

Referral Agency Exemption – AB 2257
[Adopted by Legislature 8/31/20]

Section 2775 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:

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

(1) 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.

(2) 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 in order to provide the services under the contract, the service provider shall certify to the referral agency that they have the required business license or business tax registration. The referral agency shall keep the certifications for a period of at least three years. As used in this paragraph:

(A) “Business license” includes a license, tax certificate, fee, or equivalent payment that is required or collected by a local jurisdiction annually, or on some other fixed cycle, as a condition of providing services in the local jurisdiction.

(B) “Local jurisdiction” means a city, county, or city and county, including charter cities.

(3) 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.

(4) If there is an applicable professional licensure, permit, certification, or registration administered or recognized by the state available for the type of work being performed for the client, the service provider shall certify to the referral agency that they have the appropriate professional licensure, permit, certification, or registration. The referral agency shall keep the certifications for a period of at least three years.

(5) The service provider delivers services to the client under the service provider’s name, without being required to deliver the services under the name of the referral agency.

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

(7) The service provider is customarily engaged, or was previously engaged, in an independently established business or trade of the same nature as, or related to, the work performed for the client.

(8) The referral agency does not restrict the service provider from maintaining a clientele and the service provider is free to seek work elsewhere, including through a competing referral agency.

(9) The service provider sets their own hours and terms of work or negotiates their hours and terms of work directly with the client.

(10) Without deduction by the referral agency, the service provider sets their own rates, negotiates their rates with the client through the referral agency, negotiates rates directly with the client, or is free to accept or reject rates set by the client.

(11) The service provider is free to accept or reject clients and contracts, without being penalized in any form by the referral agency. This paragraph does not apply if the service provider accepts a client or contract and then fails to fulfill any of its contractual obligations.

(b) For purposes of this section, the following definitions apply:

(1) "Client" means:

(A) A person who utilizes a referral agency to contract for services from a service provider, or

(B) A business that utilizes a referral agency to contract for services from a service provider that are otherwise not provided on a regular basis by employees at the client's business location, or to contract for services that are outside of the client's usual course of business. Notwithstanding subdivision (a), it is the responsibility of a business that utilizes a referral agency to contract for services, to meet the conditions outlined in this subparagraph.

(2) (A) "Referral agency" is a business that provides clients with referrals for service providers to provide services under a contract, with the exception of services in subparagraph (C).

(B) Under this paragraph, referrals for services shall include, but are not limited to, graphic design, web design, photography, tutoring, consulting, **youth sports coaching, caddying**, wedding or event planning, services provided by wedding and event vendors, minor home repair, moving, errands, furniture assembly, animal services, dog walking, dog grooming, picture hanging, pool cleaning, yard cleanup, and interpreting services.

(C) Under this paragraph, referrals for services do not include services provided in an industry designated by the Division of Occupational Safety and Health or the Department of Industrial Relations as a high hazard industry pursuant to subparagraph (A) paragraph (3) of subdivision (e) of Section 6401.7 of the Labor

Code or referrals for businesses that provide janitorial, delivery, courier, transportation, trucking, agricultural labor, retail, logging, in-home care, or construction services other than minor home repair.

(3) (A) "Referral agency contract" is the agency's contract with clients and service providers governing the use of its intermediary services described in paragraph (2). The intermediary services provided to the service provider by the referral agency are limited to client referrals and other administrative services ancillary to the service provider's business operation.

(B) A referral agency's contract may include a fee or fees to be paid by the client for utilizing the referral agency. This fee shall not be deducted from the rate set or negotiated by the service provider as set forth in paragraph (10) of subdivision (a).

(4) "Service provider" means an individual acting as a sole proprietor or business entity that agrees to the referral agency's contract and uses the referral agency to connect with clients.

(5) "Tutor" means a person who develops and teaches their own curriculum, teaches curriculum that is proprietarily and privately developed, or provides private instruction or supplemental academic enrichment services by using their own teaching methodology or techniques. A "tutor" does not include an individual who contracts with a local education agency or private school through a referral agency for purposes of teaching students of a public or private school in a classroom setting.

(6) "**Youth sports coaching**" means services provided by a youth sports coach who develops and implements their own curriculum, which may be subject to requirements of a youth sports league, for an athletic program in which youth who are 18 years of age or younger predominantly participate and that is organized for the purposes of training for and engaging in athletic activity and competition. "Youth sports coaching" does not mean services provided by an individual who contracts with a local education agency or private school through a referral agency for purposes of teaching students of a public or private school.