



## GOVERNMENT AFFAIRS Committee

**Government Affairs Committee  
Business Council Meeting  
October 21, 2020  
12:00 p.m.  
Zoom Meeting Originating  
Dinuba Chamber of Commerce**



HR Rep Devin Nunes



Sen. Melissa Hurtado



Assemb. Devon Mathis



Supv. Eddie Valero



Mayor Kuldip Thusu

### DINUBA CHAMBER OF COMMERCE GOVERNMENT AFFAIRS COMMITTEE

#### Agenda

October 21, 2020

*Vision Statement: Collaborative partnership between business, government, community organizations, and the public - all working together for a better more prosperous community.*

*Mission Statement - It is our mission to promote, retain, and educate the business community, ensure stability and growth and to strengthen our local economy to make Dinuba a better place to live, work, and play.*

**CALL TO ORDER** – Reda Bennani, Chair of GAC

**ROLL CALL / INTRODUCTIONS**

**NEW BUSINESS**

**I. Representatives Reports**

- a. Congressman Devin Nunes –
- b. Senator Melissa Hurtado's office – James Martinez
- c. Assemblyman Devon Mathis office – Tara Adams
- d. Tulare County Supervisor - Eddie Valero
- e. City of Dinuba Report – Daniel James

**II. HR Laws - Legal Alert: New CFRA Requirements and 1099 Contractor Classification Law Changes**

**III. Adjourn meeting**

**Next Meeting November 18, 2020**

**California Family Rights Act (“CFRA”)** requires employers to provide employees up to 12 workweeks of unpaid job protected leave during any 12-month period to bond with a new child or care for themselves or a family member with a serious health condition. Currently, CFRA only applies to employers with 50 or more employees. Starting January 1, 2021, the changes to the CFRA are as follows:

- Employers with five (5) or more employees will be required to provide their employees leave under CFRA. Employees that have at least 1,250 hours of service with the employer during the previous 12 month period will be eligible for these leave rights as long as they have a qualifying reason for leave.
- Eliminates the requirement that employees work within 75 miles of the employer worksite.
- The definition of “family member” now includes siblings, grandparents, grandchildren, and domestic partners.
- The definition of “child” now includes all adult children regardless of whether they are dependent and includes children of a domestic partner.
- Eliminates language that allows an employer, who employs both parents of a child, to only provide a combined 12 workweeks of unpaid protected leave. Now these employers will be required to allow each parent to take 12 workweeks of unpaid protected leave in that situation.
- Enhances military leave rights allowing leave to be taken when an employee’s spouse is called to active duty.
- Eliminates employer protections for refusal to reinstate on grounds of economic injury.

Additionally, if you have 50 or more employees, you should know that CFRA and the Federal Family Medical Leave Act leave rights which previously ran concurrently may not always run concurrently going forward. The reason for this is that CFRA expands the definition of family member that is no longer in alignment with federal law. Thus, it is now possible that some employees may have 12 workweeks of job protected leave under CFRA and still qualify for 12 workweeks of job protected leave under FMLA.

**To Dos:** Update your employee leave policy and leave forms by December 31, 2020 in order to ensure compliance with this new leave law. Even employers who were already providing CFRA must update their handbooks to ensure they are meeting the new California rules.

## **1099 Contract Rule Updates**

On September 4, 2020, AB 2257, which substantially revises and clarifies California’s 1099/independent contractor laws, took immediate effect. AB 2257 revises last year’s AB5 law. As a reminder, prior to 2018, the old “Borello Control Test” was used to classify 1099 workers. The Borello Test is a multi-factor test which evaluates whether the employer has the *necessary control* over the worker’s manner and means of accomplishing the result desired. The Borello Test also takes into consideration other factors such as whether the work is an integral part of the employer’s business, whether the service provided requires a special skill, the length of time for which the services are performed, and several other relevant considerations. In spring of 2018,

the California Supreme Court issued a new decision in *Dynamex Operations West, Inc. v. Superior Court* eliminating the Borello test and imposing the new and extremely strict “ABC Test” to determine whether a worker qualified as an independent contractor in California. On January 1, 2020, California’s AB5 law took effect. AB 5 incorporated the ABC Test into statutory law and created a variety of carve outs applying the old Borello test to the carve outs instead of the new ABC Test. Upon the passage of AB 5 numerous lawsuits ensued, particularly by those involved in the trucking industry, app-based driving companies, and other gig-economy type companies. The negative response to AB 5 coupled with increased litigation led to the development of AB 2257. Now, under AB 2257, the following rules apply to 1099 contractors:

- The ABC Test Still Stands: The ABC test requires that:
  - A: The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
  - B: The worker performs work that is outside the usual course of the hiring entity's business; and
  - C: The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.
- A number of new ABC test exceptions now exist and several previous exceptions are revised including those for business-to-business contracts, referral agencies, and freelance writers, editors, and newspaper cartoonists. Exceptions do not necessarily mean 1099 classification is lawful; instead it means that the old Borello Control Test applies.
- Enforcement has been expanded. California's district attorneys may now bring an action for injunctive relief to prevent continued misclassification of workers.
- The referral agency exception does not apply to referrals for services provided in certain high hazard industries and referrals for businesses that provide certain services such as, janitorial, delivery, or transportation services.
- The business-to-business exception has been modified in the following significant ways:
  - The business-to-business exemption is not violated if the business service provider's employees are solely performing services under the name of the business service provider and the business service provider regularly contracts with other businesses. (e.g., furniture store can now contract with furniture delivery company—even though they are dropping off furniture directly to the customers' homes).
  - The exemption requires a written contract with the 1099 worker that includes, at a minimum, the following terms: payment amount, rate of pay, and the due date for the payment.
  - Businesses are not required to have contracts in place with other businesses (aside from the one they are contracting with) to qualify for this exemption but they must be able to freely do so. In other words, exclusivity provisions in 1099 agreements are prohibited and will pull a worker out of the 1099 classification.
  - When two bona fide businesses are contracting with one another under this exemption, the determination of whether an individual working for a business service provider is an employee or independent contractor of the business service provider is still governed by the ABC test. In other words, while the business service provider itself may be a contractor, the persons working for that business service provider would be subject to the ABC test to determine their status.
- Additionally, new changes are likely on the horizon. On the November 3, 2020 ballot, Proposition 22 seeks to change the law to allow app-based workers, like those who drive for Uber, Lyft or DoorDash, to be classified as independent contractors rather than employees or agents. Court cases involving other sectors, like those involving the trucking industry, are still proceeding through the judicial system.

**To Dos:** If you are a 1099 contractor and you also hire 1099 workers, you should consult an attorney regarding whether this business model is lawful under the new regulations. If your business hires 1099 workers or engages in business-to-business services (e.g., outsourced IT or HR, delivery driver services, etc.) then you should ensure you have a contract in place governing that relationship, and update those contracts as needed to comply with the new law and eliminate language which would otherwise imply an employee-employer relationship. Whenever working with 1099 workers, it is generally recommended to contract with a legal entity (e.g., LLC or S-Corp) rather than with an individual sole proprietor.

