



Worker Classification

THE ISSUE: Recently, the traditional independent contractor model utilized by independent financial professionals has been challenged on federal and state levels by efforts to redefine who is considered an employee. Some initiatives are focused on the expansion of unionization for independent contractors while others would modify independent contractor status under other employment or tax laws by adopting an “ABC” test to define who is an “employee.” Allowing insurance and financial services producers to retain the option to operate under an independent contractor status is vital to the industry. If the option is removed, it would create massive disruption in the industry.

BACKGROUND: Under the ABC test, a worker (i.e., “an individual performing any service”) is affirmatively presumed to be an “employee,” unless the hiring business can prove that the worker is an independent contractor based on the following three specific factors:

- The individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact.
- The service is performed outside the usual course of the business of the employer.
- The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

Given the rigidity of this test, it could result in the reclassification of independent insurance and financial professionals as employees.

Reclassifying agents and advisors as employees would in many cases stifle the independence that allows them to provide clients with diverse options, complicate their tax filing status, and disrupt their business models and relationships with clients. Many agents and advisors have relationships with multiple insurance companies and financial institutions, which could make reclassifying them as ‘employees’ problematic. The current independent-contractor relationship ensures consumers have the greatest access to products, services, and advice.”

Legislation or regulatory action that redefines the relationship shared between insurance producers, independent broker-dealers (IBDs), and independent financial advisors (IFAs) with the insurance industry would have an adverse effect on everyone. This relationship ensures consumers have the greatest access to products being offered by the insurance industry. Creating a new standard that does not exempt these vital individuals from worker reclassification under an ABC test severely limits the scope of insurance products consumers would have access to as well as the general distribution of insurance products and investment advice, thereby limiting consumers' ability to protect themselves and their loved ones.



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BACKGROUND (CONT.): Existing regulations create a landscape with established controls of an already well-established industry. Independent contractors working within the framework of the industry choose to operate under existing rules because it allows them to cultivate their own small business enterprise which they independently control and operate. For this reason, Congress has historically left the regulation of the insurance industry, including the licensure and regulation of insurance producers, to the states.

In 2019, California's AB 5 adopted the application of the ABC test to determine if workers in California were employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the Industrial Welfare Commission wage order. Recognizing the uniqueness of the industry, an exemption for life agents, advisors, P&C agents, brokers, and health agents was also adopted. While AB5 was eventually overturned with the passage of the California ballot initiative Proposition 22, the exemption laid the foundation for the exemption of the insurance and financial services industry.

In March 2022 the National Council of Insurance Legislators (NCOIL) adopted a resolution based on the CA AB5 exemption for the industry.

NAIFA POSITION: The independent contractor/statutory employee model is the distribution model that most insurance companies and producers adhere to within the insurance industry. This working model is essential to providing consumers with the greatest protection and access to insurance products.

NAIFA opposes the reclassification of insurance professionals under an ABC test. Any proposal to redefine independent contractors should exempt insurance and financial professionals from laws or regulations that include an ABC test or similar methods to determine whether a worker is classified as a contractor or employee.

NAIFA members are professionals who generally operate their own small businesses. A survey of members indicates that they oppose attempts to reclassify them as employees. Results indicate:

- Approximately 90% receive income reported on a 1099.
- 94% do not want to be treated as an employee for union organizing.
- 95% operating as an independent contractor want to remain so.

For More Information:

Diane Boyle
Senior Vice President
Government Relations
(703) 770-8252
Dboyle@naifa.org

Michael Hedge
Director
Government Relations
(703) 770-8158
mhedge@naifa.org

Cody Schoonover
Manager
Government Relations
(703) 770-8159
cschoonover@naifa.org