



AB 2257: Version 2.0 of AB 5, California's Landmark Independent Contractor Legislation

Eric M. Lloyd
Pamela L. Vartabedian
Paul J. Leaf

October 1, 2020

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2020 Seyfarth Shaw LLP. All rights reserved. Private and Confidential



Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2020 Seyfarth Shaw LLP. All rights reserved. Private and Confidential

Speakers



Eric M. Lloyd
Labor & Employment
SAN FRANCISCO



Pamela L. Vartabedian
Labor & Employment
SAN FRANCISCO



Paul J. Leaf
Labor & Employment
LOS ANGELES

Agenda

- 01** Background On AB 5
- 02** What Does AB 2257 Do?
- 03** AB 2257's New Exemptions from the ABC Test
- 04** The Revised Business-to-Business & Referral Agency Exemptions
- 05** What Happens Next?



AB 5: The Precursor to AB 2257

- Codified the “ABC Test” for employee status adopted by the California Supreme Court in *Dynamex*
- Expanded the reach of the ABC Test
- Applied to work performed on or after January 1, 2020
- Exempted numerous occupations from the ABC Test, making *Borello* the governing standard for employee status
- Prompted massive lobbying efforts by industries not given an exemption

What Does AB 2257 Do?

Replaces AB 5

- Effective Sept. 4, 2020
- Maintains ABC Test
- Maintains all of AB 5's exemptions
- Still applies to work performed on or after Jan. 1, 2020

Updates Exemptions

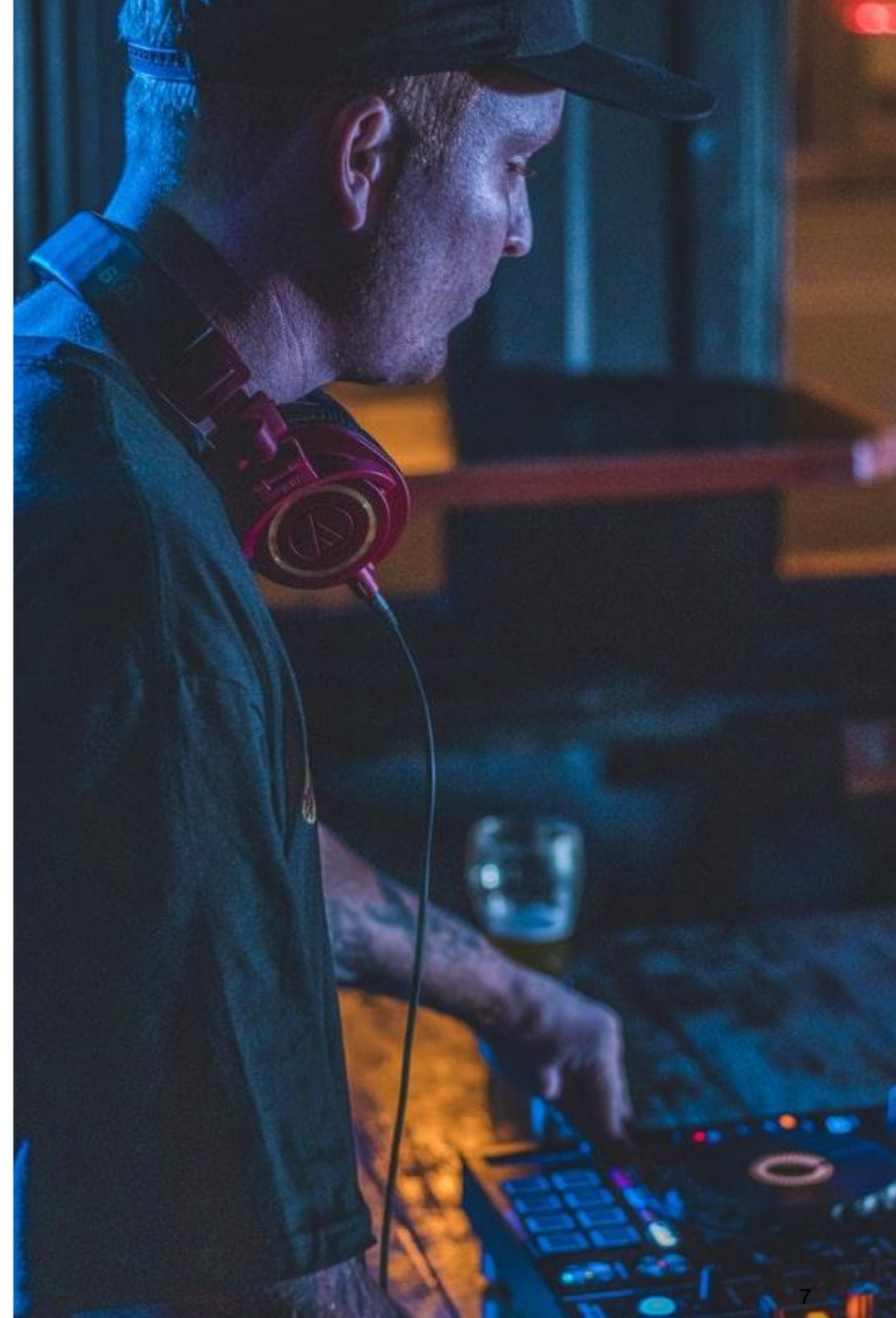
- Adds additional exemptions
- Revises the business-to-business and referral agency exemptions
- All exemptions apply retroactively

Enhances Enforcement Powers

- District attorneys may now bring enforcement actions, in addition to the Attorney General and some city attorneys.

AB 2257's New Exemptions

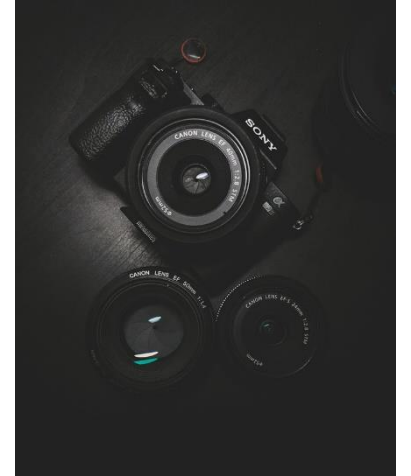
- “Single Engagement” Business-to-Business Exemption
- Music Industry & Performer Exemptions
- Miscellaneous: manufactured housing salespersons, individuals engaged by international visitor exchange programs, and competition judges



Expanded Exemptions

Professional Services Exemption

- Certain content contributors, advisors, producers or cartographers
- Specialized performers hired to teach for no more than one week
- Translators
- Appraisers and home inspectors
- “Submission cap” removed for freelance writers, editors, photographers and newspaper cartoonists



Referral Agency Exemption

- Consulting
- Youth sports coaching and caddying
- Wedding/event planners and vendors
- Interpreting services



The Revised Referral Agency Exemption

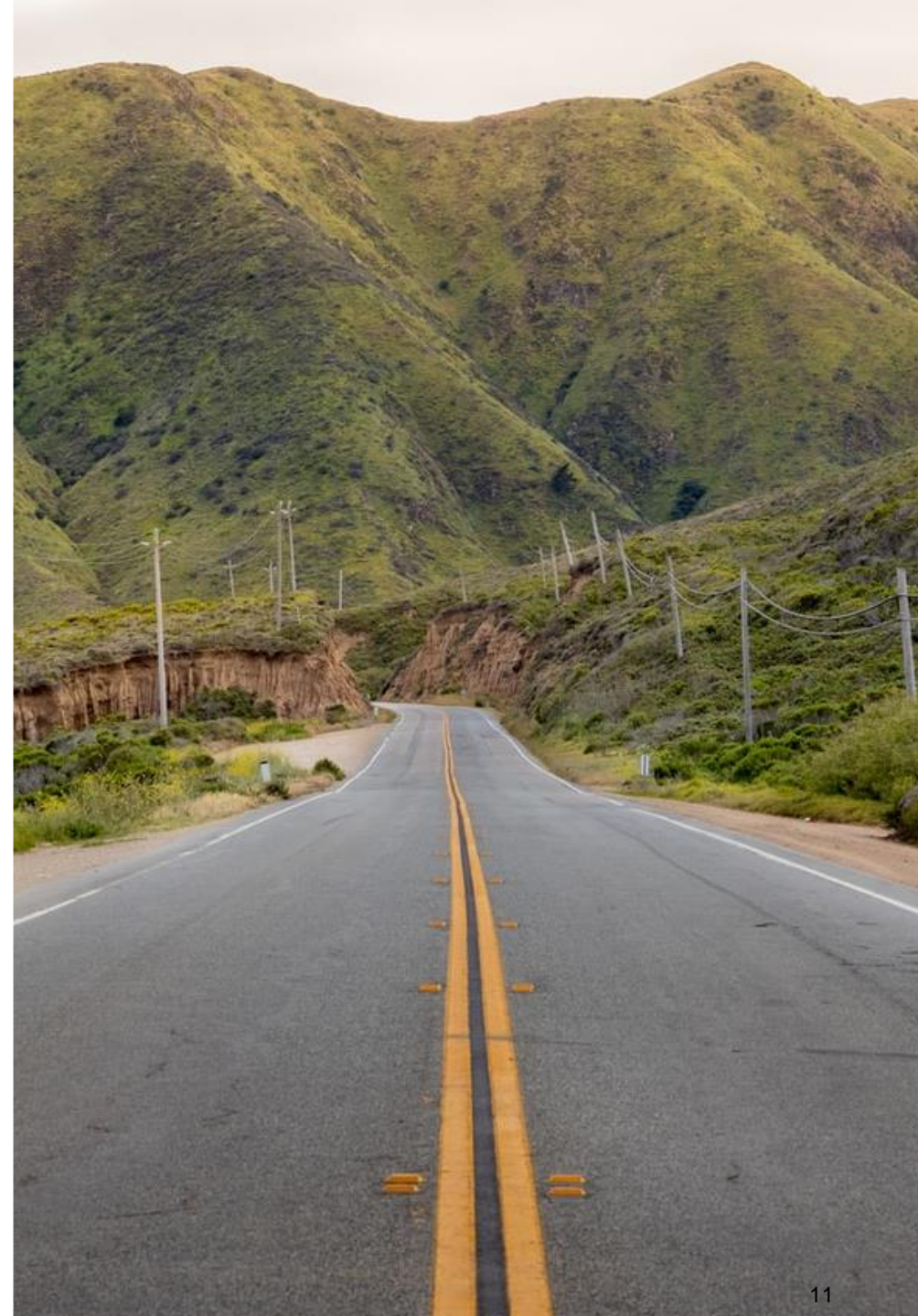
- Service provider must certify compliance with business license & tax registration requirements
- More flexibility on requirement that service provider be customarily engaged in independent business
- Service provider must be able to set own hours and terms of work, or, to negotiate them with client
- Service provider may negotiate rates through the referral agency with the client
- ABC Test applies to “individual workers,” both as to the service provider and the client

- Still applies to “bona fide business-to-business contracting relationships”
- Service provider may provide services to the contracting business’s customers under some circumstances
- Contract must specify payment amount, rate of pay and due date
- No longer required that service provider actually contract with other businesses
- ABC Test applies to “individual workers,” both as to the service provider and the contracting business

The Revised B2B Exemption

What Happens **Next?**

- Continued lobbying
- Ballot initiatives
- Litigation
- Government enforcement actions
- Changes at the federal level





Additional Resources :

Wage Hour Class & Collective Actions Practice

<https://www.seyfarth.com/services/practices/litigation/class-and-collective-actions/wage-hour-class-and-collective-actions.html>

California Peculiarities Employment Law Blog

<https://www.calpeculiarities.com/>

COVID-19 Resource Center

<https://www.seyfarth.com/covid-19-resource-center.html>

Thank You

