



## CALIFORNIA AB5 "GIG WORKER BILL" OR STRICTER DEFINITION FOR INDEPENDENT CONTRACTORS

This information is just for California wineries (and businesses). The rest of you can go back to fussing with that stuck fermentation (unless you are in New York, Arizona and other states where similar laws are being debated or have been enacted).

In California, the new "gig worker bill" goes into effect January 1, 2020. The official name of the law is California Assembly Bill 5 or AB5. The law was designed to regulate a companies like Uber and Lyft, however those companies have attorneys who claim that the rule changes still do not apply to their drivers. Unfortunately, the rest of us lesser mortals are now subject to these much more strict rules which define an employee versus an independent contractor.

There are lots of articles that summarize the rules, but the important piece to clarify on AB5 is the definitions. For example when AB5 refers to "accountants" they mean only "accountants licensed by California," which are CPAs. When AB5 refers to "professional services," there are 6 conditions that must ALL apply. And guess what, AB5 does not consider an accountant who is not a CPA to be a professional service provider.

For specifics, read this [article from Nolo Press](#). If your head is still spinning, [here is the actual bill](#) (make sure you have a pencil and good erasure, and make sure that you remember how outlines are formatted).

Here are my comments and guidelines. Please remember, consult your attorney to confirm how AB5 applies to your situation.

1. Expect greater scrutiny around the 1099s. That means that if you have not been filing them or if you have been generous with the \$600 threshold, 2020 is the year to come clean and do it right. AB5 created higher and more severe penalties for willfully not filing.
2. California businesses are required to file form DE 542 "[Report of Independent Contractors](#)" which is exactly what it sounds like: you need to report anyone who will receive a 1099 within 20 days of your figuring out that they will be getting one. This is not a new form (who knew?), but my hunch is that the folks at the EDD are now going to be looking for it.
3. The rules for California and for the Federal government are different. So, it is possible for the same person to be an employee following California rules and an independent contractor following Federal or IRS rules. I suggest keeping it simple and sticking with the stricter California rules.
4. Once you classify a worker as an Independent Contractor, you have a second decision about whether to send a 1099. And again, the Federal and California rules are slightly different. They agree on the \$600/year threshold but LLCs are treated differently.

Who Receives a 1099	California	Federal (IRS)
Sole Proprietor	Yes	Yes
LLC	Yes	No
Corporation	No	No



AB5 discusses “exemptions”. This is misleading because while there are over 50 occupations grouped into 7 classifications, each classification lists various conditions that must **all** be met, so no exemption is cut and dry. Of course none of those lists of conditions are the same. The logic is fuzzy because the trade groups with the best lobbyists got the so-called exemptions.

For the wine industry, I identified 3 main groups of exclusions, and I listed workers who are likely to show up at a winery. This is not an exhaustive list. Again, contact your lawyer to review how AB5 applies to you.

## GROUP 1 These folks must be licensed by the State of California.

CPA - Not all accountants are CPA's

Lawyer - Again, paralegals and others offering legal-type advice but who are not licensed are not part of this group.

**NOTE:** this group includes “Direct Salespeople”, however, these are not the same as regular sales people. “Direct Salespeople” give Tupperware Parties and sell door-to-door directly to retail customers, so wineries are not likely to hire any of these (unless you have figured out a new marketing program).

## GROUP 2 These Professional Service providers must offer their services to others, and meet 5 other conditions [\(see AB5 sections \(c\)\(1\)\(A\) to \(F\) for the full list\)](#).

Their services include only:

Marketing

Administrator of Human Resources

Graphic Design

Photographer - Can provide a maximum 35 projects, but the projects must be identified in the contract

Freelance Writer - Can provide a maximum 35 projects, but the projects must be identified in the contract

Enrolled Agent - This is a tax preparer with a certification as an EA

**NOTE:** many workers you or I might consider to be in this group such as computer techs and musicians were not included.

## GROUP 3 Bona Fide businesses must have a written contract, business license, advertise their services, and meet 9 other conditions [\(see AB5 sections \(e\)\(1\)\(A\) to \(L\) for the full list\)](#).

This group includes:

Musician

Accountant (non CPA)

Bookkeeper

Tech and Computer Support

Sales People

Business Consultant

Equipment Repair

Consulting Winemaker

Website Designer

Caterer

Bottling Service

Weekend Warrior

Crush Intern

Compliance Person



# QB Winery Solutions

Many of you are used to hiring your first-cousin-once-removed or your neighbor's kid who is home from college to do random tasks. On the other hand, your computer guru might be a legitimate business-to-business service provider. However, unless these folks can cough up a business license or show where they advertise their services, they will have to be employees and issued a paycheck.

Issuing a 1099 is no longer easier than issuing a paycheck, because you are now required to generate additional paperwork around the non-employees.

1. Get the W9 signed up front
2. File the DE 542 "Report of Independent Contractors".
3. Sign a contract with the worker
4. Confirm the worker has a business license

That means that it might be simpler to just pay them with a paycheck. If these workers are categorized as "employees" they do not have to have a regular schedule (contrary to some of the complaining I have heard). However, the rules for overtime, breaks and PTO are still in place.

The new rules go into effect January 1, 2020. You will file the 1099's for 2019 as usual. But you need to be prepared on January 1st to classify your workers correctly.

If you want a refresher on how to file the 1099s, we have a mini-course called [Happy New Year! Happy 1099](#). It's free for Silver Club members. \$47 for everyone else.

