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AB-1561 Worker classification: employees and independent contractors. (2021-2022)

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Assembly Bill No. 1561

CHAPTER 422

An act to amend Sections 2778, 2781, 2782, and 2783 of the Labor Code, relating to worker classification.

[Approved by Governor September 30, 2021. Filed with Secretary of State September 30, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1561, Committee on Labor and Employment. Worker classification: employees and independent contractors.

Existing law requires a 3-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission. Under the ABC test, a person providing labor or services for remuneration is 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. Existing law charges the Labor Commissioner with the enforcement of labor laws, including worker classification.

Existing law exempts specified occupations and business relationships from the application of the ABC test described above. Existing law, instead, provides that these exempt relationships are governed by the multifactor test previously adopted in the case of *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341. These exemptions include services provided by a licensed manicurist, subject to the manicurist meeting specified conditions. Existing law makes this exemption for licensed manicurists inoperative on January 1, 2022.

This bill would extend the inoperative date of this exemption for licensed manicurists to January 1, 2025.

Existing law exempts the relationship between a contractor and an individual performing work pursuant to a subcontract in the construction industry, if the contractor demonstrates that specified criteria are satisfied, including that the subcontractor is licensed by the Contractors State License Board and the work is within the scope of that license. Existing law, for construction trucking services, provides that the requirement of having this license does not apply to a subcontractor providing construction trucking services for which a contractor's license is not required, as specified. This provision applies to work performed before January 1, 2022.

This bill would extend the applicable timeframe for this provision to work performed before January 1, 2025.

Existing law exempts the relationship between a data aggregator and an individual providing feedback to the data aggregator, if certain conditions are satisfied. These conditions include, among others, that any consideration paid for the feedback provided, if prorated to an hourly basis, is an amount equivalent to or greater than the minimum wage.

This bill would delete the above-described condition regarding the consideration paid. The bill would revise the exemption to instead apply to the relationship between a data aggregator and a "research subject," as defined, and would make related,

conforming changes.

Existing law also exempts a person or organization that is licensed by the Department of Insurance or a person who provides underwriting inspections, premium audits, risk management, or loss control work for the insurance and financial service industries.

This bill would expand that exception to also apply to a person who provides claims adjusting or third-party administration, as defined.

Existing law also exempts a manufactured housing salesperson, subject to specified legal obligations and regulations governing manufactured housing salespersons.

This bill, in regard to the above exemption, would provide that the statutorily imposed duties of a manufactured housing dealer are not factors to be considered under the Borello test.

This bill would incorporate additional changes to Section 2783 of the Labor Code proposed by AB 1506 to be operative only if this bill and AB 1506 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2778 of the Labor Code is amended to read:

2778. (a) Section 2775 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:

- (1) The individual maintains a business location, which may include the individual’s residence, that is separate from the hiring entity. Nothing in this paragraph prohibits an individual from choosing to perform services at the location of the hiring entity.
- (2) If work is performed more than six months after the effective date of this section and the work is performed in a jurisdiction that requires the individual to have a business license or business tax registration, the individual has the required business license or business tax registration in order to provide the services under the contract, in addition to any required professional licenses or permits for the individual to practice in their profession.
- (3) The individual has the ability to set or negotiate their own rates for the services performed.
- (4) Outside of project completion dates and reasonable business hours, the individual has the ability to set the individual’s own hours.
- (5) 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.
- (6) The individual customarily and regularly exercises discretion and independent judgment in the performance of the services.

(b) For purposes of this section:

- (1) An “individual” includes an individual providing services as a sole proprietor or other business entity.
- (2) “Professional services” means services that meet any of the following:
 - (A) 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 individual or work that is an essential part of or necessarily incident to any of the contracted work.
 - (B) 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.
 - (C) 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.

(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.

(D) Graphic design.

(E) Grant writer.

(F) (i) Fine artist.

(ii) For the purposes of this subparagraph, "fine artist" means an individual who creates works of art to be appreciated primarily or solely for their imaginative, aesthetic, or intellectual content, including drawings, paintings, sculptures, mosaics, works of calligraphy, works of graphic art, crafts, or mixed media.

(G) 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.

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

(I) Services provided by any of the following:

(i) By a still photographer, photojournalist, videographer, or photo editor who works under a written contract that specifies the rate of pay and obligation to pay by a defined time, as long as the individual providing the services is not directly replacing an employee who performed the same work at the same volume for the hiring entity; the individual does not primarily perform the work at the hiring entity's business location, notwithstanding paragraph (1) of subdivision (a); and the individual is not restricted from working for more than one hiring entity. This subclause is not applicable to a still photographer, photojournalist, videographer, or photo editor who works on motion pictures, which is inclusive of, but is not limited to, theatrical or commercial productions, broadcast news, television, and music videos. Nothing in this section restricts a still photographer, photojournalist, photo editor, or videographer from distributing, licensing, or selling their work product to another business, except as prohibited under copyright laws or workplace collective bargaining agreements.

(ii) To a digital content aggregator by a still photographer, photojournalist, videographer, or photo editor.

(iii) For the purposes of this subparagraph the following definitions apply:

(I) "Photo editor" means an individual who performs services ancillary to the creation of digital content, such as retouching, editing, and keywording.

(II) "Digital content aggregator" means a licensing intermediary that obtains a license or assignment of copyright from a still photographer, photojournalist, videographer, or photo editor for the purposes of distributing that copyright by way of sublicense or assignment, to the intermediary's third-party end users.

(J) Services provided by a freelance writer, translator, editor, copy editor, illustrator, or newspaper cartoonist who works under a written contract that specifies the rate of pay, intellectual property rights, and obligation to pay by a defined time, as long as the individual providing the services is not directly replacing an employee who performed the same work at the same volume for the hiring entity; the individual does not primarily perform the work at the hiring entity's business location, notwithstanding paragraph (1) of subdivision (a); and the individual is not restricted from working for more than one hiring entity.

(K) Services provided by an individual as a content contributor, advisor, producer, narrator, or cartographer for a journal, book, periodical, evaluation, other publication or educational, academic, or instructional work in any format or media, who works under a written contract that specifies the rate of pay, intellectual property rights and obligation to pay by a defined time, as long as the individual providing the services is not directly replacing an employee who performed the same work at the same volume for the hiring entity, the individual does not primarily perform the work at the hiring entity's business location notwithstanding paragraph (1) of subdivision (a); and the individual is not restricted from working for more than one hiring entity.

(L) 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 subparagraph shall become inoperative, with respect to licensed manicurists, on January 1, 2025.

(M) A specialized performer hired by a performing arts company or organization to teach a master class for no more than one week. "Master class" means a specialized course for limited duration that is not regularly offered by the hiring entity and is taught by an expert in a recognized field of artistic endeavor who does not work for the hiring entity to teach on a regular basis.

(N) Services provided by an appraiser, as defined in Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code.

(O) Registered professional foresters licensed pursuant to Article 3 (commencing with Section 750) of Chapter 2.5 of Division 1 of the Public Resources Code.

(c) Section 2775 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.

(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 home inspector, as defined in Section 7195 of the Business and Professions Code, and subject to the provisions of Chapter 9.3 (commencing with Section 7195) of Division 3 of that code.

(3) 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.

SEC. 2. Section 2781 of the Labor Code is amended to read:

2781. Section 2775 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:

(a) The subcontract is in writing.

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

(c) 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.

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

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

(f) 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.

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

(h) (1) Subdivision (b) 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:

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

(B) 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.

(C) 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.

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

(2) 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.

(3) For purposes of this subdivision, "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.

(4) This subdivision shall only apply to work performed before January 1, 2025.

(5) Nothing in this subdivision 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.

SEC. 3. Section 2782 of the Labor Code is amended to read:

2782. (a) Section 2775 and the holding in *Dynamex* do not apply to the relationship between a data aggregator and a research subject, and instead the holding in *Borello* shall apply, if all of the following conditions are satisfied:

(1) The research subject is free from control and direction with respect to the substance and content of the feedback.

(2) The nature of the feedback requested requires the research subject to exercise independent judgment and discretion.

(3) The research subject has the ability to reject feedback requests, without being penalized in any form by the data aggregator.

(b) As used in this section:

(1) "Data aggregator" is a business, research institution, or organization that requests and gathers feedback on user interface, products, services, people, concepts, ideas, offerings, or experiences from research subjects willing to provide it.

(2) "Research subject" is any person who willingly engages with a data aggregator in order to provide individualized feedback on user interface, products, services, people, concepts, ideas, offerings, or experiences, and does not engage solely for the purposes of completing individual tasks, except as the tasks relate to providing such feedback.

SEC. 4. Section 2783 of the Labor Code is amended to read:

2783. Section 2775 and the holding in *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*:

(a) A person or organization that 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 or a person who provides underwriting inspections, premium audits, risk management, claims adjusting, third-party administration consistent with use of the term "third-party administrator," as defined in subdivision (cc) of Section 10112.1 of Title 8 of the California Code of Regulations, or loss control work for the insurance and financial service industries.

(b) 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 circumvent, undermine, or restrict the rights under federal law to organize and collectively bargain.

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

(d) A securities broker-dealer or investment adviser or their agents and representatives that are either of the following:

(1) Registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority.

(2) 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.

(e) 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.

(f) A manufactured housing salesperson, subject to all obligations under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code, including all regulations promulgated by the Department of Housing and Community Development relating to manufactured home salespersons and all other obligations of manufactured housing salespersons to members of the public. The statutorily imposed duties of a manufactured housing dealer under Section 18060.5 of the Health and Safety Code are not factors to be considered under the Borello test.

(g) A commercial fisher working on an American vessel.

(1) For the purposes of this subdivision:

(A) "American vessel" has the same meaning as defined in Section 125.5 of the Unemployment Insurance Code.

(B) "Commercial fisher" 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.

(C) "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.

(2) For the purposes of this subdivision, a commercial fisher 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.

(3) (A) 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, all of the following:

(i) Reporting the number of commercial fishers who apply for unemployment insurance benefits.

(ii) The number of commercial fishers who have their claims disputed.

(iii) The number of commercial fishers who have their claims denied.

(iv) The number of commercial fishers who receive unemployment insurance benefits.

(B) The report required by this subparagraph shall be submitted in compliance with Section 9795 of the Government Code.

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

(h) (1) A newspaper distributor working under contract with a newspaper publisher, as defined in paragraph (2), or a newspaper carrier.

(2) For purposes of this subdivision:

(A) "Newspaper" means a newspaper of general circulation, as defined in Section 6000 of the Government Code, and any other publication circulated to the community in general as an extension of or substitute for that newspaper's own publication, whether that publication be designated a "shoppers' guide," as a zoned edition, or otherwise.

(B) "Publisher" means the natural or corporate person that manages the newspaper's business operations, including circulation.

(C) "Newspaper distributor" means a person or entity that contracts with a publisher to distribute newspapers to the community.

(D) "Carrier" means a person who effects physical delivery of the newspaper to the customer or reader.

(3) This subdivision shall become inoperative on January 1, 2022, unless extended by the Legislature.

(i) An individual who is engaged by an international exchange visitor program that has obtained and maintains full official designation by the United States Department of State under Part 62 (commencing with Section 62.1) of Title 22 of the Code of Federal Regulations for the purpose of conducting, instead of participating in, international and cultural exchange visitor programs and is in full compliance with Part 62 (commencing with Section 62.1) of Title 22 of the Code of Federal Regulations.

(j) A competition judge with a specialized skill set or expertise providing services that require the exercise of discretion and independent judgment to an organization for the purposes of determining the outcome or enforcing the rules of a competition. This includes, but is not limited to, an amateur umpire or referee.

SEC. 4.5. Section 2783 of the Labor Code is amended to read:

2783. Section 2775 and the holding in *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*:

(a) A person or organization that 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 or a person who provides underwriting inspections, premium audits, risk management, claims adjusting, third-party administration consistent with use of the term "third-party administrator," as defined in subdivision (cc) of Section 10112.1 of Title 8 of the California Code of Regulations, or loss control work for the insurance and financial service industries.

(b) 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 circumvent, undermine, or restrict the rights under federal law to organize and collectively bargain.

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

(d) A securities broker-dealer or investment adviser or their agents and representatives that are either of the following:

(1) Registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority.

(2) 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.

(e) 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.

(f) A manufactured housing salesperson, subject to all obligations under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code, including all regulations promulgated by the Department of Housing and Community Development relating to manufactured home salespersons and all other obligations of manufactured housing salespersons to members of the public. The statutorily imposed duties of a manufactured housing dealer under Section 18060.5 of the Health and Safety Code are not factors to be considered under the *Borello* test.

(g) A commercial fisher working on an American vessel.

(1) For the purposes of this subdivision:

(A) "American vessel" has the same meaning as defined in Section 125.5 of the Unemployment Insurance Code.

(B) "Commercial fisher" 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.

(C) "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.

(2) For the purposes of this subdivision, a commercial fisher 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.

(3) (A) 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, all of the following:

(i) Reporting the number of commercial fishers who apply for unemployment insurance benefits.

(ii) The number of commercial fishers who have their claims disputed.

(iii) The number of commercial fishers who have their claims denied.

(iv) The number of commercial fishers who receive unemployment insurance benefits.

(B) The report required by this subparagraph shall be submitted in compliance with Section 9795 of the Government Code.

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

(h) (1) A newspaper distributor working under contract with a newspaper publisher, as defined in paragraph (2), or a newspaper carrier.

(2) For purposes of this subdivision:

(A) "Newspaper" means a newspaper of general circulation, as defined in Section 6000 or 6008 of the Government Code, and any other publication circulated to the community in general as an extension of or substitute for that newspaper's own publication, whether that publication be designated a "shoppers' guide," as a zoned edition, or otherwise. "Newspaper" may also be a publication that is published in print and that may be posted in a digital format, and distributed periodically at daily, weekly, or other short intervals, for the dissemination of news of a general or local character and of a general or local interest.

(B) "Publisher" means the natural or corporate person that manages the newspaper's business operations, including circulation.

(C) "Newspaper distributor" means a person or entity that contracts with a publisher to distribute newspapers to the community.

(D) "Newspaper carrier" means a person who effects physical delivery of the newspaper to the customer or reader, who is not working as an app-based driver, as defined in Chapter 10.5 (commencing with Section 7448) of Division 3 of the Business and Professions Code, during the time when the newspaper carrier is performing the newspaper delivery services.

(3) (A) On or before March 1, 2022, March 1, 2023, and March 1, 2024, every newspaper publisher or distributor that hires or directly contracts with newspaper carriers shall submit to the Labor and Workforce Development Agency, in a manner prescribed by the agency and in conformity with existing law, the following information related to their workforce for the current year:

(i) The number of carriers for which the publisher or distributor paid payroll taxes in the previous year and the number of carriers for which the publisher or distributor did not pay payroll taxes in the previous year.

(ii) The average wage rate paid to carriers classified as independent contractors and as employees.

(iii) The number of carrier wage claims filed, if any, with the Labor Commissioner or in a court of law.

(B) For the March 1, 2022, reporting date only, every newspaper publisher and distributor shall also report the number of carrier wage claims filed with the Labor Commissioner or in a court of law for the preceding three years.

(C) Information that is submitted shall only be disclosed in accordance with subdivision (k) of Section 6254 of the Government Code, relating to trade secrets or other proprietary business information.

(4) This subdivision shall become inoperative on January 1, 2025, unless extended by the Legislature.

(i) An individual who is engaged by an international exchange visitor program that has obtained and maintains full official designation by the United States Department of State under Part 62 (commencing with Section 62.1) of Title 22 of the Code of Federal Regulations for the purpose of conducting, instead of participating in, international and cultural exchange visitor programs and is in full compliance with Part 62 (commencing with Section 62.1) of Title 22 of the Code of Federal Regulations.

(j) A competition judge with a specialized skill set or expertise providing services that require the exercise of discretion and independent judgment to an organization for the purposes of determining the outcome or enforcing the rules of a competition. This includes, but is not limited to, an amateur umpire or referee.

SEC. 5. Section 4.5 of this bill incorporates amendments to Section 2783 of the Labor Code proposed by both this bill and Assembly Bill 1506. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 2783 of the Labor Code, and (3) this bill is enacted after Assembly Bill 1506, in which case Section 4 of this bill shall not become operative.