

Independent Contractor or Employee?

Beginning on January 1, 2020, a worker in California can only be classified as an independent contractor if the hiring entity demonstrates that each of the conditions below of the “ABC Test”, as outlined in Cal. Labor Code § 2750.3, are satisfied. This new statute is the result of Assembly Bill (AB) 5, which Governor Newsome recently signed into law.

“ABC TEST”:

(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.

What this means is you may NOT dictate their hours, or tell/advise them what they do in the office, or who and why they treat patients in the office, or how to treat patients in the office, or give them a script for answering phone calls. You can't fire them. You can't tell them how much to charge patients for services. You have NO control over their operations. They must be able to go and come as they please. They have their own tools and tables.

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

Every D.C. has a different style “performance” to the work that is applied to patients in the office. Some are hands-on, some utilize tools, some are physical and some are not. Some use high-low tables, some use Thompson tables, some use flexion distraction tables. Make sure that there is not a clone of you working in the room next door.

(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.

All D.C.'s are independently licensed through the State of California. We have DBA's, we are allowed to form corporations and LLC's. D.C.'s perform professional or medical services provided to or by health care entities. These rights are afforded to those mentioned in the Corporations Code 13401 (the new law references) which says “Professional services means any type of professional services that may be lawfully

rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.”

Is there an applicable exception?

Some occupations are excepted from having to meet the Cal. Labor Code § 2750.3 “ABC Test”, and the determination of employee or independent contractor status has not changed with the enactment of AB 5. Specifically, Cal. Labor. Code § 2750.3 states that:

“A physician and surgeon, dentist, podiatrist, psychologist, or veterinarian licensed by the State of California pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, performing professional or medical services provided to or by a health care entity, including an entity organized as a sole proprietorship, partnership, or professional corporation as defined in Section 13401 of the Corporations Code.”

While chiropractic is not specifically mentioned in this new law, it is included in the Business and Professionals Code under section 500 which the law specifically mentions.

Your Options

1. Take a thorough analysis of your situation and assess the “ABC’s.” You **must** meet all three to fall into this category.
2. You can rent, lease or license a room to them. Which means that they are to pay you rent every month. This is applicable to massage therapy, acupuncture, etc.
3. Just add them as an employee. If you have a Professional Corporation (P.C.) and they are a chiropractor you may legally add them as an officer of the corporation. You may then pay them as an employee. If they are not a chiropractor, you can’t add them as an officer, but you may hire them as an employee.
4. If your business is a P.C. and you have an associate D.C., have them form a P.C. Then they may work in the office without question, because they are their own entity at that point.

Call Dr. Damien Fertitta, Esq. for more insight into this new law, or to explore the benefits of forming a Professional Corporation for your chiropractic practice.

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