

## Text of “Business to Business for Professional Services” Exemption

*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 22 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, provided that the rate is equal to or greater than two times the minimum wage for hours worked.
- (K) 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 Section 7000 and following *Chapter 9 (commencing with Section 7000) of Division 3* of the Business and Professions Code.