

I AM A FREELANCER WITH MY OWN BUSINESS. WHICH TEST APPLIES IF I'M CONTRACTED TO PROVIDE SERVICES TO ANOTHER BUSINESS?

In cases of a bona fide business contracting with another business, the **Borello test** is applied to determine the employment status of the business providing the service ("business service provider"), given that the hiring entity can demonstrate the following criteria are met:

- 1) The business service provider is an entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation.
- 2) The business service provider has a business license or business tax registration, if the services are provided in a jurisdiction that requires such licensing or tax registration.
- 3) The business service provider has a written contract with the contracting business.
- 4) The business service provider customarily engages in the same type of work performed under the contract.
- 5) The business service provider provides services directly to the contracting business itself, instead of its customers.
- 6) The business service provider can negotiate its own rates, set its own hours, and set its location of work. The business service provider maintains a business location separate from the location of the contracting business.
- 7) The business service provider is free from control and direction from the contracting business.
- 8) The business service provider provides its own tools and equipment to perform the services.
- 9) The business service provider advertises and holds itself out to the public as available to provide the same or similar services.
- 10) The business service provider actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from the hiring entity.

In cases of a business entity providing **photography** services through a referral agency, the **Borello test** is applied to determine the employment status of the business providing the service ("service provider") in relation to the referral agency.

A "referral agency" is defined as a business that connects a person or business with a service provider for **photography services**, among other types of specified services. This is provided that the referral service agency can demonstrate the following criteria are met:

- 1) The service provider is formed as a sole proprietor, partnership, limited liability company, limited liability partnership, or corporation.
- 2) The service provider is free from the control and direction of the referral agency.
- 3) The service provider has a business license or business tax registration, if the services are provided in a jurisdiction that requires such licensing or tax registration. This includes holding a state contractor's license if the work provided for the client requires it.
- 4) The service provider delivers services to the client under service provider's name, rather than under the name of the referral agency.
- 5) The service provider provides its own tools and supplies to perform the services.
- 6) The service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed for the client.
- 7) The service provider is free to accept or reject clients and contracts and maintains a clientele without any restrictions from the referral agency. This includes the ability for the service provider to seek work elsewhere, including through a competing agency. The service provider is not penalized in any form for rejecting clients or contracts, unless contractual obligations were not fulfilled.
- 8) The service provider sets its own rates for services performed, without deduction by the referral agency, and sets hour and terms of the work.

Individual workers providing services to clients through a referral agency are subject to the **ABC test** to determine their employment status in relation to the referral agency.

I AM A FREELANCER, BUT I DON'T SATISFY ALL THE OUTLINED CRITERIA.

If a **freelance writer, still photographer, photojournalist, editor, or newspaper cartoonist** does not meet the criteria outlined in any of the previous sections, or if the nature of the individual's work is not captured by the aforementioned occupations, then the freelancer is subject to the **ABC test**.

FOR MORE INFORMATION

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