

2705. Independent Contractor—Affirmative Defense—Worker Was Not Hiring Entity’s Employee (Lab. Code, § 2775)

[Name of defendant] **claims that** [name of plaintiff] **was not** [his/her/nonbinary pronoun/its] **employee, but rather an independent contractor. To establish that** [name of plaintiff] **was an independent contractor, [name of defendant] must prove all of the following:**

1. **That** [name of plaintiff] **is under the terms of the contract and in fact free from the control and direction of** [name of defendant] **in connection with the performance of the work that** [name of plaintiff] **was hired to do;**
2. **That** [name of plaintiff] **performs work for** [name of defendant] **that is outside the usual course of** [name of defendant]’s **business; and**
3. **That** [name of plaintiff] **is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed for** [name of defendant].

New November 2018; Revised May 2020, May 2021, November 2021

Directions for Use

This instruction may be used if a hiring entity claims that the worker is an independent contractor and not an employee, and is primarily intended for use in cases involving claims under the Labor Code, the Unemployment Insurance Code, or a wage order. Any person providing services or labor for remuneration is presumptively an employee. (Lab. Code, § 2775; see *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, 913–914, & fn. 3 [232 Cal.Rptr.3d 1, 416 P.3d 1].) The hiring entity has the burden to prove independent contractor status. (Lab. Code, § 2775(b)(1); *Dynamex, supra*, 4 Cal.5th at p. 916.) This instruction may not be appropriate if the hiring entity claims independent contractor status based on Proposition 22 (Bus. & Prof. Code, § 7451) or one of the many exceptions listed in Labor Code sections 2776–2784. For an instruction on employment status under the *Borello* test, see CACI No. 3704, *Existence of “Employee” Status Disputed*.

The jury decides whether a worker is an employee or an independent contractor only when there are disputed issues of fact material to the determination. (*Espejo v. The Copley Press, Inc.* (2017) 13 Cal.App.5th 329, 342 [221 Cal.Rptr.3d 1].) On undisputed facts, the court decides whether the relationship is employment as a matter of law. (*Dynamex, supra*, 4 Cal.5th at p. 963.)

Sources and Authority

- Worker Status: Employees. Labor Code section 2775.