

BUSINESS TO BUSINESS EXEMPTION
MOTOR CARRIER INDUSTRY

This chart provides general information on the business to business exemption. It does not constitute legal advice regarding your particular circumstance. This is a fact-intensive inquiry and the hiring entity bears the burden in proving that it meets all 12 criteria.

If the hiring entity meets its burden in establishing that the business to business exemption applies, then *Borello* is the controlling test for the determination of whether the business service provider (“service provider”), i.e., the driver, is an independent contractor. If the hiring entity fails to meet its burden in establishing that the business to business exemption applies, then the controlling test is the ABC test.

The service provider must be a “sole proprietor, or a business entity formed as a partnership, limited liability company, limited liability partnership, or corporation.”

B2B Requirement	How Requirement Can Be Satisfied	Authority
Free from control and direction	If the hiring entity is able to satisfy the control-related element of <i>Borello</i> , they necessarily satisfy the identical element under the B2B exemption.	Lab. Code § 2776(a)(1)
Services are provided directly to the contracting business This does not apply if the service provider’s employees are solely performing services under the contract under the name of the service provider and the service provider regularly contracts with other businesses.	The hiring entity, (and not the hiring entity’s customers) contracts with the service providers, directs their actions, <u>and</u> pays them.	Lab. Code § 2776(a)(2); <i>People v. Superior Ct.</i> (2020) 57 Cal. App. 5th 619, 634 (<i>Cal Cartage</i>)
Contract is in writing	Specify in writing the payment amount, applicable rate of pay, services to be performed, and pay date.	Lab. Code § 2776(a)(3)
Has required business license or business tax registration in jurisdiction that requires it	Service providers need not have “a federal motor carrier operating license” to satisfy this criteria. “[T]he phrase refers to the licenses issued by local governments for health and safety regulation and tax purposes.”	Lab. Code § 2776(a)(4); <i>Cal Cartage</i> , 57 Cal. App. 5th at 633

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Service provider maintains a business location separate from contracting business' location.	A service provider can comply even by operating the driving business from their own "residence."	Lab. Code § 2776(a)(5)
Is customarily engaged in an independently established business of the same nature	Service provider runs their own independent business providing the same services to others.	Lab. Code § 2776(a)(6)
Can contract with other businesses without restrictions from the hiring entity	Service provider has the ability to work with multiple motor carriers in carrying out their independent driving business.	Lab. Code § 2776(a)(7)
Advertises and holds itself out to the public as available to provide the same or similar services	Service provider communicates with customers through independent channels or advertise their services, e.g. creating a logo; putting logo on t-shirts, vans; passing out business cards; advertising on trade websites or load boards. It is not merely enough to show that the service provider worked for others.	Lab. Code § 2776(a)(8); <i>Lawson v. Grubhub, Inc.</i> (N.D. Cal. 2023) 665 F. Supp. 3d 1108, 1116
Provides its own tools, vehicles, and equipment to perform the services	Consistent with the nature of the work, service providers use their own trucks, and other equipment as needed.	Lab. Code § 2776(a)(9)
Can negotiates own rates	Must show that the service provider actually negotiated their own rates or that they could do so. The ability to negotiate rates is a hallmark of true independent contractor status. Turning down work is not enough.	Lab. Code § 2776(a)(10)
Can set own hours and location of work	Can choose which loads to accept (which dictates their hours and location)	Lab. Code § 2776(a)(11)
Not performing work which requires a license from the Contractors' State License Board.	No license from the Contractors' State License Board is required to operate a driving business in California.	Lab. Code §2776(a)(12); Bus. & Prof. Code, §§ 7055-7509.1 (listing classifications)