

Checklist for a B2B relationship under AB 5

This information is NOT intended to substitute for legal advice from your own counsel and tax advisor.

AB 5

There has been a lot of talk about about *Dynamex*¹, AB 5² and the new Labor Code 2750.3 and how it impacts the classification of court reporters as independent contractors. I have written extensively about it on my <http://www.toddolivas.com/blog>.

The bad news is that the law presumes you will be classified as an employee. However, the good news is CSRs can (probably) be considered independent contractors if they are a **bona fide** business entity³ -- **not an individual** -- but a sole proprietor, partnership, ~~limited liability company, limited liability partnership,~~ or corporation and satisfy these 12 items L.C. 2750.3(e)(1):

#	DESCRIPTION	REQUIREMENT
1.	You must be free from the hiring Company's control and direction while performing the work (this must be set forth in the contract and be true in fact). 2750.3(e)(1)(A)	
2.	You must provide services directly to the contracting business rather than to customers of the contracting business. 2750.3(e)(1)(B)	
3.	You must have a written contract. 2750.3(e)(1)(C)	
4.	You must have all required business licenses or business tax registration. 2750.3(e)(1)(D)	
5.	You must maintain a business location separate from the business or work location of the hiring Company. 2750.3(e)(1)(E)	
6.	You must be customarily engaged in an independently established business of the same nature as that involved in the work performed. 2750.3(e)(1)(F)	

7.	You must actually contract with other businesses to provide the same or similar services and maintain a clientele without restrictions from the hiring Company. 2750.3(e)(1)(G)	
8.	You must advertise and hold yourself out to the public as available to provide the same or similar services. 2750.3(e)(1)(H)	
9.	You must provide your own tools, vehicles, and equipment to perform the services. 2750.3(e)(1)(I)	
10.	You must be able to negotiate your own rates. 2750.3(e)(1)(J)	
11.	You must be able to -- consistent with the nature of the work -- set your own hours and location of work. 2750.3(e)(1)(K)	
12.	You must not be performing work that requires a license from the Contractor's State License Board. 2750.3(e)(1)(L)	

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Without case law precedent, it is not possible to definitively state we fall under the above exemption. However, it appears that CSRs and agencies do qualify if the conditions are met. For further reading, please read these blog posts:

- <http://toddolivas.com/blog/Are-Court-Reporters-Exempted-by-AB-5-under-the-B2B-clause.asp>
- <http://www.toddolivas.com/blog/DRAs-Position-on-AB5-and-What-Reporters-Should-Do-Now.asp>

¹ *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903

² https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB5

³ *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) [48 Cal.3d 341](#)

BECOMING A SOLE PROPRIETOR IS SIMPLE

This information is NOT intended to substitute for legal advice from your own counsel and tax advisor. Other entity formations might be more suitable for you, however, a sole proprietorship is the simplest to obtain:

5 STEPS TO FORMING A SOLE PROPRIETORSHIP		
STEP #	DESCRIPTION	DONE
1	Get a business license from the city where your home office is located.	
2	Choose a business name that you wish to operate under. <i>Example: "Pat Smith, CSR 12345".</i>	
3	File for a Fictitious Business Name (FBN) which you file with your local county clerk's office. Request a Fictitious Name Statement form. (Other legal entity types can search https://businesssearch.sos.ca.gov). Assuming there is no one else with that FBN, you'll be granted that name.	
4	After the FBN is filed, it must be published. Your new FBN now becomes your business name.	
5	All pay from agencies should be made to you under that business name. Get a Federal Employer Identification Number ("FEIN"). FEINs are free and can be applied for online. Or by calling the IRS: 800-829-4933.	