily engaged in an~~  
15 ~~independently established business of the same nature as that~~  
16 ~~involved in the work performed for the client.~~

17 ~~(G) The service provider maintains a clientele without any~~  
18 ~~restrictions from the referral agency and the service provider is~~  
19 ~~free to seek work elsewhere, including through a competing agency.~~

20 ~~(H) The service provider sets its own hours and terms of work~~  
21 ~~and is free to accept or reject clients and contracts.~~

22 ~~(I) The service provider sets its own rates for services performed,~~  
23 ~~without deduction by the referral agency.~~

24 ~~(J) The service provider is not penalized in any form for~~  
25 ~~rejecting clients or contracts. This subparagraph does not apply if~~  
26 ~~the service provider accepts a client or contract and then fails to~~  
27 ~~fulfill any of its contractual obligations.~~

28 ~~(2) For purposes of this subdivision, the following definitions~~  
29 ~~apply:~~

30 ~~(A) “Animal services” means services related to daytime and~~  
31 ~~nighttime pet care including pet boarding under Section 122380~~  
32 ~~of the Health and Safety Code.~~

33 ~~(B) “Client” means a person or business that engages a service~~  
34 ~~contractor through a referral agency.~~

35 ~~(C) “Referral agency” is a business that connects clients with~~  
36 ~~service providers that provide graphic design, photography,~~  
37 ~~tutoring, event planning, minor home repair, moving, home~~  
38 ~~cleaning, errands, furniture assembly, animal services, dog walking,~~  
39 ~~dog grooming, web design, picture hanging, pool cleaning, or yard~~  
40 ~~cleanup.~~

1 ~~(D) “Referral agency contract” is the agency’s contract with~~  
2 ~~clients and service contractors governing the use of its intermediary~~  
3 ~~services described in subparagraph (C).~~

4 ~~(E) “Service provider” means a person or business who agrees~~  
5 ~~to the referral agency’s contract and uses the referral agency to~~  
6 ~~connect with clients.~~

7 ~~(F) “Tutor” means a person who develops and teaches their own~~  
8 ~~curriculum. A “tutor” does not include a person who teaches a~~  
9 ~~curriculum created by a public school or who contracts with a~~  
10 ~~public school through a referral company for purposes of teaching~~  
11 ~~students of a public school.~~

12 ~~(3) This subdivision does not apply to an individual worker, as~~  
13 ~~opposed to a business entity, who performs services for a client~~  
14 ~~through a referral agency. The determination whether such an~~  
15 ~~individual is an employee of a referral agency is governed by~~  
16 ~~subdivision (a).~~

17 ~~(h) Subdivision (a) and the holding in Dynamex do not apply~~  
18 ~~to the relationship between a motor club holding a certificate of~~  
19 ~~authority issued pursuant to Chapter 2 (commencing with Section~~  
20 ~~12160) of Part 5 of Division 2 of the Insurance Code and an~~  
21 ~~individual performing services pursuant to a contract between the~~  
22 ~~motor club and a third party to provide motor club services utilizing~~  
23 ~~the employees and vehicles of the third party and, instead, the~~  
24 ~~determination whether such an individual is an employee of the~~  
25 ~~motor club shall be governed by Borello, if the motor club~~  
26 ~~demonstrates that the third party is a separate and independent~~  
27 ~~business from the motor club.~~

28 ~~(i) (1) The addition of subdivision (a) to this section of the~~  
29 ~~Labor Code by this act does not constitute a change in, but is~~  
30 ~~declaratory of, existing law with regard to wage orders of the~~  
31 ~~Industrial Welfare Commission and violations of the Labor Code~~  
32 ~~relating to wage orders.~~

33 ~~(2) Insofar as the application of subdivisions (b), (c), (d), (e),~~  
34 ~~(f), (g), and (h) of this section would relieve an employer from~~  
35 ~~liability, those subdivisions shall apply retroactively to existing~~  
36 ~~claims and actions to the maximum extent permitted by law.~~

37 ~~(3) Except as provided in paragraphs (1) and (2) of this~~  
38 ~~subdivision, the provisions of this section of the Labor Code shall~~  
39 ~~apply to work performed on or after January 1, 2020.~~

1     ~~(j) In addition to any other remedies available, an action for~~  
2 ~~injunctive relief to prevent the continued misclassification of~~  
3 ~~employees as independent contractors may be prosecuted against~~  
4 ~~the putative employer in a court of competent jurisdiction by the~~  
5 ~~Attorney General or by a city attorney of a city having a population~~  
6 ~~in excess of 750,000, or by a city attorney in a city and county or,~~  
7 ~~with the consent of the district attorney, by a city prosecutor in a~~  
8 ~~city having a full-time city prosecutor in the name of the people~~  
9 ~~of the State of California upon their own complaint or upon the~~  
10 ~~complaint of a board, officer, person, corporation, or association.~~

11     *SEC. 2. Section 2750.3 is added to the Labor Code, to read:*

12     2750.3. (a) (1) *For purposes of the provisions of this code*  
13 *and the Unemployment Insurance Code, and for the wage orders*  
14 *of the Industrial Welfare Commission, a person providing labor*  
15 *or services for remuneration shall be considered an employee*  
16 *rather than an independent contractor unless the hiring entity*  
17 *demonstrates that all of the following conditions are satisfied:*

18     (A) *The person is free from the control and direction of the*  
19 *hiring entity in connection with the performance of the work, both*  
20 *under the contract for the performance of the work and in fact.*

21     (B) *The person performs work that is outside the usual course*  
22 *of the hiring entity's business.*

23     (C) *The person is customarily engaged in an independently*  
24 *established trade, occupation, or business of the same nature as*  
25 *that involved in the work performed.*

26     (2) *Notwithstanding paragraph (1), any exceptions to the terms*  
27 *“employee,” “employer,” “employ,” or “independent contractor,”*  
28 *and any extensions of employer status or liability, that are*  
29 *expressly made by a provision of this code, the Unemployment*  
30 *Insurance Code, or in an applicable order of the Industrial Welfare*  
31 *Commission, including, but not limited to, the definition of*  
32 *“employee” in subdivision 2(E) of Wage Order No. 2, shall remain*  
33 *in effect for the purposes set forth therein.*

34     (3) *If a court of law rules that the three-part test in paragraph*  
35 *(1) cannot be applied to a particular context based on grounds*  
36 *other than an express exception to employment status as provided*  
37 *under paragraph (2), then the determination of employee or*  
38 *independent contractor status in that context shall instead be*  
39 *governed by the California Supreme Court's decision in S. G.*

1 *Borello & Sons, Inc. v. Department of Industrial Relations (1989)*  
2 *48 Cal.3d 341 (Borello).*

3 *(b) Subdivision (a) and the holding in Dynamex do not apply*  
4 *to a bona fide business-to-business contracting relationship, as*  
5 *defined below, under the following conditions:*

6 *(1) If a business entity formed as a sole proprietorship,*  
7 *partnership, limited liability company, limited liability partnership,*  
8 *or corporation (“business service provider”) contracts to provide*  
9 *services to another such business (“contracting business”), the*  
10 *determination of employee or independent contractor status of the*  
11 *business services provider shall be governed by Borello, if the*  
12 *contracting business demonstrates that all of the following criteria*  
13 *are satisfied:*

14 *(A) The business service provider is free from the control and*  
15 *direction of the contracting business entity in connection with the*  
16 *performance of the work, both under the contract for the*  
17 *performance of the work and in fact.*

18 *(B) The business service provider is providing services directly*  
19 *to the contracting business rather than to customers of the*  
20 *contracting business.*

21 *(C) The contract with the business service provider is in writing.*

22 *(D) If the work is performed in a jurisdiction that requires the*  
23 *business service provider to have a business license or business*  
24 *tax registration, the business service provider has the required*  
25 *business license or business tax registration.*

26 *(E) The business service provider maintains a business location*  
27 *that is separate from the business or work location of the*  
28 *contracting business.*

29 *(F) The business service provider is customarily engaged in an*  
30 *independently established business of the same nature as that*  
31 *involved in the work performed.*

32 *(G) The business service provider actually contracts with other*  
33 *businesses to provide the same or similar services and maintains*  
34 *a clientele without restrictions from the hiring entity.*

35 *(H) The business service provider advertises and holds itself*  
36 *out to the public as available to provide the same or similar*  
37 *services.*

38 *(I) The business service provider provides its own tools, vehicles,*  
39 *and equipment to perform the services.*

40 *(J) The business service provider can negotiate its own rates.*

1     (K) *Consistent with the nature of the work, the business service*  
2 *provider can set its own hours and location of work.*

3     (L) *The business service provider is not performing the type of*  
4 *work for which a license from the Contractor's State License Board*  
5 *is required, pursuant to Chapter 9 (commencing with Section 7000)*  
6 *of Division 3 of the Business and Professions Code.*

7     (2) *This subdivision does not apply to an individual worker, as*  
8 *opposed to a business entity, who performs labor or services for*  
9 *a contracting business.*

10    (3) *The determination of whether an individual working for a*  
11 *business service provider is an employee or independent contractor*  
12 *of the business service provider is governed by paragraph (1) of*  
13 *subdivision (a).*

14    (4) *This subdivision does not alter or supersede any existing*  
15 *rights under Section 2810.3.*

16    (c) *Subdivision (a) and the holding in Dynamex do not apply to*  
17 *the relationship between a referral agency and a service provider;*  
18 *as defined below, under the following conditions:*

19    (1) *If a business entity formed as a sole proprietor, partnership,*  
20 *limited liability company, limited liability partnership, or*  
21 *corporation ("service provider") provides services to clients*  
22 *through a referral agency, the determination whether the service*  
23 *provider is an employee of the referral agency shall be governed*  
24 *by Borello, if the referral agency demonstrates that all of the*  
25 *following criteria are satisfied:*

26    (A) *The service provider is free from the control and direction*  
27 *of the referral agency in connection with the performance of the*  
28 *work for the client, both as a matter of contract and in fact.*

29    (B) *If the work for the client is performed in a jurisdiction that*  
30 *requires the service provider to have a business license or business*  
31 *tax registration, the service provider has the required business*  
32 *license or business tax registration.*

33    (C) *If the work for the client requires the service provider to*  
34 *hold a state contractor's license pursuant to Chapter 9*  
35 *(commencing with Section 7000) of Division 3 of the Business and*  
36 *Professions Code, the service provider has the required*  
37 *contractor's license.*

38    (D) *The service provider delivers services to the client under*  
39 *service provider's name, rather than under the name of the referral*  
40 *agency.*



1 (E) *The service provider provides its own tools and supplies to*  
2 *perform the services.*

3 (F) *The service provider is customarily engaged in an*  
4 *independently established business of the same nature as that*  
5 *involved in the work performed for the client.*

6 (G) *The service provider maintains a clientele without any*  
7 *restrictions from the referral agency and the service provider is*  
8 *free to seek work elsewhere, including through a competing agency.*

9 (H) *The service provider sets its own hours and terms of work*  
10 *and is free to accept or reject clients and contracts.*

11 (I) *The service provider sets its own rates for services*  
12 *performed, without deduction by the referral agency.*

13 (J) *The service provider is not penalized in any form for*  
14 *rejecting clients or contracts. This subparagraph does not apply*  
15 *if the service provider accepts a client or contract and then fails*  
16 *to fulfill any of its contractual obligations.*

17 (2) *For purposes of this subdivision, the following definitions*  
18 *apply:*

19 (A) *“Animal services” means services related to daytime and*  
20 *nighttime pet care including pet boarding under Section 122380*  
21 *of the Health and Safety Code.*

22 (B) *“Client” means a person or business that engages a service*  
23 *contractor through a referral agency.*

24 (C) *“Referral agency” is a business that connects clients with*  
25 *service providers that provide graphic design, photography,*  
26 *tutoring, event planning, minor home repair, moving, home*  
27 *cleaning, errands, furniture assembly, animal services, dog*  
28 *walking, dog grooming, web design, picture hanging, pool*  
29 *cleaning, or yard cleanup.*

30 (D) *“Referral agency contract” is the agency’s contract with*  
31 *clients and service contractors governing the use of its*  
32 *intermediary services described in subparagraph (C).*

33 (E) *“Service provider” means a person or business who agrees*  
34 *to the referral agency’s contract and uses the referral agency to*  
35 *connect with clients.*

36 (F) *“Tutor” means a person who develops and teaches their*  
37 *own curriculum. A “tutor” does not include a person who teaches*  
38 *a curriculum created by a public school or who contracts with a*  
39 *public school through a referral company for purposes of teaching*  
40 *students of a public school.*

1     (3) *This subdivision does not apply to an individual worker, as*  
 2 *opposed to a business entity, who performs services for a client*  
 3 *through a referral agency. The determination whether such an*  
 4 *individual is an employee of a referral agency is governed by*  
 5 *subdivision (a).*  
 6     (d) (1) *Subdivision (a) and the holding in Dynamex do not apply*  
 7 *to a contract for “professional services” as defined below, and*  
 8 *instead the determination of whether the individual is an employee*  
 9 *or independent contractor shall be governed by Borello if the*  
 10 *hiring entity demonstrates that all of the following factors are*  
 11 *satisfied:*  
 12     (A) *The individual maintains a business location, which may*  
 13 *include the individual’s residence, that is separate from the hiring*  
 14 *entity. Nothing in this subdivision prohibits an individual from*  
 15 *choosing to perform services at the location of the hiring entity.*  
 16     (B) *If work is performed more than six months after the effective*  
 17 *date of this section, the individual has a business license, in*  
 18 *addition to any required professional licenses or permits for the*  
 19 *individual to practice in their profession.*  
 20     (C) *The individual has the ability to set or negotiate their own*  
 21 *rates for the services performed.*  
 22     (D) *Outside of project completion dates and reasonable business*  
 23 *hours, the individual has the ability to set the individual’s own*  
 24 *hours.*  
 25     (E) *The individual is customarily engaged in the same type of*  
 26 *work performed under contract with another hiring entity or holds*  
 27 *themselves out to other potential customers as available to perform*  
 28 *the same type of work.*  
 29     (F) *The individual customarily and regularly exercises*  
 30 *discretion and independent judgment in the performance of the*  
 31 *services.*  
 32     (2) *For purposes of this subdivision:*  
 33     (A) *An “individual” includes an individual providing services*  
 34 *through a sole proprietorship or other business entity.*  
 35     (B) *“Professional services” means services that meet any of*  
 36 *the following:*  
 37     (i) *Marketing, provided that the contracted work is original and*  
 38 *creative in character and the result of which depends primarily*  
 39 *on the invention, imagination, or talent of the employee or work*

1 *that is an essential part of or necessarily incident to any of the*  
2 *contracted work.*

3 *(ii) Administrator of human resources, provided that the*  
4 *contracted work is predominantly intellectual and varied in*  
5 *character and is of such character that the output produced or the*  
6 *result accomplished cannot be standardized in relation to a given*  
7 *period of time.*

8 *(iii) Travel agent services provided by either of the following:*  
9 *(I) a person regulated by the Attorney General under Article 2.6*  
10 *(commencing with Section 17550) of Chapter 1 of Part 3 of*  
11 *Division 7 of the Business and Professions Code, or (II) an*  
12 *individual who is a seller of travel within the meaning of*  
13 *subdivision (a) of Section 17550.1 of the Business and Professions*  
14 *Code and who is exempt from the registration under subdivision*  
15 *(g) of Section 17550.20 of the Business and Professions Code.*

16 *(iv) Graphic design.*

17 *(v) Grant writer.*

18 *(vi) Fine artist.*

19 *(vii) Services provided by an enrolled agent who is licensed by*  
20 *the United States Department of the Treasury to practice before*  
21 *the Internal Revenue Service pursuant to Part 10 of Subtitle A of*  
22 *Title 31 of the Code of Federal Regulations.*

23 *(viii) Payment processing agent through an independent sales*  
24 *organization.*

25 *(ix) Services provided by a still photographer or photojournalist*  
26 *who do not license content submissions to the putative employer*  
27 *more than 35 times per year. This clause is not applicable to an*  
28 *individual who works on motion pictures, which includes, but is*  
29 *not limited to, projects produced for theatrical, television, internet*  
30 *streaming for any device, commercial productions, broadcast*  
31 *news, music videos, and live shows, whether distributed live or*  
32 *recorded for later broadcast, regardless of the distribution*  
33 *platform. For purposes of this clause a “submission” is one or*  
34 *more items or forms of content produced by a still photographer*  
35 *or photojournalist that: (I) pertains to a specific event or specific*  
36 *subject; (II) is provided for in a contract that defines the scope of*  
37 *the work; and (III) is accepted by and licensed to the publication*  
38 *or stock photography company and published or posted. Nothing*  
39 *in this section shall prevent a photographer or artist from*  
40 *displaying their work product for sale.*

1     (x) *Services provided by a freelance writer, editor, or newspaper*  
2 *cartoonist who does not provide content submissions to the putative*  
3 *employer more than 35 times per year. Items of content produced*  
4 *on a recurring basis related to a general topic shall be considered*  
5 *separate submissions for purposes of calculating the 35 times per*  
6 *year. For purposes of this clause, a “submission” is one or more*  
7 *items or forms of content by a freelance journalist that: (I) pertains*  
8 *to a specific event or topic; (II) is provided for in a contract that*  
9 *defines the scope of the work; (III) is accepted by the publication*  
10 *or company and published or posted for sale.*

11     (xi) *Services provided by a licensed esthetician, licensed*  
12 *electrologist, licensed manicurist, licensed barber, or licensed*  
13 *cosmetologist provided that the individual:*

14     (I) *Sets their own rates, processes their own payments, and is*  
15 *paid directly by clients.*

16     (II) *Sets their own hours of work and has sole discretion to*  
17 *decide the number of clients and which clients for whom they will*  
18 *provide services.*

19     (III) *Has their own book of business and schedules their own*  
20 *appointments.*

21     (IV) *Maintains their own business license for the services offered*  
22 *to clients.*

23     (V) *If the individual is performing services at the location of*  
24 *the hiring entity, then the individual issues a Form 1099 to the*  
25 *salon or business owner from which they rent their business space.*

26     (VI) *This subdivision shall become inoperative, with respect to*  
27 *licensed manicurists, on January 1, 2022.*

28     (e) *Subdivision (a) and the holding in *Dynamex Operations**  
29 **West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903*  
30 *(*Dynamex*), do not apply to the following occupations as defined*  
31 *in the paragraphs below, and instead, the determination of*  
32 *employee or independent contractor status for individuals in those*  
33 *occupations shall be governed by *Borello*.*

34     (1) *A person or organization who is licensed by the Department*  
35 *of Insurance pursuant to Chapter 5 (commencing with Section*  
36 *1621), Chapter 6 (commencing with Section 1760), or Chapter 8*  
37 *(commencing with Section 1831) of Part 2 of Division 1 of the*  
38 *Insurance Code.*

39     (2) *A physician and surgeon, dentist, podiatrist, psychologist,*  
40 *or veterinarian licensed by the State of California pursuant to*

1 *Division 2 (commencing with Section 500) of the Business and*  
2 *Professions Code, performing professional or medical services*  
3 *provided to or by a health care entity, including an entity organized*  
4 *as a sole proprietorship, partnership, or professional corporation*  
5 *as defined in Section 13401 of the Corporations Code. Nothing in*  
6 *this subdivision shall apply to the employment settings currently*  
7 *or potentially governed by collective bargaining agreements for*  
8 *the licensees identified in this paragraph.*

9 (3) *An individual who holds an active license from the State of*  
10 *California and is practicing one of the following recognized*  
11 *professions: lawyer, architect, engineer, private investigator, or*  
12 *accountant.*

13 (4) *A securities broker-dealer or investment adviser or their*  
14 *agents and representatives that are registered with the Securities*  
15 *and Exchange Commission or the Financial Industry Regulatory*  
16 *Authority or licensed by the State of California under Chapter 2*  
17 *(commencing with Section 25210) or Chapter 3 (commencing with*  
18 *Section 25230) of Division 1 of Part 3 of Title 4 of the Corporations*  
19 *Code.*

20 (5) *A direct sales salesperson as described in Section 650 of*  
21 *the Unemployment Insurance Code, so long as the conditions for*  
22 *exclusion from employment under that section are met.*

23 (6) *A commercial fisherman working on an American vessel as*  
24 *defined in subparagraph (A) below.*

25 (A) *For the purposes of this paragraph:*

26 (i) *“American vessel” has the same meaning as defined in*  
27 *Section 125.5 of the Unemployment Insurance Code.*

28 (ii) *“Commercial fisherman” means a person who has a valid,*  
29 *unrevoked commercial fishing license issued pursuant to Article*  
30 *3 (commencing with Section 7850) of Chapter 1 of Part 3 of*  
31 *Division 6 of the Fish and Game Code.*

32 (iii) *“Working on an American vessel” means the taking or the*  
33 *attempt to take fish, shellfish, or other fishery resources of the*  
34 *state by any means, and includes each individual aboard an*  
35 *American vessel operated for fishing purposes who participates*  
36 *directly or indirectly in the taking of these raw fishery products,*  
37 *including maintaining the vessel or equipment used aboard the*  
38 *vessel. However, “working on an American vessel” does not apply*  
39 *to anyone aboard a licensed commercial fishing vessel as a visitor*

1 or guest who does not directly or indirectly participate in the  
2 taking.

3 (B) For the purposes of this paragraph, a commercial fisherman  
4 working on an American vessel is eligible for unemployment  
5 insurance benefits if they meet the definition of “employment” in  
6 Section 609 of the Unemployment Insurance Code and are  
7 otherwise eligible for those benefits pursuant to the provisions of  
8 the Unemployment Insurance Code.

9 (C) On or before March 1, 2021, and each March 1 thereafter,  
10 the Employment Development Department shall issue an annual  
11 report to the Legislature on the use of unemployment insurance  
12 in the commercial fishing industry. This report shall include, but  
13 not be limited to, reporting the number of commercial fishermen  
14 who apply for unemployment insurance benefits, the number of  
15 commercial fishermen who have their claims disputed, the number  
16 of commercial fishermen who have their claims denied, and the  
17 number of commercial fishermen who receive unemployment  
18 insurance benefits. The report required by this subparagraph shall  
19 be submitted in compliance with Section 9795 of the Government  
20 Code.

21 (D) This paragraph shall become inoperative on January 1,  
22 2023, unless extended by the Legislature.

23 (f) Subdivision (a) and the holding in *Dynamex* do not apply to  
24 the following, which are subject to the Business and Professions  
25 Code:

26 (1) A real estate licensee licensed by the State of California  
27 pursuant to Division 4 (commencing with Section 10000) of the  
28 Business and Professions Code, for whom the determination of  
29 employee or independent contractor status shall be governed by  
30 subdivision (b) of Section 10032 of the Business and Professions  
31 Code. If that section is not applicable, then this determination  
32 shall be governed as follows: (A) for purposes of unemployment  
33 insurance by Section 650 of the Unemployment Insurance Code;  
34 (B) for purposes of workers compensation by Section 3200 et seq.;  
35 and (C) for all other purposes in the Labor Code by Borello. The  
36 statutorily imposed duties of a responsible broker under Section  
37 10015.1 of the Business and Professions Code are not factors to  
38 be considered under the Borello test.

39 (2) A repossession agency licensed pursuant to Section 7500.2  
40 of the Business and Professions Code, for whom the determination

1 of employee or independent contractor status shall be governed  
2 by Section 7500.2 of the Business and Professions Code, if the  
3 repossession agency is free from the control and direction of the  
4 hiring person or entity in connection with the performance of the  
5 work, both under the contract for the performance of the work and  
6 in fact.

7 (g) Subdivision (a) and the holding in *Dynamex* do not apply  
8 to the relationship between a contractor and an individual  
9 performing work pursuant to a subcontract in the construction  
10 industry, and instead the determination of whether the individual  
11 is an employee of the contractor shall be governed by Section  
12 2750.5 and by *Borello*, if the contractor demonstrates that all the  
13 following criteria are satisfied:

14 (1) The subcontract is in writing.

15 (2) The subcontractor is licensed by the Contractors State  
16 License Board and the work is within the scope of that license.

17 (3) If the subcontractor is domiciled in a jurisdiction that  
18 requires the subcontractor to have a business license or business  
19 tax registration, the subcontractor has the required business license  
20 or business tax registration.

21 (4) The subcontractor maintains a business location that is  
22 separate from the business or work location of the contractor.

23 (5) The subcontractor has the authority to hire and to fire other  
24 persons to provide or to assist in providing the services.

25 (6) The subcontractor assumes financial responsibility for errors  
26 or omissions in labor or services as evidenced by insurance, legally  
27 authorized indemnity obligations, performance bonds, or  
28 warranties relating to the labor or services being provided.

29 (7) The subcontractor is customarily engaged in an  
30 independently established business of the same nature as that  
31 involved in the work performed.

32 (8) (A) Paragraph (2) shall not apply to a subcontractor  
33 providing construction trucking services for which a contractor's  
34 license is not required by Chapter 9 (commencing with Section  
35 7000) of Division 3 of the Business and Professions Code, provided  
36 that all of the following criteria are satisfied:

37 (i) The subcontractor is a business entity formed as a sole  
38 proprietorship, partnership, limited liability company, limited  
39 liability partnership, or corporation.

1 (ii) For work performed after January 1, 2020, the subcontractor  
2 is registered with the Department of Industrial Relations as a  
3 public works contractor pursuant to Section 1725.5, regardless  
4 of whether the subcontract involves public work.

5 (iii) The subcontractor utilizes its own employees to perform  
6 the construction trucking services, unless the subcontractor is a  
7 sole proprietor who operates their own truck to perform the entire  
8 subcontract and holds a valid motor carrier permit issued by the  
9 Department of Motor Vehicles.

10 (iv) The subcontractor negotiates and contracts with, and is  
11 compensated directly by, the licensed contractor.

12 (B) For work performed after January 1, 2020, any business  
13 entity that provides construction trucking services to a licensed  
14 contractor utilizing more than one truck shall be deemed the  
15 employer for all drivers of those trucks.

16 (C) For purposes of this paragraph, “construction trucking  
17 services” mean hauling and trucking services provided in the  
18 construction industry pursuant to a contract with a licensed  
19 contractor utilizing vehicles that require a commercial driver’s  
20 license to operate or have a gross vehicle weight rating of 26,001  
21 or more pounds.

22 (D) This paragraph shall only apply to work performed before  
23 January 1, 2022.

24 (E) Nothing in this paragraph prohibits an individual who owns  
25 their truck from working as an employee of a trucking company  
26 and utilizing that truck in the scope of that employment. An  
27 individual employee providing their own truck for use by an  
28 employer trucking company shall be reimbursed by the trucking  
29 company for the reasonable expense incurred for the use of the  
30 employee owned truck.

31 (h) Subdivision (a) and the holding in *Dynamex* do not apply  
32 to the relationship between a motor club holding a certificate of  
33 authority issued pursuant to Chapter 2 (commencing with Section  
34 12160) of Part 5 of Division 2 of the Insurance Code and an  
35 individual performing services pursuant to a contract between the  
36 motor club and a third party to provide motor club services  
37 utilizing the employees and vehicles of the third party and, instead,  
38 the determination whether such an individual is an employee of  
39 the motor club shall be governed by *Borello*, if the motor club



1 *demonstrates that the third party is a separate and independent*  
2 *business from the motor club.*

3 *(i) (1) The addition of subdivision (a) to this section of the*  
4 *Labor Code by this act does not constitute a change in, but is*  
5 *declaratory of, existing law with regard to wage orders of the*  
6 *Industrial Welfare Commission and violations of the Labor Code*  
7 *relating to wage orders.*

8 *(2) Insofar as the application of subdivisions (b), (c), (d), (e),*  
9 *(f), (g), and (h) of this section would relieve an employer from*  
10 *liability, those subdivisions shall apply retroactively to existing*  
11 *claims and actions to the maximum extent permitted by law.*

12 *(3) Except as provided in paragraphs (1) and (2) of this*  
13 *subdivision, the provisions of this section of the Labor Code shall*  
14 *apply to work performed on or after January 1, 2020.*

15 *(j) In addition to any other remedies available, an action for*  
16 *injunctive relief to prevent the continued misclassification of*  
17 *employees as independent contractors may be prosecuted against*  
18 *the putative employer in a court of competent jurisdiction by the*  
19 *Attorney General or by a city attorney of a city having a population*  
20 *in excess of 750,000, or by a city attorney in a city and county or,*  
21 *with the consent of the district attorney, by a city prosecutor in a*  
22 *city having a full-time city prosecutor in the name of the people*  
23 *of the State of California upon their own complaint or upon the*  
24 *complaint of a board, officer, person, corporation, or association.*

25 ~~SECTION 1. It is the intent of the Legislature to enact~~  
26 ~~legislation that would further clarify the application of the~~  
27 ~~California Supreme Court's decision in *Dynamex Operations W.*~~  
28 ~~*v. Superior Court* (2018) 4 Cal.5th 903 and requirements under~~  
29 ~~Section 2750.3 of the Labor Code.~~