

From: DRA of California memberservices@caldra.org
Subject: Exemption under AB 5 Deemed Top Priority For CalDRA in 2020
Date: December 9, 2019 at 9:13 AM
To: todd@toddlivas.com

DC



*WHY DID CALDRA, ON BEHALF OF
FREELANCERS, LEAD ON AB 5 AND THE
DYNAMEX SUPREME COURT DECISION IN
2019 AND VOTE TO UNANIMOUSLY
PRIORITIZE IT FOR 2020?*



IMPORTANT INFO THAT AFFECTS YOU AND YOUR LIVELIHOOD!

Please take a minute to read this
important update:

You may have heard about Assembly Bill (“AB”) 5 and the *Dynamex Operations West v. Superior Court*, (Cal. Apr. 30, 2018) (“*Dynamex*”) California Supreme Court decision, but if you haven’t been able to come to one of our terrific seminars on the subject, you still may be in the dark about why your CalDRA prioritized the issue in 2019, why the CalDRA board voted unanimously to do so again this coming year, and what steps you can take now to make lawsuits against you less likely. Almost the entire freelance part of our profession works through independent contracting. **AB 5 and *Dynamex* address the laws about when someone is deemed to be an independent contractor or an employee.**

I am not a firm owner. Why should I care about independent contracting?

For two reasons:

First, you likely got into freelance court reporting in part for the flexibility and freedom to set your own schedule and work as much as you like. If the industry moves to an employee model of retaining reporters just to prevent lawsuits alleging reporters were misclassified as independent contractors as opposed to employees, you will lose that freedom and potentially many more professional choices and freedoms.

Second, you likely retain scopists and/or proofreaders as independent contractors. If so, you are also exposed to a lawsuit just like a firm owner for misclassifying them as independent contractors rather than employees.

What is AB 5, what is *Dynamex*, and how are they related?

The California Supreme Court in *Dynamex* held that it is the burden of the hiring entity (either the firm retaining a reporter or a reporter retaining a scopist or proofreader) to establish that a worker is an independent contractor. The case applied the so-called “ABC test.” The most important part of the test is B, which is new and which many businesses – including many court reporting firms – might flunk.

What does the “B” test say?

That the worker must perform work that is outside the usual course of the hiring entity’s business to be an independent contractor.

What does that mean?

It means that in any lawsuit, the B test says *a judge has to look at whether a reporter performed work that is outside the usual course of the court reporting firm’s business.*

The Supreme Court offered the following example: When a retail store hires an outside plumber to repair a leak in a bathroom on its premises or hires an outside electrician to install a new electrical line, the services of the plumber or electrician are not part of the store’s usual course of business and the store would not reasonably be seen as having employed the plumber or electrician to be working as its employee.

On the other hand, when a clothing manufacturing company hires work-at-home seamstresses to make dresses from cloth and patterns supplied by the company that will thereafter be sold by the company, or when a bakery hires cake decorators to work on a regular basis on its custom-designed cakes, these tasks are part of the hiring entity’s usual business operation, and the hiring business can reasonably be viewed as having permitted the workers to provide services as employees and not as

independent contractors.

So if a court reporting firm is in the business of providing court reporting and I cover a deposition or court hearing for that firm, there is a risk of me not being considered an independent contractor because of application of the B test; right?

Pretty much, right. That's the risk and the problem. And it is a problem not just for court reporters but for a huge number of professions.

Does AB 5 address the problem?

It started to, yes. AB 5, as it was signed into law this year, is a complicated bill that codifies the case of *Dynamex* but offers a laundry list of exemptions. Most professions, including court reporters, were not expressly exempted by the bill.

Notwithstanding CalDRA's efforts this year to obtain such an exemption, we were not successful. The absence of an exemption means that the court reporting industry will continue to be governed by *Dynamex* and the ABC test until and unless an exemption is secured in legislation (you can read our letter asking for an exemption [HERE](#)).

Why didn't we get an exemption?

It is impossible to say. Lots of professions did not. But one factor was likely that CalDRA was the **only court reporting association** in California asking for an exemption. In legislative efforts, the more stakeholders weighing in, the better.

Are there ways to try and comply with current law in the meantime that don't turn the court reporting profession upside down?

Yes. Here are a number of ways reporters and firms can protect themselves. These strategies and options have been painstakingly covered in our seminars. We have prepared a comprehensive “how-to” handout for you (You can find it [HERE](#)).

In addition to the strategies cited in our handout, freelancers have two specific options available for protecting themselves from being classified as employees regardless of what firms do to protect themselves. These options are available because AB 5 contains an exemption for business-to-business (as opposed to business-to-individual) arrangements. And these options could be used by any independent contractor, so would apply to your scopists and proofreaders as well.

Option One: Incorporate. This may require consultation with an attorney or CPA, along with other associated expenses, and may take some time to accomplish, but as a corporation you’ll enormously benefit from some tax write-offs, lower tax rates, and advantages not otherwise available to you. It isn’t very hard or expensive to do. And, if you are doing business with a court reporting agency through your corporation (invoicing, receiving payments, agreeing to cover jobs), your corporation cannot easily be considered an employee.

Option Two: Obtain a business license, a Fictitious Business Name (“FBN”) -- also known as a “DBA” or “doing business as” – and a Federal Employer Identification Number (“FEIN”) and do business – again, invoice, get paid, agree to do jobs -- in that name. This option is simpler, won’t require the consultation with a professional, can be done fairly quickly (remember that AB 5 goes into effect on January 1, 2020), and with minimal expense. For your business license, you apply to your city of residence or wherever your home office is located, and the cost for this varies with each city. Then apply to your county for the FBN, and that should be good for five years before it will have to be renewed. For this, select a unique business name – perhaps your name with your CSR number – to ensure that no other business exists under the same name. Then apply for your FEIN, which can be easily done online and should involve no

expense.

By doing business through either of these entities rather than through you in your individual name, you will have verified yourself as an independent business entity and so can maintain a business-to-business relationship, as our handout describes that AB 5 requires, with any reporting firm and likely NOT be classified as an employee no matter what the firm does or doesn't do to exempt itself from AB 5.

What about next year?

CalDRA, at its last board meeting, unanimously voted to prioritize obtaining an exemption in 2020, and we are actively working to do so currently.

Is there anything I can do?

Yes! Former CalDRA board member Todd Olivas has prepared a survey and petition asking for an exemption. Sign it! You can do so [HERE](#).

Also, support our efforts to protect you as the only California trade association devoted just to freelancers and please contribute to our Legislative War Chest that goes directly to support our advocacy efforts! You can contribute [HERE](#) or by using the clickable link below!

As always, your CalDRA will continue to work hard for you at resolving this important issue and keeping you informed. Stay tuned for updates!

make a contribution



**DRA
WarChest**



Deposition Reporters Association of California, Inc. | 4733 Torrance Boulevard, #815, Torrance, CA
90503

[Unsubscribe todd@toddolivas.com](mailto:todd@toddolivas.com)

[About Constant Contact](#)

Sent by memberservices@caldra.org in collaboration with

Constant Contact® 

Try email marketing for free today!