**Central California Conference Policy for**
**Classifying Workers as Employees or Independent Contractors**

It is the policy of this Conference that the Conference and each of its entities shall strictly comply with both the spirit and the letter of California law in regard to classifying workers as employees or independent contractors and that the Conference and each of its entities shall act with due diligence and in good faith to properly so classify workers.

In 2018, the California Supreme Court decided the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles.* That case established criteria which severely limited the circumstances under which a worker could be classified as an independent contractor. Effective January 1, 2020, the California legislature clarified the scope the *Dynamex* decision by passing AB5, which added section 2750.3 to the California Labor Code.

Under Section 27250.3, in order for a worker to be properly classified as an independent contractor, the hiring entity must establish that the worker meets what is commonly called the "**ABC Test**". The three prongs of the ABC Test are set forth below in bold print. It should be noted that for a worker to be properly classified as an independent contractor, that worker must strictly meet *every* prong of the ABC Test.

The questions and comments below each prong are for guidance purposes in determining whether a worker meets that prong. And while there is some minimal leeway in the application of those guiding questions and comments, it is quite clear that California courts and administrative agencies are going to apply the ABC Test very strictly; they are not going to tolerate cosmetic steps to only technically bring a worker within a prong of the Test.

- ***Test A:*** **Is the worker free from the control and direction of the hiring entity in the performance of the work, both under the contract for the performance of the work and in fact?**
    - Does the worker provide their own tools, vehicles, and equipment to perform the services?
    - Does the worker have the ability, in fact, to negotiate their own rates?
    - Consistent with the nature of the work to be provided, can the worker set their own hours and location of work?

- ***Test B:*** **Does the worker perform work that is outside the usual course of the hiring entity's business?**
    - For instance, if a church retains a plumber to fix a leaking sink, that would pass muster under Test B. On the other hand, if that same church hires an organist to play for a church service (and/or funeral, wedding, etc.), that organist would be an employee because conducting religious services is part of the usual course of what that church does, so playing the organ for those services is not outside the usual course of the church's activities.

- ***Test C:*** **Is the worker customarily engaged in an independently-established trade, occupation, or business of the same nature as the work performed for the hiring entity?**
    - Does the worker have applicable licenses, plus any required professional license or permits in order to practice in their profession, plus any required business tax registration?
    - Does the worker maintain a business location, which may be the worker's residence, that is separate from the hiring entity's place of business?
    - Is the worker customarily engaged in the same type of work performed under contract with one or more other hiring entities –or—does the worker hold themselves out to other potential customers (without restrictions from the hiring entity) as available to perform the same type of work?
    - Does the worker advertise and hold themselves out to the public as available to provide the same or similar services?

Not only is there every indication that courts and administrative agencies will interpret the ABC Test very strictly, California law provides steep penalties for the misclassification of a worker as an independent contractor. In addition to Labor Code violations for items such as unpaid wages, missed meal and rest breaks, and overtime that would be available to a worker misclassified as an independent contractor (which by themselves can easily lead to six figure liability to a misclassified long-term worker), Labor Code section 226.8 provides that employers can be liable for civil penalties of $5,000 to $15,000 for each violation of "willful misclassification" of employees as independent contractors. In addition, if it is found that the employer has a pattern and practice of misclassifying independent contractors, the penalties can increase to a minimum of $10,000 to $25,000 per violation. **There is generally no insurance coverage for liability due to misclassification of a worker as an independent contractor. In addition, any such liability due to misclassification by a local entity of this Conference, will likely be the liability of that local entity.**

If any administrative department or local entity of this Conference is considering classifying a worker as an independent contractor