

## Worker Classification/ABC Test – Internal backgrounder

In 2019, a California bill, AB 5, was signed into law. The bill addressed employment status when a hiring entity claims that the person it hired is an independent contractor. AB 5 requires the application of the ABC test to determine if workers in California are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the Industrial Welfare Commission wage order. The law would have required many independent contractors, including insurance agents and advisors, to become W-2 employees of every carrier they're connected to.

NAIFA-CA, CAHU and IABCaI successfully got an exemption for life agents, advisors, P&C agents, brokers and health agents from the new law. The exemption applies to licensees working for independent agents, brokers, as well as licensees working for captive insurers and direct writers.

Not long after AB 5 passed in California. Congress began seriously considering the PRO Act, which also established an ABC test to broaden the ability of unions to allow employees to unionize. Democratic lawmakers wanted more people to have access to unions as possible.

Under the ABC test, a worker is considered an employee and not an independent contractor, unless the hiring entity satisfies all three of the following conditions:

1. The worker 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;
2. The worker performs work that is outside the usual course of the hiring entity's business; and
3. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

NAIFA is primarily concerned with part B of the three criteria. One way to look at it would be, if Burger King hired you to pick up dry cleaning, you could argue that you are an independent contractor and not an employee. However, if Burger King had you selling hamburgers at the side of the road, you would be considered an employee.

The 1099 status is vital to the insurance and financial services industry. If that were to be removed, you would revolutionize the industry for the wrong reasons. NAIFA members who operate as independents would lose the ability to make their own decisions and run their own business.

Few states have initiated their own bills to establish an ABC test without an exemption for insurance and financial advisors, though, so far, none have made it into law. This is a significant area of concern for NAIFA members. In 2021, NAIFA conducted a robust survey of its members on the legislation. Results indicate that:

- Approximately 90% receive income reported on a 1099.
- 94% do not want to be treated as an employee for union organizing.
- 95% operating as an independent contractor want to remain so.

The top concerns of members should they be reclassified as employees include:

- Loss of business deductions.
- Loss of ability to set one's own schedule.
- Loss of renewal income if current clients were reassigned.
- Nullification of existing agent contracts.
- Diminished product offerings due to inability to offer products outside of a primary carrier.



NAIFA will vigorously defend its members' rights to operate their own business and will aggressively challenge such legislative proposals to establish an ABC test but not carve out the insurance and financial services industry.