

## Taxicab Industry

The purpose of this information sheet is to provide guidance to the taxicab industry on properly classifying workers for employment tax purposes.

Note: Although other industries may operate in a similar manner, this information sheet is specific to the taxicab industry.

Taxicab drivers typically operate taxicabs under one of the following three business arrangements:

1. The taxicab company acknowledges the driver as an employee.
2. The driver owns and operates the taxicab, independently arranges fares, and personally pays for required licenses, permits, and insurance.
3. The driver performs services as a lease driver on either a fixed-fee or percentage-of-receipts basis.

### Impact of Governmental Requirements

Local governments commonly mandate requirements that a taxicab company must meet in order to lawfully own and operate a taxicab company. Generally, these mandates will include provisions that require a taxicab company to exercise certain direction and control over its taxicab drivers to ensure transportation accessibility and to maintain public safety. These requirements differ in each jurisdiction and are not viewed as evidence of an employment relationship unless a taxicab company expands its direction and control, exceeding the mandates.

### Who is an Employee?

For purposes of the [California Unemployment Insurance Code \(CUIC\)](http://leginfo.ca.gov/faces/codes.html) (leginfo.ca.gov/faces/codes.html), an employee may be one of the following:

- An individual who is an employee based on the standard that applies using the ABC test under section 621(b) of the CUIC, the *Borello* test, or another applicable test; or
- An individual who is identified specifically or statutorily in the CUIC.

An employee may perform services on a permanent, temporary, or less than full-time basis.

### The ABC Test for Classifying Individuals

Effective January 1, 2020, section 621(b) of the CUIC was amended to apply a new standard for classifying individuals as employees. This new standard is referred to as the ABC test.

Any individual providing labor or services for remuneration has the status of an employee rather than an independent contractor unless the hiring entity demonstrates all three of the following conditions:

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

While the ABC test under section 621(b) of the CUIC contains the applicable criteria for most workers, there are some jobs, industries, and contracting relationships listed in [Labor Code](http://leginfo.ca.gov/faces/codes.html) (leginfo.ca.gov/faces/codes.html) sections 2776 through 2784 (referred to as exceptions), which the employment factors listed in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal. 3d 341 (Borello)* must be used. Additionally, there are other specific occupations which require the standards set forth in the [California Business and Professions Code](http://leginfo.ca.gov/faces/codes.html) (leginfo.ca.gov/faces/codes.html) to be applied.

Employers and workers should seek independent advice and counsel if they have questions about the applicability of any exception to their particular case. For additional information and a full list of the exceptions, refer to [Information Sheet: Employment \(DE 231\) \(PDF\)](http://edd.ca.gov/pdf_pub_ctr/de231.pdf) (edd.ca.gov/pdf\_pub\_ctr/de231.pdf) and visit the [Employment Status Portal](http://labor.ca.gov/employmentstatus) (labor.ca.gov/employmentstatus).

## Business-to-Business Exception

Labor Code section 2776 applies to a relationship between a *business service provider* and a *contracting business*.

A *business service provider* is an individual acting as a sole proprietor, or a business entity formed as a partnership, limited liability company, limited liability partnership, or corporation.

A business service provider contracts to provide services to another business, a public agency or a quasi-public corporation; referred to as a *contracting business*.

The employment status is determined by the *Borello* test if the contracting business satisfies all of the following 12 required criteria:

- (1) The business service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- (2) The business service provider is providing services directly to the contracting business rather than to customers of the contracting business. This criteria does not apply if the business service provider's employees are solely performing the services under the contract under the name of the business service provider and the business service provider regularly contracts with other businesses.
- (3) The contract with the business service provider is in writing and specifies the payment amount, including any applicable rate of pay, for services to be performed, as well as the due date of payment for such services.
- (4) If the work is performed in a jurisdiction that requires the business service provider to have a business license or business tax registration, the business service provider has the required business license or business tax registration.
- (5) The business service provider maintains a business location, which may include the business service provider's residence, that is separate from the business or work location of the contracting business.
- (6) The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.

- (7) The business service provider can contract with other businesses to provide the same or similar services and maintains a clientele without restrictions from the hiring entity.
- (8) The business service provider advertises and holds itself out to the public as available to provide the same or similar services.
- (9) Consistent with the nature of the work, the business service provider provides its own tools, vehicles, and equipment to perform the services, not including any proprietary materials that may be necessary to perform the services under the contract.
- (10) The business service provider can negotiate its own rates.
- (11) Consistent with the nature of the work, the business service provider can set its own hours and location of work.
- (12) The business service provider is not performing the type of work for which a license from the [Contractors State License Board](http://cslb.ca.gov/) (cslb.ca.gov/) is required, pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code

If all 12 criteria are satisfied, the *Borello* test will determine the employment status. If all criteria are not satisfied, the ABC test under section 621(b) of the CUIIC will determine the employment status.

## Additional Information

For further assistance, please contact the Taxpayer Assistance Center at 1-888-745-3886 or visit the nearest Employment Tax Office listed in the [California Employer's Guide \(DE 44\) \(PDF\)](#) (edd.ca.gov/pdf\_pub\_ctr/de44.pdf) and on the [EDD website](#) (edd.ca.gov). Additional information is also available through the EDD's no-fee [payroll tax seminars](#) (seminars.edd.ca.gov/payroll\_tax\_seminars).

The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Requests for services, aids, and/or alternate formats need to be made by calling 1-888-745-3886 (voice) or TTY 1-800-547-9565.

This information sheet is provided as a public service, and is intended to provide non-technical assistance. Every attempt has been made to provide information that is consistent with the appropriate statutes, rules, and administrative and court decisions. Any information that is inconsistent with the law, regulations, and administrative and court decisions is not binding on either the Employment Development Department or the taxpayer. Any information provided is not intended to be legal, accounting, tax, investment or other professional advice.