



7 DUMB WAYS EMPLOYERS VIOLATE WAGE & HOUR LAWS IN CALIFORNIA

A guide to seven of the most common ways employers violate California's wage and hour laws, from misclassification to retaliation.

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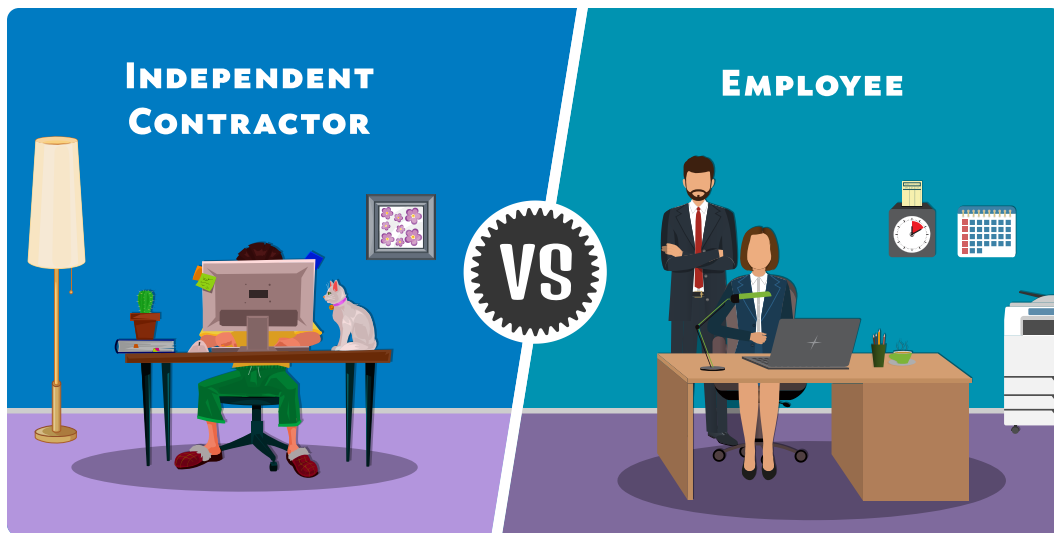
He writes these guides to put the state’s labor laws into plain English, in neutral terms, with a citation for every claim.



California law provides protections for workers' wages and hours. Many employers, however, violate those protections. In some cases, the violations are unintentional; the employer might simply be unaware of their legal duties. In other cases, employers intentionally violate the law to avoid paying their employees more money.

Regardless of the intent, violations of California's wage and hour laws can have severe consequences. This article takes a closer look at seven of the most common violations of wage laws in California.

They Misclassify Employees as Independent Contractors



Independent contractors are workers who are in business for themselves. They're generally free to work on multiple projects at the same time, and take jobs on a freelance basis. In many cases, they can choose when, where, and how they perform the work.¹

Employees, on the other hand, are workers that are employed by a business, person, or government entity.² In an employee-employer relationship, the employer generally exercises a high degree of control over the wages, hours, or working conditions of the employee.³

The distinction between independent contractors and employees is an important one. Employees have many legal rights that independent contractors do not. Those can include the right to overtime pay,⁴ the right to meal breaks,⁵ and the right to a minimum wage.⁶

1.1 The California Test

In California, the critical question is whether an “employment relationship” has been created. An *employment relationship* exists when an entity hires someone to do something for their benefit (or the benefit of a third party).⁷ The hiring entity can be a person, a business, an organization, or a governmental body.⁸

The legal definition of “employment relationship” is somewhat vague, and often depends on the worker’s specific occupation. In many cases, the default presumption is that a worker is an “employee” if they provide labor or services for someone else in exchange for pay. The burden is often on the hiring entity to establish that the worker is *not* an employee.⁹

A hiring entity can show that a worker is an independent contractor (and thus *not* an employee) only if all three of the following requirements are met:

-  **Autonomy.** The worker must be free from the control and direction of the hiring entity with regard to how the work is performed.¹⁰
-  **Business Dissimilarity.** The worker's labor or services must fall outside the usual course of the hiring entity's business.¹¹
-  **Custom of the Worker.** The worker must be customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.¹²

This test is commonly called the “ABC” test. Although the ABC test is the most common under California law, it isn't always the correct test to determine a worker's status as employee or independent contractor. The ABC test controls when applying three sets of rules:

-  **Labor Code.** California's Labor Code governs most aspects of the employment relationship. These statutes cover rules like the minimum wage,¹³ labor law exemptions,¹⁴ hours of work,¹⁵ workplace safety,¹⁶ and much more.¹⁷
-  **Wage Orders.** The State of California uses a series of wage orders to define many conditions of employment. The wage orders, which are available [here](#), have the force of law. They address workplace rules, such as: the right to overtime pay, the right to meal and rest breaks, and certain recordkeeping requirements.¹⁸
-  **Unemployment Insurance Code.** California's Unemployment Insurance Code governs, as the name suggests, unemployment insurance. It also

covers: disability insurance, certain tax withholdings, the CalWORKs program, and other workforce development programs.¹⁹

For most workers, if the legal rights established by either set of rules above are at issue, the ABC test will apply to determine whether the worker is an employee or an independent contractor. But, as with most legal rules, there are exceptions.

If an exception to the ABC test applies, the next most common applicable test is called the “manner and means” test. The manner and means test is also the default test used when a court finds, for some reason, that the ABC test cannot be applied in a particular case.²⁰

Under the manner and means test, an employment relationship will be found when the business has a right to control the manner and means of accomplishing the result desired.²¹

The manner and means test is the most commonly used for the purposes of:

-  California's wage and hour laws when the ABC test doesn't apply,²²
-  Unemployment insurance benefits when the ABC test doesn't apply,²³
-  Workers' compensation insurance,²⁴
-  State disability insurance,²⁵ and
-  State income tax withholding.²⁶

Because of their widespread use, it is important for California businesses and workers alike to fully understand these tests.

1.2 The Amount of Control Is Key

The primary question under the manner and means test is the degree to which the hiring business can control *how* a worker does their job. If the business has a right to exercise a high degree of control, the worker will be considered an employee.²⁷ If, on the other hand, the business only has a right to control the result of the work (and not the means by which it is accomplished), an independent contractor relationship is established.²⁸

Put simply, the more control a business exercises over the way a worker does their job, the more likely it is that the worker will be found to be an employee.²⁹ If, for example, the business can control the details involved in how a task is performed,

rather than just the end result of the task, they will likely be considered an employer.³⁰

Importantly, businesses do not have to actually exercise control over the way a worker performs the work to be considered an employer. The business only needs to have the right to do so under the parties' agreement.³¹ The business's right of control can be expressly stated in a written contract, or it can be implied by the nature of the job.³²

1.3 Secondary Factors to Consider

It is often difficult to know who has the right to control the manner and means of a particular job.³³ Courts will therefore consider a series of secondary factors to make a final determination:³⁴

-  **Is the worker supervised?** Independent contractors are free to do their work however they want, according to their own methods. If a person is required to follow a business's procedures, is supervised, or is given instructions on how to work, this suggests the worker is an employee.³⁵
-  **Can the worker be fired at any time?** If the business can fire a worker at will, it suggests the worker is an employee. But if a person is an independent contractor, they typically cannot be terminated unless the terms of the contract are fulfilled or breached.³⁶
-  **Is the work a part of the business's normal trade?** Work that is part of a business's regular line of work is normally performed by employees. A shoe salesperson in a shoe store, for example, would probably be an employee because they assist with the work normally performed by the business.³⁷
-  **Does the worker operate a separate business?** If a worker markets himself or herself as able to provide services for more than one company, it is evidence that the person has a separately established business. Independent contractors can normally accept work from more than one business, while employees are usually more limited.³⁸
-  **Does the worker make business decisions?** A person who can make their own business decisions, particularly those that involve a risk of losing money or an opportunity for profit, is usually an independent contractor. Employees generally do *not* purchase equipment, rent an office, invest in advertising, or purchase insurance coverage with their own money.³⁹
-  **Does the worker provide their own equipment?** Employees are usually not required to provide their own equipment, tools, supplies, or the location

to perform their work. Independent contractors, on the other hand, often invest in the resources they need to do the job. If a business furnishes the tools for the job, the worker is more likely to be considered an employee.⁴⁰

-  **How long is the work expected to last?** Employees are usually hired for an indefinite period. Independent contractors, on the other hand, are often retained on a per-job basis for a fixed period of time.⁴¹
-  **How is the worker paid?** Employees are often paid a fixed salary or an hourly wage. Independent contractors, on the other hand, are usually paid a fixed rate per project or per task performed. Additionally, independent contractors generally submit invoices to businesses after a project is completed.⁴²
-  **Is the worker a skilled laborer?** Workers who provide unskilled or semi-skilled labor are more likely to be considered employees entitled to full protection of California's labor laws.⁴³
-  **Was the worker trained by the business?** Independent contractors generally perform their job independently and do not require training. If the business provides training to workers performing the same job, that can be evidence that a worker is an employee.
-  **How did the parties characterize their relationship?** Courts will sometimes, but not always, consider how the parties described their relationship. If the worker or business believed they were creating an employee-employer relationship, courts may be more likely to find that an employment relationship exists.⁴⁴

Courts do not apply a strict formula when looking at these factors. Instead, they view the relationship as a whole and approach the factors flexibly, giving them varying levels of importance depending on the facts of the case.⁴⁵

If, after using these factors, a court is still unsure about whether a worker is an employee or an independent contractor, they will usually presume the person is an employee.⁴⁶ Given this, it can be a good idea for businesses to err on the side of caution and treat their workers as employees if there is any doubt about their status.

1.4 A Written Agreement Is **NOT** Determinative

Importantly, the label a business places on a worker does not determine whether the worker is an employee or an independent contractor for legal purposes.⁴⁷ If, for example, the parties have a written agreement stating that the worker is an

independent contractor but the parties act like an employer and employee, courts will ignore the agreement.⁴⁸

Similarly, the fact that a worker is issued a 1099 form for federal tax purposes, rather than a W-2 form, is not determinative of whether a person is an independent contractor. The legal test used to determine whether an employment relationship exists under California law is slightly different than it is for federal tax purposes. Also, some businesses mistakenly classify their workers as independent contractors to avoid the costs associated with employment.

This means that many workers who call themselves “independent contractors” are actually employees. When a worker has been misclassified, they can be entitled to recover all the benefits they would have received if they had been properly classified as an employee.

EXAMPLE

John works as a cashier at a grocery store. His boss assigns him specific tasks and requires him to show up during specific hours. The grocery store requires John to sign an agreement stating that he is an independent contractor.

Because John meets the legal test of being an employee, and not an independent contractor, the agreement he signed is unlawful and courts will ignore it. Instead, courts will look at the conduct of the worker and the business to determine who really has control over the way the job is performed.

Put simply, the law requires workers to be treated as employees if they meet the legal definition of that role, regardless of whether the business has called them something else. A job title itself is not dispositive of whether a person is an employee or an independent contractor.⁴⁹

1.5 **Employment Can Exist Even When Control Is Absent**

In some circumstances, a business may lack control over how work is performed but a court will nevertheless find that an employer-employee relationship exists.⁵⁰ This can happen when three factors are met:



The business retains pervasive control over the operation as a whole,



The worker's job responsibilities are an integral part of the operation, and



The nature of the work makes detailed control unnecessary.⁵¹

Cab drivers, for example, can sometimes be deemed employees under this rule, since the drivers perform an indispensable service for a cab company and all three factors are met.⁵²

1.6 Presumption for Licensed Contractors

Workers who perform services that require a contractor's license issued by the State of California are presumed to be employees.⁵³ Likewise, people who work for a person who is required to obtain a contractors license are presumed to be employees.⁵⁴

This presumption shifts the burden of proof to the business receiving services. This means that, in court, businesses wishing to classify their workers as independent contractors will bear the initial responsibility of showing that the workers were actually independent contractors under the normal test and factors stated above.⁵⁵

Businesses are also responsible for proving that the worker's status as an independent contractor was not a pretext to avoid classifying the worker as an employee.⁵⁶

1.7 Workers' Compensation Cases

California employees who have suffered a work-related injury are sometimes entitled to pay or benefits under California's workers' compensation laws.⁵⁷ Workers' compensation claims in California are administered by the Division of Workers' Compensation (the DWC).⁵⁸

The test used to determine whether an employment relationship exists in workers' compensation cases is largely the same as the test used in other California cases.⁵⁹ But the California Supreme Court has noted that the workers' compensation law should be interpreted liberally in favor of awarding compensation.⁶⁰ As such, some courts will consider other factors when reviewing cases.⁶¹

Specifically, courts in workers' compensation cases may consider:



The purpose of the workers' compensation laws,

- The class of people intended to be protected by the laws,
- Whether there are any specific statutory exclusions that apply, and
- The relative bargaining positions of the parties (including consideration of the parties' mental states, economic strength, and educational attainment).⁶²

These factors tend to favor a finding that an employment relationship exists in workers' compensation cases.⁶³ It is not clear whether courts will consider them in other contexts.

1.8 Still Not Sure?

If a worker or a business is still confused about whether their relationship meets the legal definition of “employment” under California law, they have the option of requesting a written determination from California's Employment Development Department (the EDD) for purposes of the state's employment tax laws. The request can be completed on Form DE 1870 [↗](#) and mailed to the EDD. The EDD then issues a written ruling on the worker's status.

They Misclassify Regular Employees as “Exempt” Employees



California labor laws require most employers to follow certain rules, like paying overtime, tracking hours, or providing rest breaks. Some types of jobs, however, are exempt from these requirements. An *exempt employee* is someone whose job is not subject to one or more sets of wage and hour laws.

In most cases, there are three simple requirements to determine whether a worker is an exempt employee under California law:

- ✓ **Minimum Salary.** The employee must be paid a salary that is at least twice the state minimum wage for full-time employment.⁶⁴
- ✓ **White Collar Duties.** The employee's primary duties must consist of administrative, executive, or professional tasks.⁶⁵
- ✓ **Independent Judgment.** The employee's job duties must involve the use of discretion and independent judgment.⁶⁶

If all three requirements are met, the employee will usually be classified as “exempt” from overtime, minimum wage, and rest break requirements (but not meal break requirements). There are, however, many caveats to this test.

There are also some jobs that are subject to a different test altogether. And some employees are only partially exempt; meaning, they are protected by certain labor laws, but not others. These distinctions, and the relevant test to determine whether an employee is exempt, are explored further in our article: [Exempt vs. Non-Exempt Employees: Guide to California Law](#).

For now, we'll take a look at the three main requirements in California to determine whether an employee is exempt or non-exempt.

2.1 The Salary Requirement

In general, an employee is only exempt if they are paid on a salary basis (rather than an hourly wage).⁶⁷ The salary must be at least *twice the state minimum wage* for full-time employment.⁶⁸

A *salary*, for these purposes, is an unvarying minimum amount of pay.⁶⁹ The employee's pay must be predetermined, and cannot change based on the number of hours worked or the quality of the work performed.⁷⁰

Courts have suggested that employers can deduct from an employee's pay for *full-day* absences and still consider the employee to be paid on a salary basis.⁷¹ But the employee would no longer be considered "salaried" if the employer deducted for *partial-day* absences.⁷²

If the employee's pay is based on the number of hours worked with no minimum guarantee, the employee will be treated as being an hourly employee (and thus nonexempt).⁷³

2.2 Calculating the Minimum Salary

As mentioned above, California law requires the employee to be paid a monthly salary of at least twice the state minimum wage for full-time employment to qualify as exempt. For these purposes, *full-time employment* is considered 40 hours per week.⁷⁴

In 2026, employees are entitled to be paid a minimum wage of at least \$16.90 per hour.⁷⁵ Some workers are entitled to more than this: many cities and counties have adopted higher local minimum wages, and covered fast food and health care workers have higher statewide minimums.⁷⁶

This means that the minimum salary for exempt employees in 2026 is **\$5,858.67 per month** (or \$70,304.00 annually). These numbers are calculated by doubling the applicable minimum wage, multiplying that amount by 40 hours per week, the result of which is then multiplied by 52 weeks and divided by 12 months. This calculation gives us a monthly salary that is equal to twice the state minimum wage for full-time employment.⁷⁷ A higher salary floor applies to some exempt employees, including covered health care workers and exempt employees of large fast food chains, whose minimums are tied to their industries' higher minimum wages.⁷⁸

California's minimum wage is adjusted on January 1 of each year based on inflation.⁷⁹ This means that the minimum salary for exempt employees in California can also increase each year.

Minimum annual salary for exempt employees	
Year	Minimum Annual Salary
2023	\$64,480
2024	\$66,560
2025	\$68,640
2026	\$70,304.00

Before January 1, 2023, employers with 25 or fewer employees had a lower minimum. In 2022, the minimum annual salary was \$58,240 for those employers and \$62,400 for larger ones. Earlier figures are listed in the Department of Industrial Relations' history of the California minimum wage [here](#).

For more information about California's minimum wage, please read our article: [Guide to California's Minimum Wage Laws in 2026 and Beyond](#).

2.3 The White Collar Duties Requirement

If the salary requirements are met, the next question is whether the employee is employed in an administrative, executive, or professional capacity.⁸⁰ This is sometimes called the “white collar duties” test.

To determine whether an employee is employed in an administrative, executive, or professional capacity, we look at which duties the employee actually performs, regardless of job title or how the job is defined in a position description.⁸¹

Importantly, the white collar duties test focuses on the employee's *primary* duties. California law requires an employee to devote more than half of his or her working hours to the primary duty in order to satisfy this test.⁸²

Administrative Employees

An employee is considered employed in an administrative capacity if their primary duty is office or nonmanual work directly related to management or general business operations.⁸³

Work *relates* to management or general business operations when the employee assists in running the business.⁸⁴

Secretaries, store clerks, bookkeepers, and lead operators on production lines cannot be classified as administrative employees because they do not help run the business.

Examples of duties that relate to management or general business operations include responsibility for marketing, research, budgeting, finance, accounting, purchasing, quality control, human resources, labor or government relations, regulatory compliance, and database administration.⁸⁵

Executive Employees

An employee is considered employed in an executive capacity when:

-  Their primary duty is the management of a business or one of its departments;
-  They regularly direct the work of two or more other employees; and
-  They have the authority to hire and fire employees, or to make recommendations about hiring, firing, promotions, and wages that are given particular weight.⁸⁶

Management includes such activities as hiring, firing, training, supervising, and disciplining employees; making work assignments; resolving employee grievances; maintaining production or sales records; ordering materials or inventory; and planning a budget.⁸⁷

Executive employees receive little direct supervision.

Professional Employees

There are three types of professional employees that can qualify for exemptions:



Licensed Professionals. People who are licensed or certified by the State of California and are primarily engaged in the practice of: law, medicine, dentistry, optometry, architecture, engineering, teaching,⁸⁸ or accounting.⁸⁹



Learned Professionals. People who have advanced knowledge in a field of science or learning that is customarily acquired by prolonged and specialized study.⁹⁰



Creative Professionals. People who focus on invention, imagination, originality, or talent in a recognized field that is artistic or creative.⁹¹

The professional employee exemption is fact-specific and depends on the nature of the work that the employee primarily undertakes.

Of note, registered nurses who are employed to engage in the practice of nursing are not exempt professionals, but they might still be exempt as administrators or executives.⁹²

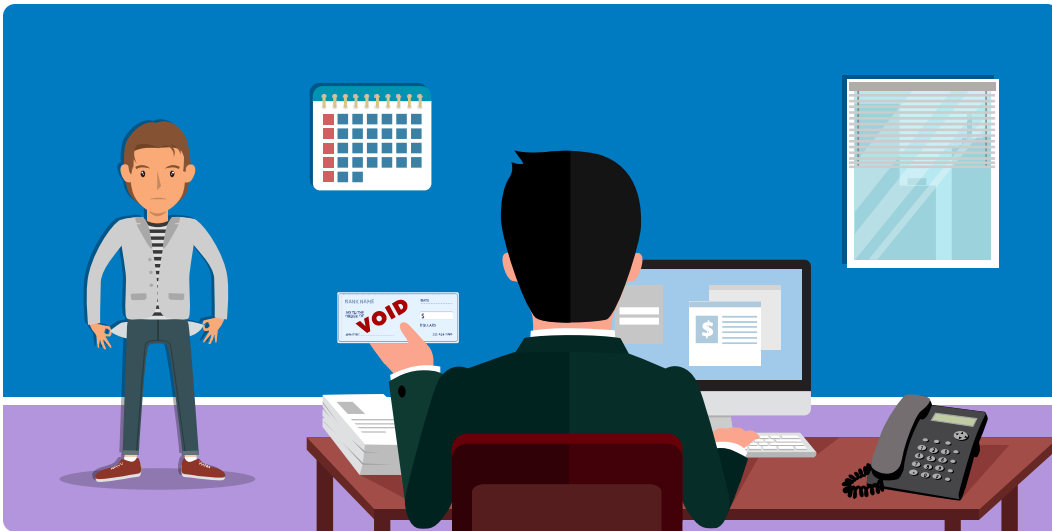
2.4 The Discretion and Independent Judgment Requirement

To qualify as an exempt employee, California's Labor Code requires the worker to regularly exercise *discretion and independent judgment* in performing their duties.⁹³

An employee exercises discretion and independent judgment when the employee makes and implements important choices after considering competing courses of action.⁹⁴

An employee's judgment is *independent* when it is free from immediate direction or supervision, even if an employee who is higher in the management chain has the authority to override the decision.⁹⁵

They Fail to Fully Pay Their Employees on Time



In general, the agreement between the employee and employer sets the terms of employment, including when wages will be paid. But California law imposes some requirements on employers, regardless of their agreement with their employees.

3.1 General Rule: Semimonthly Payments

Most California employees must be paid at least twice a month.⁹⁶ An employer must establish an employee's regular paydays before wages are first paid.⁹⁷

The employer must post a conspicuous notice at the place of work or at the office where employees are paid, specifying the regular paydays and the time and place of payment.⁹⁸

If employees are paid semimonthly (twice a month) *and* the work periods for which they are paid are the 1st through the 15th and the 16th through the end of the month, wages must be paid on the following schedule:⁹⁹



Wages earned between the 1st and 15th day of the month must be paid between the 16th and 26th day of the same month.



Wages earned between the 16th and the last day of the month must be paid between the 1st and the 10th day of the following month.

3.2 **Alternative Pay Schedules**

If employees are paid on any other schedule the employer must generally pay wages no later than 7 days after the end of each work period. Labor Code, § 204, subd. (d)

References

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- 1 Labor Code, § 3353 [“Independent contractor' means any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.”].
 - 2 Labor Code, § 3351; see also Cal. Code of Regs., tit. 8, § 11150, subd. 2(F) [“Employee' means any person employed by an employer.”].
 - 3 See, e.g., Cal. Code of Regs., tit. 8, § 11150, subd. 2(G) [“Employer' means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.”].
 - 4 29 U.S.C. § 207; Labor Code, § 510, subd. (a).
 - 5 See Labor Code, § 512, subd. (a); Cal. Code of Regs., tit. 8, §§ 11010–11170 [wage orders of the California Industrial Welfare Commission].
 - 6 Labor Code, § 1182.12, subd. (b).
 - 7 Labor Code, § 2750 [“The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a third person.”].
 - 8 Labor Code, § 18 [“Person' means any person, association, organization, partnership, business trust, limited liability company, or corporation.”].
 - 9 Labor Code, § 2775, subd. (b)(1) [“For purposes of this code and the Unemployment Insurance Code, and for the purposes of wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied: . . . ”].
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- 10 Labor Code, § 2775, subd. (b)(1)(A) [“The person is 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.”].
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- 11 Labor Code, § 2775, subd. (b)(1)(B) [“The person performs work that is outside the usual course of the hiring entity's business.”].
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- 12 Labor Code, § 2775, subd. (b)(1)(C) [“The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.”].
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- 13 Labor Code, § 1182.12.
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- 14 Labor Code, § 515.
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- 15 Labor Code, § 510.
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- 16 Labor Code, § 6300 et seq.
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- 17 Labor Code, § 2775, subd. (b)(1).
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- 18 Labor Code, § 2775, subd. (b)(1).
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- 19 Labor Code, § 2775, subd. (b)(1).
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- 20 Labor Code, § 2775, subd. (b)(3) [“If a court of law rules that the three-part test in paragraph (1) cannot be applied to a particular context based on grounds other than an express exception to employment status as provided under paragraph (2), then the determination of employee or independent contractor status in that context shall instead be governed by the California Supreme Court's decision in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (*Borello*).”].
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- 21 *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 350; see also Labor Code, § 3353 [defining “independent contractor” as “any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.”].
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- 22 See, e.g., *Bradley v. Networkers Internat., LLC* (2012) 211 Cal.App.4th 1129, 1145–1146 [applying the manner and means test in the context of a wage and hour class action case].
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- 23 See, e.g., *Tieberg v. Unemployment Ins. Appeals Board* (1970) 2 Cal.3d 943, 946 [“The Unemployment Insurance Code defines employment as service performed for wages or under a contract of hire. The principal test of an employment relationship is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired.”].
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- 24 See, e.g., *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 350.
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- 25 See, e.g., *An Independent Home Support Service, Inc. v. Superior Court* (2006) 145 Cal.App.4th 1418, 1425 [mentioning state disability insurance and using the manner and means test].
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- 26 See Employment Development Department, *Form DE 38: Employment Determination Guide* (2016), [available here](#) ²³.
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- 27 *Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 10 [“The essence of the test is the ‘control of details’—that is, whether the principal has the right to control the manner and means by which the worker accomplishes the work”]; see also Labor Code, § 3351 [“‘Employee’ means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed . . .”].
-
- 28 *Tieberg v. Unemployment Ins. Appeals Board* (1970) 2 Cal.3d 943, 946–947.
-
- 29 *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 528 [“Whether a common law employer-employee relationship exists turns foremost on the degree of a hirer’s right to control how the end result is achieved.”].
-
- 30 *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 535.
-
- 31 *Hardin v. Elvitsky* (1965) 232 Cal.App.2d 357, 373 [“The determination of whether the status of an employee or that of an independent contractor exists is governed primarily by the right of control which rests in the employer, rather than by his actual exercise of control; and where no express agreement is shown as to the right of the claimed employer to control the mode and manner of doing the work, the existence or non-

existence of the right must be determined by reasonable inferences drawn from the circumstances shown, and is a question for the jury.”].

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- 32 *Burlingham v. Gray* (1943) 22 Cal.2d 87, 100 [“Where there is shown no express agreement as to the right of the claimed employer to control the mode and manner of doing the work, the existence or nonexistence of the right must be determined by reasonable inferences drawn from the circumstances shown, and is a question for the jury.”].
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- 33 *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 350 [“[T]he courts have long recognized that the 'control' test, applied rigidly and in isolation, is often of little use in evaluating the infinite variety of service arrangements. While conceding that the right to control work details is the 'most important' or 'most significant' consideration, the authorities also endorse several 'secondary' indicia of the nature of a service relationship.”].
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- 34 *Arnold v. Mutual of Omaha Ins. Co.* (2011) 202 Cal.App.4th 580, 584.
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- 35 *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 351 [considering “the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision”].
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- 36 *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 539 [“[T]he hirer's right to fire at will and the basic level of skill called for by the job, are often of inordinate importance.”].
-
- 37 *Tieberg v. Unemployment Ins. Appeals Board* (1970) 2 Cal.3d 943, 949 [considering “whether or not the one performing services is engaged in a distinct occupation or business”].
-
- 38 *Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 10 [considering “whether the worker is engaged in a distinct occupation or business”].
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- 39 *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 355 [noting that other jurisdictions consider “the alleged employee's opportunity for profit or loss depending on his managerial skill”].
-
- 40 *Arnold v. Mutual of Omaha Ins. Co.* (2011) 202 Cal.App.4th 580, 584 [considering “whether the principal or the worker supplies the

instrumentalities, tools, and the place of work for the person doing the work”].

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- 41 *Tieberg v. Unemployment Ins. Appeals Board* (1970) 2 Cal.3d 943, 949 [considering “the length of time for which the services are to be performed”].
-
- 42 *Varisco v. Gateway Science & Engineering, Inc.* (2008) 166 Cal.App.4th 1099, 1103 [considering “the method of payment, whether by the time or by the job”].
-
- 43 *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 539 [“[T]he hirer’s right to fire at will and the basic level of skill called for by the job, are often of inordinate importance.”].
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- 44 *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 351 [considering “whether or not the parties believe they are creating the relationship of employer-employee”].
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- 45 *Germann v. Workers’ Comp. Appeals Bd.* (1981) 123 Cal.App.3d 776, 783 [“Not all these factors are of equal weight. The decisive test is the right of control, not only as to results, but as to the manner in which the work is done. . . . Generally, however, the individual factors cannot be applied mechanically as separate tests; they are intertwined and their weight depends often on particular combinations.”].
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- 46 See Labor Code, § 3357 [“Any person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee.”]; see also *Jones v. Workers’ Comp. Appeals Bd.* (1971) 20 Cal.App.3d 124, 127 [applying a presumption that a worker is an employee if they “perform work ‘for another’”].
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- 47 *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 349 [“The label placed by the parties on their relationship is not dispositive, and subterfuges are not countenanced.”].
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- 48 *Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 877 [“The agreement characterizing the relationship as one of ‘client—-independent contractor’ will be ignored if the parties, by their actual conduct, act like ‘employer—employee.’”].
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- 49 *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 349.
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- 50 *Yellow Cab Coop. v. Workers' Comp. Appeals Bd.* (1991) 226 Cal.App.3d 1288, 1295 [“the statutory test of 'control' may be satisfied even where 'complete control' or 'control over details' is lacking—at least where the principal retains pervasive control over the operation as a whole, the worker's duties are an integral part of the operation, the nature of the work makes detailed control unnecessary, and adherence to statutory purpose favors a finding of coverage.”].
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- 51 *Yellow Cab Coop. v. Workers' Comp. Appeals Bd.* (1991) 226 Cal.App.3d 1288, 1295.
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- 52 *Yellow Cab Coop. v. Workers' Comp. Appeals Bd.* (1991) 226 Cal.App.3d 1288, 1295.
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- 53 Labor Code, § 2750.5; see Bus. & Prof. Code, §§ 7000–7191 [contractor licensing].
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- 54 Labor Code, § 2750.5 [“There is a rebuttable presumption affecting the burden of proof that a worker performing services for which a license is required pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, or who is performing such services for a person who is required to obtain such a license is an employee rather than an independent contractor.”].
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- 55 Labor Code, § 2750.5.
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- 56 Labor Code, § 2750.5, subd. (c) [requiring proof that “the individual's independent contractor status is bona fide and not a subterfuge to avoid employee status”].
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- 57 See Labor Code, § 3201; Cal. Const., art. XIV, § 4.
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- 58 Labor Code, § 3205.
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- 59 See, e.g., *Johnson v. Workmen's Comp. Appeals Bd.* (1974) 41 Cal.App.3d 318, 321.
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- 60 *Greydanus v. Industrial Accident Comm'n* (1965) 63 Cal.2d 490, 493 [“[I]t is well recognized that workmen's compensation statutes are to be construed liberally in favor of awarding compensation.”].
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- 61 *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 351 [“[T]he concept of 'employment' embodied in the [Workers Compensation] Act is not inherently limited by common law

principles. We have acknowledged that the Act's definition of the employment relationship must be construed with particular reference to the 'history and fundamental purposes' of the statute.”].

62 *Truesdale v. Workers' Comp. Appeals Bd.* (1987) 190 Cal.App.3d 608, 617; *Johnson v. Workmen's Comp. Appeals Bd.* (1974) 41 Cal.App.3d 318, 322 [“[R]ather than relying merely upon the specific and several tests listed in *Tieberg* and *Empire Star*, we should also consider (a) the purpose of the statute and the intention of the Legislature, (b) the persons sought to be protected, (c) if the petitioner is or is not of a class of persons generally intended to be protected, (d) whether there are any other specific statutory exclusions, and (e) what are the relative bargaining positions of the parties mentally, economically and educationally.”].

63 *Greydanus v. Industrial Accident Comm'n* (1965) 63 Cal.2d 490, 493.

64 Labor Code, § 515, subd. (a); Cal. Code of Regs., tit. 8, § 11040 [providing that, for each exempted category, the employee must earn “a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment”].

65 Labor Code, § 515, subd. (a) [“The Industrial Welfare Commission may establish exemptions from the requirement that an overtime rate of compensation be paid pursuant to Sections 510 and 511 for executive, administrative, and professional employees, if the employee is primarily engaged in the duties that meet the test of the exemption, customarily and regularly exercises discretion and independent judgment in performing those duties, and earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment.”].

66 Labor Code, § 515, subd. (a) [requiring employees to “customarily and regularly exercises discretion and independent judgment in performing” the duties of their job].

67 Labor Code, § 515, subd. (a); Cal. Code of Regs., tit. 8, § 11040.

68 Labor Code, § 515, subds. (a), (c).

69 *Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 395; *Kettenring v. Los Angeles Unified School Dist.* (2008) 167 Cal.App.4th 507, 513–514.

- 70 *Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 398 [“Since federal law requires that, in order to meet the salary basis test for exemption the employee would have to be paid a predetermined amount that is not subject to reduction based upon the number of hours worked, state law requirements must be at least as protective.”]; *Kettenring v. Los Angeles Unified School Dist.* (2008) 167 Cal.App.4th 507, 513–514 [salary cannot be “subject to reduction because of variations in the quality or quantity of the work performed”], quoting 29 C.F.R. § 541.602(a).
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- 71 *Conley v. Pacific Gas and Elec. Co.* (2005) 131 Cal.App.4th 260, 267; 29 C.F.R. § 541.602(b)(1).
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- 72 *Conley v. Pacific Gas and Elec. Co.* (2005) 131 Cal.App.4th 260, 267 [“It is undisputed that the combined effect of these provisions of federal law is to preclude employers from docking the pay of an employee for an absence of less than a day (a partial-day absence). If they do, then the involved employees do not meet the salary basis test, and are nonexempt for purposes of [overtime pay](#).”].
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- 73 *Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 400.
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- 74 Labor Code, § 515, subds. (a), (c).
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- 75 Labor Code, § 1182.12, subd. (b). The minimum wage applies to “all industries” and to “any occupation” except outside salespersons and individuals participating in certain national service programs. (Labor Code, §§ 1171, 1182.12.)
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- 76 Labor Code, §§ 1474–1476 [fast food]; Labor Code, §§ 1182.14–1182.15 [health care]; see Department of Industrial Relations, *Fast Food Minimum Wage FAQ*, [available here](#) ; Department of Industrial Relations, *Health Care Worker Minimum Wage FAQ*, [available here](#) .
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- 77 Labor Code, § 515, subd. (a).
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- 78 Labor Code, §§ 1182.14–1182.15, 1474–1476.
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- 79 Labor Code, § 1182.12; see Department of Industrial Relations, *Minimum Wage*, [available here](#) .
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- 80 Labor Code, § 515, subd. (a) [“The Industrial Welfare Commission may establish exemptions from the requirement that an overtime rate of

compensation be paid pursuant to Sections 510 and 511 for executive, administrative, and professional employees, if the employee is primarily engaged in the duties that meet the test of the exemption, customarily and regularly exercises discretion and independent judgment in performing those duties, and earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment.”].

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- 81 29 C.F.R. § 541.2; *Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 398 “[S]tate law requirements for exemption from overtime pay must be at least as protective of the employee as the corresponding federal standards.”].
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- 82 Labor Code, § 515, subd. (e) [“For the purposes of this section, 'primarily' means more than one-half of the employee's worktime.”].
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- 83 Cal. Code of Regs., tit. 8, §§ 11010–11150, subd. 1(A)(2) [defining administrative employee under California law]. An employee might also be considered administrative if they perform “functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein.” (*Id.*)
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- 84 29 C.F.R. § 541.201(a).
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- 85 29 C.F.R. § 541.201(b).
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- 86 Cal. Code of Regs., tit. 8, §§ 11010–11150, subd. 1(A)(1) [defining executive employee].
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- 87 29 C.F.R. § 541.102.
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- 88 “Teaching” for these purposes only applies to teaching under a certificate from the Commission for Teacher Preparation and Licensing or teaching in an accredited college or university. (Cal. Code of Regs., tit. 8, § 11040, subd. 2(R).)
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- 89 Cal. Code of Regs., tit. 8, §§ 11010–11150, subd. 3(A).
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- 90 Cal. Code of Regs., tit. 8, §§ 11010–11150, subd. 3(B).
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- 91 29 C.F.R. § 541.300 [defining professional employee under the federal FLSA]; Cal. Code of Regs., tit. 8, §§ 11010–11150, subd. 1(A)(3) [defining professional employee under California law].
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- 92 Labor Code, § 515, subd. (f)(1).
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93	Labor Code, § 515, subd. (a).
94	29 C.F.R. § 541.202(a) ["In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered."].
95	29 C.F.R. § 541.202(c) ["The exercise of discretion and independent judgment implies that the employee has authority to make an independent choice, free from immediate direction or supervision. However, employees can exercise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level."].
96	Labor Code, § 204, subd. (a).
97	Labor Code, § 204, subd. (a) ["All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays."].
98	Labor Code, § 207 ["Every employer shall keep posted conspicuously at the place of work, if practicable, or otherwise where it can be seen as employees come or go to their places of work, or at the office or nearest agency for payment kept by the employer, a notice specifying the regular pay days and the time and place of payment, in accordance with this article."].
99	Labor Code, § 204, subd. (a).