

File No. 200323

Committee Item No. \_\_\_\_\_

Board Item No. 21

## COMMITTEE/BOARD OF SUPERVISORS

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Date: \_\_\_\_\_  
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Prepared by: Lisa Lew  
Prepared by: \_\_\_\_\_

Date: March 27, 2020  
Date: \_\_\_\_\_

1 [Urging Enforcement Action and Injunctive Relief for the Misclassification of San Francisco  
2 Workers]

3 **Resolution urging local enforcement of State Assembly Bill No. 5; pursuit of immediate**  
4 **injunctive relief; additional public health directives; and further state action to address**  
5 **the misclassification of San Francisco workers and ensure employee access to**  
6 **benefits.**

7  
8 WHEREAS, On April 30, 2018, the California Supreme Court issued a landmark,  
9 unanimous decision in the matter of Dynamex Operations West, Inc. v. Superior Court of Los  
10 Angeles (2018) (“Dynamex”), which embraced a standard for worker classification that  
11 presumes that all workers are employees instead of independent contractors and placed the  
12 burden of making that determination on the employer; and

13 WHEREAS, On September 18, 2019, Governor Gavin Newsom signed State Assembly  
14 Bill No. 5 (“A.B. 5”), authored by Assembly Member Lorena Gonzalez, to codify and expand  
15 the California Supreme Court’s decision in Dynamex; and

16 WHEREAS, On July 16, 2019, the San Francisco Board of Supervisors adopted a  
17 Resolution supporting A.B.5, authored by Supervisor Rafael Mandelman, on file with the Clerk  
18 of the Board of Supervisors in File No. 190771, which is hereby declared to be a part of this  
19 Resolution as if set forth fully herein; and

20 WHEREAS, A.B. 5 went into effect on January 1, 2020, establishing a presumption that  
21 a worker is an employee for purposes of wages and benefits included in the California Labor  
22 Code, Unemployment Insurance Code, and Industrial Welfare Commission wage orders; and

23 WHEREAS, California law grants City Attorneys in cities with more than 750,000  
24 residents the authority to seek injunctive relief on behalf of workers who have been  
25 misclassified, see Cal. Lab. Code § 2750.3(j); and

1           WHEREAS, The City of San Diego recently engaged in a successful enforcement  
2 action and obtained a court order preventing an app-based company from claiming that their  
3 workers are independent contractors, see The People of the State of California v. Mapbear,  
4 Inc., Case No. 37-2019-00048731-CU-MC-CTL (Feb. 13, 2020); and

5           WHEREAS, These public actions may be necessary to ensure that workers have  
6 access to the benefits they need, which are blocked by misclassification; and

7           WHEREAS, While the impact from COVID-19 continues to grow in San Francisco and  
8 across California, misclassified employees are losing work and their livelihoods; and

9           WHEREAS, Without assistance, these workers face many uncertainties, including  
10 housing and food insecurity, no access to health care, exposure to COVID-19 without safety  
11 training, sanitation and protective equipment, and more; and

12           WHEREAS, App-based employers including Uber, Lyft, Doordash, Instacart,  
13 Postmates, and others continue to flout our state and city laws, leaving their misclassified  
14 employees without access to unemployment insurance, paid sick leave, medical benefits,  
15 workers' compensation, and other crucial benefits, even amidst an unprecedented public  
16 health and economic crisis; and

17           WHEREAS, Public servants have a moral obligation to fight on behalf of the most  
18 vulnerable when companies like Uber, Lyft, Doordash, Instacart, Postmates abandon the very  
19 people who make their business possible; and

20           WHEREAS, On March 16, 2020, the San Francisco Health Officer issued Order No.  
21 C19-07, directing all individuals living in the City and County of San Francisco to shelter in  
22 place at their place of residence with limited exceptions; and

23           WHEREAS, On March 24, 2020, the San Francisco Board of Supervisors adopted a  
24 Resolution urging the creation of a multilingual workers rights hotline and committing to  
25 provide additional local support for workers impacted by Order No. C19-07, on file with the

1 Clerk of the Board of Supervisors in File No. 200304, which is hereby declared to be a part of  
2 this Resolution as if set forth fully herein; and

3 WHEREAS, Because they are denied benefits, drivers living paycheck to paycheck will  
4 be forced to continue working to afford food, rent, healthcare, and more, putting passengers  
5 and the public at risk; now, therefore, be it

6 RESOLVED, That the San Francisco Board of Supervisors urges the Office of Labor  
7 Standards Enforcement to establish rapid enforcement procedures to address  
8 misclassification of San Francisco employees and ensure local compliance with Assembly Bill  
9 5, and to proactively communicate to all employers their obligations under local law to provide  
10 benefits such as paid sick leave to their employees; and, be it

11 FURTHER RESOLVED, That the San Francisco Board of Supervisors urges the Office  
12 of Labor Standards Enforcement to base each app-based employee's eligibility to receive paid  
13 sick leave under San Francisco's Administrative Code, Chapter 12W and required healthcare  
14 expenditures under Administrative Code, Chapter 12Q on the total hours the employee is  
15 logged in to the employer's platform along with the amount of such benefits; and, be it

16 FURTHER RESOLVED, That the San Francisco Board of Supervisors urges the  
17 Department of Public Health to (i) establish minimum health and safety guidelines for TNC  
18 and food delivery drivers who continue to operate during this pandemic, and (ii) direct  
19 employers still in operation to provide sanitary supplies for their workers as needed, and (iii)  
20 direct companies who employ gig workers to comply with all Workers Compensation benefits  
21 in the event their employee should come into contact with a customer who has been infected;  
22 and, be it

23 FURTHER RESOLVED, That the San Francisco Board of Supervisors urges City  
24 Attorney Dennis Herrera and District Attorney Chesa Boudin to seek immediate injunctive  
25 relief to prevent the misclassification of San Francisco workers as they seek to access basic

1 workplace rights like paid sick leave, unemployment insurance, and benefits provided under  
2 the San Francisco Health Care Security Ordinance; and, be it

3 FURTHER RESOLVED, That the City and County of San Francisco urges California  
4 Attorney General Xavier Becerra to (i) seek immediate injunctive relief to prevent the  
5 misclassification of California workers as they seek to access basic workplace rights like paid  
6 sick leave and unemployment insurance, and (ii) issue guidance to all District Attorneys, City  
7 Attorneys, and County Counsels regarding their authority to seek rapid injunctive relief to  
8 ensure workers can access workplace benefits under current state law; and, be it

9 FURTHER RESOLVED, That the San Francisco Board of Supervisors urges Labor  
10 Secretary Julie Su to provide guidance for accessing benefits like disability insurance, paid  
11 family leave, and unemployment insurance for misclassified workers; and, be it

12 FURTHER RESOLVED, That the Clerk of the Board of Supervisors shall transmit  
13 copies of this Resolution to the Office of Labor Standards, Department of Public Health, City  
14 Attorney Dennis Herrera, District Attorney Chesa Boudin, California Attorney General Xavier  
15 Becerra, and California Labor Secretary Julie Su with a request to take all action necessary to  
16 achieve the objectives of this Resolution.

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## Assembly Bill No. 5

### CHAPTER 296

An act to amend Section 3351 of, and to add Section 2750.3 to, the Labor Code, and to amend Sections 606.5 and 621 of the Unemployment Insurance Code, relating to employment, and making an appropriation therefor.

[Approved by Governor September 18, 2019. Filed with  
Secretary of State September 18, 2019.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 5, Gonzalez. Worker status: employees and independent contractors.

Existing law, as established in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the “ABC” test, to establish that a worker is an independent contractor for those purposes.

Existing law, for purposes of unemployment insurance provisions, requires employers to make contributions with respect to unemployment insurance and disability insurance from the wages paid to their employees. Existing law defines “employee” for those purposes to include, among other individuals, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

This bill would state the intent of the Legislature to codify the decision in the *Dynamex* case and clarify its application. The bill would provide that for purposes of the provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity’s business, and the person is customarily engaged in an independently established trade, occupation, or business. The bill, notwithstanding this provision, would provide that any statutory exception from employment status or any extension of employer status or liability remains in effect, and that if a court rules that the 3-part test cannot be applied, then the determination of employee or independent contractor status shall be governed by the test adopted in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (*Borello*). The bill would exempt specified occupations from the application of *Dynamex*, and would instead provide that these

occupations are governed by Borello. These exempt occupations would include, among others, licensed insurance agents, certain licensed health care professionals, registered securities broker-dealers or investment advisers, direct sales salespersons, real estate licensees, commercial fishermen, workers providing licensed barber or cosmetology services, and others performing work under a contract for professional services, with another business entity, or pursuant to a subcontract in the construction industry.

The bill would also require the Employment Development Department, on or before March 1, 2021, and each March 1 thereafter, to issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry. The bill would make the exemption for commercial fishermen applicable only until January 1, 2023, and the exemption for licensed manicurists applicable only until January 1, 2022. The bill would authorize an action for injunctive relief to prevent employee misclassification to be brought by the Attorney General and specified local prosecuting agencies.

This bill would also redefine the definition of “employee” described above, for purposes of unemployment insurance provisions, to include an individual providing labor or services for remuneration who has the status of an employee rather than an independent contractor, unless the hiring entity demonstrates that the individual meets all of specified conditions, including that the individual performs work that is outside the usual course of the hiring entity’s business. Because this bill would increase the categories of individuals eligible to receive benefits from, and thus would result in additional moneys being deposited into, the Unemployment Fund, a continuously appropriated fund, the bill would make an appropriation. The bill would state that addition of the provision to the Labor Code does not constitute a change in, but is declaratory of, existing law with regard to violations of the Labor Code relating to wage orders of the Industrial Welfare Commission. The bill would also state that specified Labor Code provisions of the bill apply retroactively to existing claims and actions to the maximum extent permitted by law while other provisions apply to work performed on or after January 1, 2020. The bill would additionally provide that the bill’s provisions do not permit an employer to reclassify an individual who was an employee on January 1, 2019, to an independent contractor due to the bill’s enactment.

Existing provisions of the Labor Code make it a crime for an employer to violate specified provisions of law with regard to an employee. The Unemployment Insurance Code also makes it a crime to violate specified provisions of law with regard to benefits and payments.

By expanding the definition of an employee for purposes of these provisions, the bill would expand the definition of a crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) On April 30, 2018, the California Supreme Court issued a unanimous decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (Dynamex).

(b) In its decision, the Court cited the harm to misclassified workers who lose significant workplace protections, the unfairness to employers who must compete with companies that misclassify, and the loss to the state of needed revenue from companies that use misclassification to avoid obligations such as payment of payroll taxes, payment of premiums for workers' compensation, Social Security, unemployment, and disability insurance.

(c) The misclassification of workers as independent contractors has been a significant factor in the erosion of the middle class and the rise in income inequality.

(d) It is the intent of the Legislature in enacting this act to include provisions that would codify the decision of the California Supreme Court in *Dynamex* and would clarify the decision's application in state law.

(e) It is also the intent of the Legislature in enacting this act to ensure workers who are currently exploited by being misclassified as independent contractors instead of recognized as employees have the basic rights and protections they deserve under the law, including a minimum wage, workers' compensation if they are injured on the job, unemployment insurance, paid sick leave, and paid family leave. By codifying the California Supreme Court's landmark, unanimous *Dynamex* decision, this act restores these important protections to potentially several million workers who have been denied these basic workplace rights that all employees are entitled to under the law.

(f) The *Dynamex* decision interpreted one of the three alternative definitions of "employ," the "suffer or permit" definition, from the wage orders of the Industrial Welfare Commission (IWC). Nothing in this act is intended to affect the application of alternative definitions from the IWC wage orders of the term "employ," which were not addressed by the holding of *Dynamex*.

(g) Nothing in this act is intended to diminish the flexibility of employees to work part-time or intermittent schedules or to work for multiple employers.

SEC. 2. Section 2750.3 is added to the Labor Code, to read:

2750.3. (a) (1) For purposes of the provisions of this code and the Unemployment Insurance Code, and for the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration



shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

(A) The person 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 person performs work that is outside the usual course of the hiring entity's business.

(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

(2) Notwithstanding paragraph (1), any exceptions to the terms "employee," "employer," "employ," or "independent contractor," and any extensions of employer status or liability, that are expressly made by a provision of this code, the Unemployment Insurance Code, or in an applicable order of the Industrial Welfare Commission, including, but not limited to, the definition of "employee" in subdivision 2(E) of Wage Order No. 2, shall remain in effect for the purposes set forth therein.

(3) If a court of law rules that the three-part test in paragraph (1) cannot be applied to a particular context based on grounds other than an express exception to employment status as provided under paragraph (2), then the determination of employee or independent contractor status in that context shall instead be governed by the California Supreme Court's decision in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (Borello).

(b) Subdivision (a) and the holding in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (Dynamex), do not apply to the following occupations as defined in the paragraphs below, and instead, the determination of employee or independent contractor status for individuals in those occupations shall be governed by Borello.

(1) A person or organization who is licensed by the Department of Insurance pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Part 2 of Division 1 of the Insurance Code.

(2) A physician and surgeon, dentist, podiatrist, psychologist, or veterinarian licensed by the State of California pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, performing professional or medical services provided to or by a health care entity, including an entity organized as a sole proprietorship, partnership, or professional corporation as defined in Section 13401 of the Corporations Code. Nothing in this subdivision shall apply to the employment settings currently or potentially governed by collective bargaining agreements for the licensees identified in this paragraph.

(3) An individual who holds an active license from the State of California and is practicing one of the following recognized professions: lawyer, architect, engineer, private investigator, or accountant.

(4) A securities broker-dealer or investment adviser or their agents and representatives that are registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or licensed by the State of California under Chapter 2 (commencing with Section 25210) or Chapter 3 (commencing with Section 25230) of Division 1 of Part 3 of Title 4 of the Corporations Code.

(5) A direct sales salesperson as described in Section 650 of the Unemployment Insurance Code, so long as the conditions for exclusion from employment under that section are met.

(6) A commercial fisherman working on an American vessel as defined in subparagraph (A) below.

(A) For the purposes of this paragraph:

(i) “American vessel” has the same meaning as defined in Section 125.5 of the Unemployment Insurance Code.

(ii) “Commercial fisherman” means a person who has a valid, unrevoked commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code.

(iii) “Working on an American vessel” means the taking or the attempt to take fish, shellfish, or other fishery resources of the state by any means, and includes each individual aboard an American vessel operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, including maintaining the vessel or equipment used aboard the vessel. However, “working on an American vessel” does not apply to anyone aboard a licensed commercial fishing vessel as a visitor or guest who does not directly or indirectly participate in the taking.

(B) For the purposes of this paragraph, a commercial fisherman working on an American vessel is eligible for unemployment insurance benefits if they meet the definition of “employment” in Section 609 of the Unemployment Insurance Code and are otherwise eligible for those benefits pursuant to the provisions of the Unemployment Insurance Code.

(C) On or before March 1, 2021, and each March 1 thereafter, the Employment Development Department shall issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry. This report shall include, but not be limited to, reporting the number of commercial fishermen who apply for unemployment insurance benefits, the number of commercial fishermen who have their claims disputed, the number of commercial fishermen who have their claims denied, and the number of commercial fishermen who receive unemployment insurance benefits. The report required by this subparagraph shall be submitted in compliance with Section 9795 of the Government Code.

(D) This paragraph shall become inoperative on January 1, 2023, unless extended by the Legislature.

(c) (1) Subdivision (a) and the holding in *Dynamex* do not apply to a contract for “professional services” as defined below, and instead the determination of whether the individual is an employee or independent

contractor shall be governed by Borello if the hiring entity demonstrates that all of the following factors are satisfied:

(A) The individual maintains a business location, which may include the individual's residence, that is separate from the hiring entity. Nothing in this subdivision prohibits an individual from choosing to perform services at the location of the hiring entity.

(B) If work is performed more than six months after the effective date of this section, the individual has a business license, in addition to any required professional licenses or permits for the individual to practice in their profession.

(C) The individual has the ability to set or negotiate their own rates for the services performed.

(D) Outside of project completion dates and reasonable business hours, the individual has the ability to set the individual's own hours.

(E) The individual is customarily engaged in the same type of work performed under contract with another hiring entity or holds themselves out to other potential customers as available to perform the same type of work.

(F) The individual customarily and regularly exercises discretion and independent judgment in the performance of the services.

(2) For purposes of this subdivision:

(A) An "individual" includes an individual providing services through a sole proprietorship or other business entity.

(B) "Professional services" means services that meet any of the following:

(i) Marketing, provided that the contracted work is original and creative in character and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the contracted work.

(ii) Administrator of human resources, provided that the contracted work is predominantly intellectual and varied in character and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(iii) Travel agent services provided by either of the following: (I) a person regulated by the Attorney General under Article 2.6 (commencing with Section 17550) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, or (II) an individual who is a seller of travel within the meaning of subdivision (a) of Section 17550.1 of the Business and Professions Code and who is exempt from the registration under subdivision (g) of Section 17550.20 of the Business and Professions Code.

(iv) Graphic design.

(v) Grant writer.

(vi) Fine artist.

(vii) Services provided by an enrolled agent who is licensed by the United States Department of the Treasury to practice before the Internal Revenue Service pursuant to Part 10 of Subtitle A of Title 31 of the Code of Federal Regulations.

(viii) Payment processing agent through an independent sales organization.

(ix) Services provided by a still photographer or photojournalist who do not license content submissions to the putative employer more than 35 times per year. This clause is not applicable to an individual who works on motion pictures, which includes, but is not limited to, projects produced for theatrical, television, internet streaming for any device, commercial productions, broadcast news, music videos, and live shows, whether distributed live or recorded for later broadcast, regardless of the distribution platform. For purposes of this clause a “submission” is one or more items or forms of content produced by a still photographer or photojournalist that: (I) pertains to a specific event or specific subject; (II) is provided for in a contract that defines the scope of the work; and (III) is accepted by and licensed to the publication or stock photography company and published or posted. Nothing in this section shall prevent a photographer or artist from displaying their work product for sale.

(x) Services provided by a freelance writer, editor, or newspaper cartoonist who does not provide content submissions to the putative employer more than 35 times per year. Items of content produced on a recurring basis related to a general topic shall be considered separate submissions for purposes of calculating the 35 times per year. For purposes of this clause, a “submission” is one or more items or forms of content by a freelance journalist that: (I) pertains to a specific event or topic; (II) is provided for in a contract that defines the scope of the work; (III) is accepted by the publication or company and published or posted for sale.

(xi) Services provided by a licensed esthetician, licensed electrologist, licensed manicurist, licensed barber, or licensed cosmetologist provided that the individual:

(I) Sets their own rates, processes their own payments, and is paid directly by clients.

(II) Sets their own hours of work and has sole discretion to decide the number of clients and which clients for whom they will provide services.

(III) Has their own book of business and schedules their own appointments.

(IV) Maintains their own business license for the services offered to clients.

(V) If the individual is performing services at the location of the hiring entity, then the individual issues a Form 1099 to the salon or business owner from which they rent their business space.

(VI) This subdivision shall become inoperative, with respect to licensed manicurists, on January 1, 2022.

(d) Subdivision (a) and the holding in *Dynamex* do not apply to the following, which are subject to the Business and Professions Code:

(1) A real estate licensee licensed by the State of California pursuant to Division 4 (commencing with Section 10000) of the Business and Professions Code, for whom the determination of employee or independent contractor status shall be governed by subdivision (b) of Section 10032 of the Business and Professions Code. If that section is not applicable, then this determination shall be governed as follows: (A) for purposes of

unemployment insurance by Section 650 of the Unemployment Insurance Code; (B) for purposes of workers compensation by Section 3200 et seq.; and (C) for all other purposes in the Labor Code by Borello. The statutorily imposed duties of a responsible broker under Section 10015.1 of the Business and Professions Code are not factors to be considered under the Borello test.

(2) A repossession agency licensed pursuant to Section 7500.2 of the Business and Professions Code, for whom the determination of employee or independent contractor status shall be governed by Section 7500.2 of the Business and Professions Code, if the repossession agency is free from the control and direction of the hiring person or entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(e) Subdivision (a) and the holding in *Dynamex* do not apply to a bona fide business-to-business contracting relationship, as defined below, under the following conditions:

(1) If a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation (“business service provider”) contracts to provide services to another such business (“contracting business”), the determination of employee or independent contractor status of the business services provider shall be governed by Borello, if the contracting business demonstrates that all of the following criteria are satisfied:

(A) The business service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The business service provider is providing services directly to the contracting business rather than to customers of the contracting business.

(C) The contract with the business service provider is in writing.

(D) If the work is performed in a jurisdiction that requires the business service provider to have a business license or business tax registration, the business service provider has the required business license or business tax registration.

(E) The business service provider maintains a business location that is separate from the business or work location of the contracting business.

(F) The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.

(G) 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.

(H) The business service provider advertises and holds itself out to the public as available to provide the same or similar services.

(I) The business service provider provides its own tools, vehicles, and equipment to perform the services.

(J) The business service provider can negotiate its own rates.

(K) Consistent with the nature of the work, the business service provider can set its own hours and location of work.

(L) The business service provider is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(2) This subdivision does not apply to an individual worker, as opposed to a business entity, who performs labor or services for a contracting business.

(3) The determination of whether an individual working for a business service provider is an employee or independent contractor of the business service provider is governed by paragraph (1) of subdivision (a).

(4) This subdivision does not alter or supersede any existing rights under Section 2810.3.

(f) Subdivision (a) and the holding in *Dynamex* do not apply to the relationship between a contractor and an individual performing work pursuant to a subcontract in the construction industry, and instead the determination of whether the individual is an employee of the contractor shall be governed by Section 2750.5 and by *Borello*, if the contractor demonstrates that all the following criteria are satisfied:

(1) The subcontract is in writing.

(2) The subcontractor is licensed by the Contractors State License Board and the work is within the scope of that license.

(3) If the subcontractor is domiciled in a jurisdiction that requires the subcontractor to have a business license or business tax registration, the subcontractor has the required business license or business tax registration.

(4) The subcontractor maintains a business location that is separate from the business or work location of the contractor.

(5) The subcontractor has the authority to hire and to fire other persons to provide or to assist in providing the services.

(6) The subcontractor assumes financial responsibility for errors or omissions in labor or services as evidenced by insurance, legally authorized indemnity obligations, performance bonds, or warranties relating to the labor or services being provided.

(7) The subcontractor is customarily engaged in an independently established business of the same nature as that involved in the work performed.

(8) (A) Paragraph (2) shall not apply to a subcontractor providing construction trucking services for which a contractor's license is not required by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, provided that all of the following criteria are satisfied:

(i) The subcontractor is a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation.

(ii) For work performed after January 1, 2020, the subcontractor is registered with the Department of Industrial Relations as a public works

contractor pursuant to Section 1725.5, regardless of whether the subcontract involves public work.

(iii) The subcontractor utilizes its own employees to perform the construction trucking services, unless the subcontractor is a sole proprietor who operates their own truck to perform the entire subcontract and holds a valid motor carrier permit issued by the Department of Motor Vehicles.

(iv) The subcontractor negotiates and contracts with, and is compensated directly by, the licensed contractor.

(B) For work performed after January 1, 2020, any business entity that provides construction trucking services to a licensed contractor utilizing more than one truck shall be deemed the employer for all drivers of those trucks.

(C) For purposes of this paragraph, “construction trucking services” mean hauling and trucking services provided in the construction industry pursuant to a contract with a licensed contractor utilizing vehicles that require a commercial driver’s license to operate or have a gross vehicle weight rating of 26,001 or more pounds.

(D) This paragraph shall only apply to work performed before January 1, 2022.

(E) Nothing in this paragraph prohibits an individual who owns their truck from working as an employee of a trucking company and utilizing that truck in the scope of that employment. An individual employee providing their own truck for use by an employer trucking company shall be reimbursed by the trucking company for the reasonable expense incurred for the use of the employee owned truck.

(g) Subdivision (a) and the holding in *Dynamex* do not apply to the relationship between a referral agency and a service provider, as defined below, under the following conditions:

(1) If a business entity formed as a sole proprietor, partnership, limited liability company, limited liability partnership, or corporation (“service provider”) provides services to clients through a referral agency, the determination whether the service provider is an employee of the referral agency shall be governed by *Borello*, if the referral agency demonstrates that all of the following criteria are satisfied:

(A) The service provider is free from the control and direction of the referral agency in connection with the performance of the work for the client, both as a matter of contract and in fact.

(B) If the work for the client is performed in a jurisdiction that requires the service provider to have a business license or business tax registration, the service provider has the required business license or business tax registration.

(C) If the work for the client requires the service provider to hold a state contractor’s license pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, the service provider has the required contractor’s license.

(D) The service provider delivers services to the client under service provider’s name, rather than under the name of the referral agency.

(E) The service provider provides its own tools and supplies to perform the services.

(F) 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.

(G) The service provider maintains a clientele without any restrictions from the referral agency and the service provider is free to seek work elsewhere, including through a competing agency.

(H) The service provider sets its own hours and terms of work and is free to accept or reject clients and contracts.

(I) The service provider sets its own rates for services performed, without deduction by the referral agency.

(J) The service provider is not penalized in any form for rejecting clients or contracts. This subparagraph does not apply if the service provider accepts a client or contract and then fails to fulfill any of its contractual obligations.

(2) For purposes of this subdivision, the following definitions apply:

(A) “Animal services” means services related to daytime and nighttime pet care including pet boarding under Section 122380 of the Health and Safety Code.

(B) “Client” means a person or business that engages a service contractor through a referral agency.

(C) “Referral agency” is a business that connects clients with service providers that provide graphic design, photography, tutoring, event planning, minor home repair, moving, home cleaning, errands, furniture assembly, animal services, dog walking, dog grooming, web design, picture hanging, pool cleaning, or yard cleanup.

(D) “Referral agency contract” is the agency’s contract with clients and service contractors governing the use of its intermediary services described in subparagraph (C).

(E) “Service provider” means a person or business who agrees to the referral agency’s contract and uses the referral agency to connect with clients.

(F) “Tutor” means a person who develops and teaches their own curriculum. A “tutor” does not include a person who teaches a curriculum created by a public school or who contracts with a public school through a referral company for purposes of teaching students of a public school.

(3) This subdivision does not apply to an individual worker, as opposed to a business entity, who performs services for a client through a referral agency. The determination whether such an individual is an employee of a referral agency is governed by subdivision (a).

(h) Subdivision (a) and the holding in *Dynamex* do not apply to the relationship between a motor club holding a certificate of authority issued pursuant to Chapter 2 (commencing with Section 12160) of Part 5 of Division 2 of the Insurance Code and an individual performing services pursuant to a contract between the motor club and a third party to provide motor club services utilizing the employees and vehicles of the third party and, instead, the determination whether such an individual is an employee



of the motor club shall be governed by Borello, if the motor club demonstrates that the third party is a separate and independent business from the motor club.

(i) (1) The addition of subdivision (a) to this section of the Labor Code by this act does not constitute a change in, but is declaratory of, existing law with regard to wage orders of the Industrial Welfare Commission and violations of the Labor Code relating to wage orders.

(2) Insofar as the application of subdivisions (b), (c), (d), (e), (f), (g), and (h) of this section would relieve an employer from liability, those subdivisions shall apply retroactively to existing claims and actions to the maximum extent permitted by law.

(3) Except as provided in paragraphs (1) and (2) of this subdivision, the provisions of this section of the Labor Code shall apply to work performed on or after January 1, 2020.

(j) In addition to any other remedies available, an action for injunctive relief to prevent the continued misclassification of employees as independent contractors may be prosecuted against the putative employer in a court of competent jurisdiction by the Attorney General or by a city attorney of a city having a population in excess of 750,000, or by a city attorney in a city and county or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association.

SEC. 3. Section 3351 of the Labor Code, as amended by Section 33 of Chapter 38 of the Statutes of 2019, is amended to read:

3351. "Employee" means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:

(a) Aliens and minors.

(b) All elected and appointed paid public officers.

(c) All officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. An officer or member of a board of directors may elect to be excluded from coverage in accordance with paragraph (16), (18), or (19) of subdivision (a) of Section 3352.

(d) Except as provided in paragraph (8) of subdivision (a) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment as defined in paragraph (1) of subdivision (a) of Section 10021 of Title 8 of the California Code of Regulations, or engaged in work performed under contract.

(f) All working members of a partnership or limited liability company receiving wages irrespective of profits from the partnership or limited liability company. A general partner of a partnership or a managing member of a limited liability company may elect to be excluded from coverage in accordance with paragraph (17) of subdivision (a) of Section 3352.

(g) A person who holds the power to revoke a trust, with respect to shares of a private corporation held in trust or general partnership or limited liability company interests held in trust. To the extent that this person is deemed to be an employee described in subdivision (c) or (f), as applicable, the person may also elect to be excluded from coverage as described in subdivision (c) or (f), as applicable, if that person otherwise meets the criteria for exclusion, as described in Section 3352.

(h) A person committed to a state hospital facility under the State Department of State Hospitals, as defined in Section 4100 of the Welfare and Institutions Code, while engaged in and assigned work in a vocation rehabilitation program, including a sheltered workshop.

(i) Beginning on July 1, 2020, any individual who is an employee pursuant to Section 2750.3. This subdivision shall not apply retroactively.

SEC. 4. Section 606.5 of the Unemployment Insurance Code is amended to read:

606.5. (a) Whether an individual or entity is the employer of specific employees shall be determined pursuant to subdivision (b) of Section 621, except as provided in subdivisions (b) and (c).

(b) As used in this section, a “temporary services employer” and a “leasing employer” is an employing unit that contracts with clients or customers to supply workers to perform services for the client or customer and performs all of the following functions:

(1) Negotiates with clients or customers for such matters as time, place, type of work, working conditions, quality, and price of the services.

(2) Determines assignments or reassignments of workers, even though workers retain the right to refuse specific assignments.

(3) Retains the authority to assign or reassign a worker to other clients or customers when a worker is determined unacceptable by a specific client or customer.

(4) Assigns or reassigns the worker to perform services for a client or customer.

(5) Sets the rate of pay of the worker, whether or not through negotiation.

(6) Pays the worker from its own account or accounts.

(7) Retains the right to hire and terminate workers.

(c) If an individual or entity contracts to supply an employee to perform services for a customer or client, and is a leasing employer or a temporary services employer, the individual or entity is the employer of the employee who performs the services. If an individual or entity contracts to supply an employee to perform services for a client or customer and is not a leasing employer or a temporary services employer, the client or customer is the employer of the employee who performs the services. An individual or entity that contracts to supply an employee to perform services for a customer

or client and pays wages to the employee for the services, but is not a leasing employer or a temporary services employer, pays the wages as the agent of the employer.

(d) In circumstances which are in essence the loan of an employee from one employer to another employer wherein direction and control of the manner and means of performing the services changes to the employer to whom the employee is loaned, the loaning employer shall continue to be the employer of the employee if the loaning employer continues to pay remuneration to the employee, whether or not reimbursed by the other employer. If the employer to whom the employee is loaned pays remuneration to the employee for the services performed, that employer shall be considered the employer for the purposes of any remuneration paid to the employee by the employer, regardless of whether the loaning employer also pays remuneration to the employee.

SEC. 5. Section 621 of the Unemployment Insurance Code is amended to read:

621. "Employee" means all of the following:

(a) Any officer of a corporation.

(b) Any individual providing labor or services for remuneration has the status of an employee rather than an independent contractor unless the hiring entity demonstrates all of the following conditions:

(1) The individual 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.

(2) The individual performs work that is outside the usual course of the hiring entity's business.

(3) The individual is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

(c) (1) Any individual, other than an individual who is an employee under subdivision (a) or (b), who performs services for remuneration for any employing unit if the contract of service contemplates that substantially all of those services are to be performed personally by that individual either:

(A) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for their principal.

(B) As a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, their principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(C) As a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by that person that are required to be returned to that person or a designee thereof.

(2) An individual shall not be included in the term “employee” under the provisions of this subdivision if that individual has a substantial investment in facilities used in connection with the performance of those services, other than in facilities for transportation, or if the services are in the nature of a single transaction not part of a continuing relationship with the employing unit for whom the services are performed.

(d) Any individual who is an employee pursuant to Section 601.5 or 686.

(e) Any individual whose services are in subject employment pursuant to an election for coverage under any provision of Article 4 (commencing with Section 701) of this chapter.

(f) Any member of a limited liability company that is treated as a corporation for federal income tax purposes.

SEC. 6. No provision of this measure shall permit an employer to reclassify an individual who was an employee on January 1, 2019, to an independent contractor due to this measure’s enactment.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



**ORDER OF THE HEALTH OFFICER No. C19-07**

**ORDER OF THE HEALTH OFFICER  
OF THE CITY AND COUNTY OF SAN FRANCISCO DIRECTING  
ALL INDIVIDUALS LIVING IN THE COUNTY TO SHELTER AT THEIR  
PLACE OF RESIDENCE EXCEPT THAT THEY MAY LEAVE TO  
PROVIDE OR RECEIVE CERTAIN ESSENTIAL SERVICES OR  
ENGAGE IN CERTAIN ESSENTIAL ACTIVITIES AND WORK FOR  
ESSENTIAL BUSINESS AND GOVERNMENT SERVICES; EXEMPTING  
INDIVIDUALS EXPERIENCING HOMELESSNESS FROM THE  
SHELTER IN PLACE ORDER BUT URGING THEM TO FIND SHELTER  
AND GOVERNMENT AGENCIES TO PROVIDE IT; DIRECTING ALL  
BUSINESSES AND GOVERNMENTAL AGENCIES TO CEASE NON-  
ESSENTIAL OPERATIONS AT PHYSICAL LOCATIONS IN THE  
COUNTY; PROHIBITING ALL NON-ESSENTIAL GATHERINGS OF  
ANY NUMBER OF INDIVIDUALS; AND ORDERING CESSATION OF  
ALL NON-ESSENTIAL TRAVEL**

**(SHELTER IN PLACE)**

DATE OF ORDER: March 16, 2020

**Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*; California Penal Code §§ 69, 148(a)(1); San Francisco Administrative Code section 7.17(b).)**

Summary: The virus that causes Coronavirus 2019 Disease (“COVID-19”) is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety. Because of the risk of the rapid spread of the virus, and the need to protect all members of the community and the Bay Area region, especially including our members most vulnerable to the virus and also health care providers, this Order requires all individuals anywhere in San Francisco to shelter in place—that is, stay at home—except for certain essential activities and work to provide essential business and government services or perform essential public infrastructure construction, including housing. This order begins at 12:01 a.m. on March 17, 2020 and will continue for three weeks through April 7, 2020, subject to the limited exceptions and under the terms and conditions more particularly set forth below.

Gatherings of individuals outside the home are generally prohibited, with certain exceptions for essential activities or essential travel or to perform work for essential businesses and government agencies or perform essential infrastructure work. Consistent



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with the directive issued by Governor Gavin Newsom on March 15, 2020, all bars and nightclubs are ordered closed. Restaurants and cafes—regardless of their seating capacity—that serve food are ordered closed except solely for takeout and delivery service. Additionally, all gyms and recreation facilities are ordered closed. Homeless individuals are not subject to the shelter in place order but are strongly urged to find shelter and government agencies are urged to take steps needed to provide shelter for those individuals.

Under any of the limited circumstances in which individuals are allowed to interact in person outside their residence, the Health Officer orders individuals to abide by the following requirements: (i) maintain at least six feet from other individuals, wash hands with soap and water for at least 20 seconds as frequently as possible or using hand sanitizer, cover coughs or sneezes, and not shake hands; (ii) for people with medical conditions, regardless of age, that put them at higher risk of serious complications should they get COVID-19, and other than health care workers and other essential providers, avoid leaving their homes to the extent possible; and (iii) for employers in San Francisco that do not provide essential businesses or government services, take all steps necessary for employees to work remotely from home to the extent possible. These requirements build on the California Department of Public Health and United States Centers for Disease Control and Prevention guidelines issued March 11, 2020, extended as necessary to address the health emergency affecting the Bay Area region. No individual who is sick may go to the workplace or be outside the home except as necessary to seek or receive medical care in accordance with guidance from public health officials. The Health Officer may revise this Order as the situation evolves, and facilities must stay updated by checking the City Administrator’s website ([sfgsa.org](http://sfgsa.org)) regularly.

This Order revokes and replaces Order Number C19-05b, issued March 13, 2020, and C19-02, issued March 7, 2020. Those orders are no longer in effect as of the effective date and time of this Order. This Order does not revoke Order Numbers C19-01b, C19-03, C19-04, or C19-06.

**UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE  
SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE CITY AND  
COUNTY OF SAN FRANCISCO (“HEALTH OFFICER”) ORDERS:**

- 1. The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the maximum extent possible. When people need to leave their places of residence, whether to obtain or perform vital services, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times reasonably possible comply with Social Distancing Requirements as defined in Section 10 below. All provisions of this Order should be interpreted to effectuate this intent. Failure to**



**ORDER OF THE HEALTH OFFICER No. C19-07**

comply with any of the provisions of this Order constitutes an imminent threat and creates an immediate menace to public health.

2. **All individuals currently living within the City and County of San Francisco (the “County”) are ordered to shelter at their place of residence. To the extent individuals are using shared or outdoor spaces, they must at all times as reasonably possible maintain social distancing of at least six feet from any other person when they are outside their residence. All persons may leave their residences only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses, all as defined in Section 10. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to use COVID-19 risk mitigation practices in their operation).**
3. **All businesses with a facility in the County, except Essential Businesses as defined below in Section 10, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 10. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. To the greatest extent feasible, Essential Businesses shall comply with Social Distancing Requirements as defined in Section 10 below, including by maintaining six-foot social distancing for both employees and members of the public, including, but not limited to, when any customers are standing in line.**
4. **All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes as expressly permitted in Section 10. Nothing in this Order prohibits the gathering of members of a household or living unit.**
5. **All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel and Essential Activities as defined below in Section 10, is prohibited. People must use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses or maintain Essential Governmental Functions. People riding on public transit must comply with Social Distancing Requirements as defined in Section 10 below, to the greatest extent feasible. This Order allows travel into or out of the County to perform Essential Activities, operate Essential Businesses, or maintain Essential Governmental Functions.**
6. **This Order is issued based on evidence of increasing occurrence of COVID-19 within the County and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the**



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age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 virus in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings can result in preventable transmission of the virus. The scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow the transmission is to limit interactions among people to the greatest extent practicable. By reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited healthcare capacity in the County.

7. This Order also is issued in light of the existence of 37 cases of COVID-19 in the County, as well as at least 258 confirmed cases and at least three deaths in neighboring Bay Area counties, as of 10:00 a.m. on Sunday, March 16, 2020, including a significant and increasing number of suspected cases of community transmission and likely further significant increases in transmission. Widespread testing for COVID-19 is not yet available but is expected to increase in the coming days. This Order is necessary to slow the rate of spread and the Health Officer will re-evaluate it as further data becomes available.
8. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the February 25, 2020 Proclamation by the Mayor Declaring the Existence of a Local Emergency issued by Mayor London Breed, as supplemented on March 11, 2020, the March 6, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, and guidance issued by the California Department of Public Health, as each of them have been and may be supplemented.
9. This Order is also issued in accordance with, and incorporates by reference the March 12, 2020 Executive Order (Executive Order N-25-20) issued by Governor Gavin Newsom. Executive Order N-25-20 expressly orders that “[a]ll residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19.” This Order is also based on statements by Governor Newsom during a press conference on March 15, 2020, indicating the guidance of the State of California that all nightclubs, bars, wineries, and brewpubs close and that persons 65 years old and older isolate at home.





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**10. Definitions and Exemptions.**

- a. For purposes of this Order, individuals may leave their residence only to perform any of the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.
  - i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.
  - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences.
  - iii. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in this Section, such as, by way of example and without limitation, walking, hiking, or running.
  - iv. To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.
  - v. To care for a family member or pet in another household.
- b. For purposes of this Order, individuals may leave their residence to work for or obtain services at any “Healthcare Operations” including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. “Healthcare Operations” does not include fitness and exercise gyms and similar facilities.



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- c. For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of “Essential Infrastructure,” including, but not limited to, public works construction, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Section, to the extent possible.**
- d. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others working for or to support Essential Businesses are categorically exempt from this Order. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions.” Essential Governmental Functions means all services needed to ensure the continuing operation of the government agencies and provide for the health, safety and welfare of the public. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined this Section, to the extent possible.**
- e. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or its corporate or entity structure.**
- f. For the purposes of this Order, “Essential Businesses” means:**

  - i. Healthcare Operations and Essential Infrastructure;**
  - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences;**
  - iii. Food cultivation, including farming, livestock, and fishing;**



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- iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;**
- v. Newspapers, television, radio, and other media services;**
- vi. Gas stations and auto-supply, auto-repair, and related facilities;**
- vii. Banks and related financial institutions;**
- viii. Hardware stores;**
- ix. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;**
- x. Businesses providing mailing and shipping services, including post office boxes;**
- xi. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;**
- xii. Laundromats, dry cleaners, and laundry service providers;**
- xiii. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;**
- xiv. Businesses that supply products needed for people to work from home;**
- xv. Businesses that supply other essential businesses with the support or supplies necessary to operate;**



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- xvi. **Businesses that ship or deliver groceries, food, goods or services directly to residences;**
  - xvii. **Airlines, taxis, and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;**
  - xviii. **Home-based care for seniors, adults, or children;**
  - xix. **Residential facilities and shelters for seniors, adults, and children;**
  - xx. **Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;**
  - xxi. **Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities must operate under the following mandatory conditions:**
    - 1. **Childcare must be carried out in stable groups of 12 or fewer (“stable” means that the same 12 or fewer children are in the same group each day).**
    - 2. **Children shall not change from one group to another.**
    - 3. **If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.**
    - 4. **Childcare providers shall remain solely with one group of children.**
- g. For the purposes of this Order, “Minimum Basic Operations” include the following, provided that employees comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:**
- i. **The minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, or for related functions.**
  - ii. **The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.**



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- h. For the purposes of this Order, “Essential Travel” includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section.**
    - i. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.**
    - ii. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.**
    - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.**
    - iv. Travel to return to a place of residence from outside the jurisdiction.**
    - v. Travel required by law enforcement or court order.**
    - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.**
  - i. For purposes of this order, residences include hotels, motels, shared rental units, and similar facilities.**
  - j. For purposes of this order Social Distancing Requirements includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.**
- 11. Pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and the Chief of Police in the County ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and creates an immediate menace to public health.**
- 12. This Order shall become effective at 12:01 a.m. on March 17, 2020 and will continue to be in effect until 11:59 p.m. on April 7, 2020, or until it is extended, rescinded, superseded, or amended in writing by the Health Officer.**



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- 13. The City must promptly provide copies of this Order as follows: (1) by posting on the City Administrator's website ([sfgsa.org](http://sfgsa.org)) and the Department of Public Health website ([sfdph.org](http://sfdph.org)); (2) by posting at City Hall, located at 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102; and (3) by providing to any member of the public requesting a copy. In addition, the owner, manager, or operator of any facility that is likely to be impacted by this Order is strongly encouraged to post a copy of this Order onsite and to provide a copy to any member of the public asking for a copy.**
- 14. If any provision of this Order or its application to any person or circumstance is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.**

**IT IS SO ORDERED:**

A handwritten signature in blue ink that reads "Tomás Aragón".

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Tomás J. Aragón, MD, DrPH,  
Health Officer of the  
City and County of San Francisco

Dated: March 16, 2020

1 [Supporting California State Assembly Bill No. 5 (Gonzalez) - Worker Status: Employees and  
2 Independent Contractors]

3 **Resolution supporting California State Assembly Bill No. 5, authored by Assembly**  
4 **Member Lorena Gonzalez, to codify and expand the California Supreme Court's**  
5 **decision in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018),**  
6 **establishing a presumption that a worker is an employee for purposes of wages and**  
7 **benefits.**

8  
9 WHEREAS, On April 30, 2018, the California Supreme Court issued a landmark,  
10 unanimous decision in the matter of Dynamex Operations West, Inc. v. Superior Court of Los  
11 Angeles (2018), which embraced a standard for worker classification that presumes that all  
12 workers are employees instead of independent contractors; and

13 WHEREAS, The ruling was one of the most significant legal victories in decades for  
14 misclassified workers, who lack a basic safety net when they are sick, laid off, or get injured  
15 on the job; and

16 WHEREAS, The Dynamex Case interprets existing law as placing the burden on any  
17 entity classifying an individual as an independent contractor of establishing that such  
18 classification is proper under the newly adopted "ABC Test"; and

19 WHEREAS, Under the ABC Test, a worker is presumed to be an employee unless their  
20 employer establishes each of the following: 1) that the worker is free from the control and  
21 direction of the hiring entity in connection with the performance of their work; 2) that the  
22 worker performs work that is outside the usual course of the hiring entity's business; and 3)  
23 that the worker is customarily engaged in an independently established trade, occupation, or  
24 business of the same nature as the work performed; and  
25

1           WHEREAS, The question of whether a worker is an employee has considerable  
2 impacts on the livelihood of the worker, including whether the employer bears the  
3 responsibility of paying Social Security and payroll taxes, unemployment insurance taxes and  
4 state employment taxes, providing worker's compensation insurance, and complying with  
5 State and Federal laws governing wages, hours, and working conditions; and

6           WHEREAS, The relatively recent rise of the so-called "gig economy," wherein  
7 employers contract with purportedly independent workers for ostensibly short-term  
8 engagements, has predicated itself on the exploitation of many workers who have been  
9 denied the opportunity to be classified as employees and therefore denied the basic benefits  
10 that all employees are entitled to, such as unemployment insurance, health care subsidies,  
11 paid parental leave, overtime pay, workers' compensation, a guaranteed minimum hourly  
12 wage, and the right to organize to better their working conditions; and

13           WHEREAS, California's low-wage and immigrant workers, such as domestic workers,  
14 day laborers, restaurant workers, and janitors, among others, are some of the most vulnerable  
15 workers also subjected to misclassification and wage theft; and

16           WHEREAS, For years, worker organizations, advocates and city officials in San  
17 Francisco worked together and passed laws to establish strong labor protections, fair  
18 minimum wages, healthcare security, paid sick leave and other benefits for employees in San  
19 Francisco; and

20           WHEREAS, Assembly Bill No. 5 would codify existing case law as established by the  
21 California Supreme Court in the Dynamex Case, and apply the Dynamex "ABC Test" to  
22 determine the status of a worker as an employee or independent contractor for all provisions  
23 of the Labor Code and the Unemployment Insurance Code, unless another definition or  
24 specification of "employee" is provided; and



1           WHEREAS, By codifying the law established by the Dynamex Case, Assembly Bill No.  
2 5 would give the State of California stronger enforcement tools and make it harder for  
3 companies to label workers as independent contractors instead of employees, a common  
4 practice that has allowed businesses to skirt local, state and federal labor laws; and

5           WHEREAS, Assembly Bill No. 5 would likely impact a number of companies that have  
6 risen to prominence in the past decade in large part by exploiting tens of thousands of  
7 workers, depriving those workers of a basic social safety net and passing along costs to  
8 taxpayers, costing the State of California in excess of \$7 billion annually; and

9           WHEREAS, Assembly Bill No. 5 would help to address widening income inequality that  
10 has allowed a small number of executives to profit immensely while subjecting workers to  
11 poverty wages and unsustainable working conditions; now, therefore, be it

12           RESOLVED, That the City and County of San Francisco stands with workers,  
13 community groups and labor unions in strong support of Assembly Bill No. 5; and, be it

14           FURTHER RESOLVED, That the Board of Supervisors hereby directs the Clerk of the  
15 Board to transmit copies of this Resolution to San Francisco's State Legislative Delegation  
16 and the Office of the Governor of California accordingly.



City and County of San Francisco  
Tails  
Resolution

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

File Number: 190771

Date Passed: July 16, 2019


Resolution supporting California State Assembly Bill No. 5, authored by Assembly Member Lorena Gonzalez, to codify and expand the California Supreme Court's decision in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018), establishing a presumption that a worker is an employee for purposes of wages and benefits.

July 16, 2019 Board of Supervisors - ADOPTED

Ayes: 10 - Brown, Fewer, Haney, Mandelman, Peskin, Ronen, Safai, Stefani, Walton and Yee  
Excused: 1 - Mar

File No. 190771


I hereby certify that the foregoing Resolution was ADOPTED on 7/16/2019 by the Board of Supervisors of the City and County of San Francisco.

  
\_\_\_\_\_  
Angela Calvillo  
Clerk of the Board

\_\_\_\_\_  
Unsigned  
London N. Breed  
Mayor

\_\_\_\_\_  
7/26/19  
Date Approved

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, or time waived pursuant to Board Rule 2.14.2, became effective without her approval in accordance with the provision of said Section 3.103 of the Charter or Board Rule 2.14.2.

  
\_\_\_\_\_  
Angela Calvillo  
Clerk of the Board

\_\_\_\_\_  
7/26/19  
Date

1 [Urging Federal, State, and Local Action to Expand Access to Paid Leave Support During  
2 Public Health Emergencies]

3 **Resolution urging additional federally mandated paid leave during public health**  
4 **emergencies; supporting United States House Resolution No. 6201, authored by United**  
5 **States Congresswoman Nita Lowey, the Families First Coronavirus Response Act, if**  
6 **amended to include requirements for large employers; urging further State action to**  
7 **address gaps in Federal support; supporting California State Assembly Bill No. 3123,**  
8 **authored by California Assembly Member Lorena Gonzalez, to protect workers from**  
9 **retaliation when leave is taken during a public health emergency; urging the creation of**  
10 **a multilingual workers rights hotline; and committing to provide additional local**  
11 **support for workers impacted by Order No. C19-07.**

12  
13 WHEREAS, On March 13, 2020, the United States House of Representatives passed  
14 the Families First Coronavirus Response Act (H.R. 6201), in response to the growing  
15 coronavirus emergency in the United States; and

16 WHEREAS, This bill would require an additional 14 days of Emergency Paid Leave in  
17 response to the coronavirus, but exempts large employers with 500 or more employees from  
18 those requirements; and

19 WHEREAS, This bill would amend the federal Family and Medical Leave Act (FMLA) to  
20 address needs related to the coronavirus, but exempts large employers with 500 or more  
21 employees from those requirements; and

22 WHEREAS, On March 16, 2020, the San Francisco Health Officer issued Order No.  
23 C19-07, directing all individuals living in the City and County of San Francisco to shelter in  
24 place at their place of residence with limited exceptions; and

1           FURTHER RESOLVED, That the San Francisco Board of Supervisors commits to  
2 providing support for our local workforce through this crisis where federal and state actions fall  
3 short; and, be it

4           FURTHER RESOLVED, That the Clerk of the Board of Supervisors, no later than 30  
5 days after the passage of this Resolution, shall transmit copies of this Resolution to the  
6 President and Vice President of the United States, to the Speaker of the House of  
7 Representatives, to the Majority Leader of the Senate, to the U.S. Senators for the State of  
8 California, to the Governor of California, and to the representatives of San Francisco on the  
9 California State Legislature.

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# Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [ ] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Topic submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Mar; Haney, Ronen, Walton


Subject:

Urging Enforcement Action and Injunctive Relief for the Misclassification of San Francisco Workers

The text is listed:

Resolution urging local enforcement of State Assembly Bill No. 5; pursuit of immediate injunctive relief; additional public health directives; and further state action to address the misclassification of San Francisco workers and ensure employee access to benefits.

Signature of Sponsoring Supervisor:



For Clerk's Use Only