The following information is provided for informational purposes only and does not constitute, nor is it intended as, legal or tax advice. Additionally, receipt of this information does not create an attorney-client relationship. The information contained in these Frequently Asked Questions may change without notice. You should seek legal counsel if you have any questions about the information below.

1. **What is AB5?**

Assembly Bill 5 ("AB5") was signed into law by Governor Gavin Newson on September 18, 2019 and shall go into effect on January 1, 2020. The law codifies the California Supreme Court’s decision in the *Dynamex* case from 2018 which institutes an ‘ABC’ test to determine whether a worker should be classified as an employee or independent contractor.

Under the ABC test, a business must satisfy all three of the following conditions. The business must prove that the person:

- **A.** 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;
- **B.** performs work that is outside the usual course of the hiring entity’s business; and
- **C.** is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

If all three conditions are satisfied, the worker can be classified as an independent contractor. If all three of these conditions are not satisfied, then the worker is an employee.

2. **What does it mean that AB5 is retroactive? How far back does it apply?**

AB5 states that it is retroactively applied to the full extent of the law. If an organization is found to have violated certain labor laws, the retroactive date may go as far back as four years to January 1, 2016.

**PLEASE NOTE:** This does not mean that every employment claim qualifies for a retroactive date of four years. The retroactive date is based on the statute of limitations given to specific claims. Each claim has its own statute of limitations that must be taken into consideration when determining if a claimant still has time to file. You should discuss any concerns about the timeline for filing a claim or if a claim may be brought against you with experienced legal counsel.

3. **What if I want/agree to be an independent contractor?**

Unfortunately, there is no exemption written into the law for individual workers who want to be treated as independent contractors unless they meet all three conditions of the ABC test.

4. **What if I already have a signed contract for work in 2020 that states that I’m an independent contractor?**

It is the responsibility of each business to analyze its contracts and worker classifications. As such, you may be asked by the organization you’ve contracted with to go through a new hiring process to make you an employee unless your work fits under one of the exemptions or you are contracting under a business-to-business agreement.

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1. It is important to note that the *Dynamex* decision went into effect in 2018 and is the law until AB5 takes effect.
3. Lab. Code § 2750.3.
5. **I head up a nonprofit. Does AB5 apply to my organization as well?**
Yes. If you are doing business in California, then AB5 applies to you regardless of your nonprofit tax status.

6. **I heard there’s an exemption for Fine Artists. Doesn’t that also cover performing artists?**
There is an exemption for Fine Artists, but the term isn’t defined in the statute. If the authors of the bill intended it to cover more than the traditional definition of a fine artist (typically an artist who creates works of arts from glass, clay, fiber, paint, etc.), this was not made clear in the text that was approved and signed into law.

7. **What if I want to bring a claim against a business/organization?**
If you feel like you should have been an employee rather than an independent contractor, you should contact an employment attorney to discuss your options. Just like with any other claim you wish to bring against a person or business, there are statutes of limitation which may bar your ability to bring a claim by stating how long you can wait to do so before you forfeit your claim. Different claims have different statutes of limitation so it’s best to act sooner rather than later if you feel like you’ve been wronged.

8. **What if I want to volunteer my services/have my organization only work with volunteers?**
Nonprofits are allowed to work with volunteers to help them fulfill their missions, but it is important that nonprofits appropriately distinguish between unpaid volunteers and paid employees. Volunteers are people who do work for a nonprofit organization without compensation; if a volunteer receives compensation in exchange for the work they’ve done for the organization, they should be classified as employees and not volunteers. AB5 defines an employee as “a person providing labor or services for remuneration.” [Remuneration = money paid for work or services.]

9. **What if I just don’t comply and continue contracting work through independent contractor agreements?**
For businesses, there are hefty fines and penalties that may be assessed for misclassifying a worker, especially when you knew they should have been classified as an employee.

   If a worker is found to be an employee rather than an independent contractor due to willful misclassification by an employer, the Labor Commissioner can recover fines between $5,000 and $15,000 per violation, or as much as $10,000 to $25,000 per violation, if there is a pattern of willful misclassification. Willful misclassification is defined as “avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.”

   In addition to the civil penalties above, a worker who has been misclassified may be entitled to recover costs and penalties from the employer in back wages they should have earned as an employee, interest on those back wages, and even reimbursement for out-of-pocket expenses that would have been reimbursed as an employee. Additionally, a misclassified worker may also be entitled to compensation for missed meal and rest breaks, not receiving a paystub timely, and a waiting time penalty. This is not an exhaustive list, but a short overview of some of the claims that could be brought against a business for noncompliance.

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4 Lab. Code § 226.8(b)-(c).
5 Lab. Code § 226.8(i)(4).