



# Would The Mandalorian Be Considered An Employee Under California's Misclassification Test?

Insights

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Not so long ago – 2019, to be exact – in a state not so far, far away – California – lawmakers passed the nation's most controversial misclassification law to sweep as many independent contractors into employee status as possible. By now, most businesses recognize that AB-5 is the dreaded state statute that codified the "ABC test" across California and not the name of a new protocol droid. And most companies that have independent contractors in the state, especially gig economy companies, are quite familiar with how far-reaching the statute is. But is it so sweeping in nature that it would snare the Mandalorian, one of the Star Wars universe's newest heroes, in its grasp? This May 4th, we'll explore this question together.

## The Mandalorian, Briefly Explained

For those uninitiated in this latest chapter of Star Wars stories, the titular character of "The Mandalorian" is a bounty hunter appearing on a television series exploring a darker underworld of the galaxy we've not before seen. His signature body armor is very similar to that worn by Boba Fett, a character well known to most Star Wars fans. And it's no coincidence. This series explains that people from the planet Mandalore – who wear similar sets of armor and never reveal their faces – are a proud race of warriors who have a particular affinity for bounty hunting.

In the series, the Mandalorian engages in a series of adventures while joined by a mysterious creature that has become known as "Baby Yoda." (With apologies to some of my colleagues who offered suggestions for this year's edition, I will not be exploring whether the Mandalorian has violated any child labor laws by enlisting Baby Yoda in his travels.) In the very first episode of the series, the Mandalorian is revealed to have a connection with the Bounty Hunters' Guild, through which he receives assignments for pay. It is this relationship we will explore further to determine whether it would be considered "employment" in California, as it has many hallmarks of modern gig economy work most would consider befitting of independent contractor status.

## AB-5 And The ABC Test

Gig economy work in California changed forever in September 2019 when the state legislature codified the "ABC" test into law by passing AB-5. Under the new law, a worker is considered to be an employee under state Wage Orders unless the hiring entity can establish all three of these prongs:

1. the worker is **free from the control and direction** of the hirer in connection with the performance

- or the work, both under the contract for the performance of such work and in fact;
2. the worker performs work that is **outside the usual course** of the hiring entity's business; and
  3. the worker is **customarily engaged in an independently established trade, occupation, or business** of the same nature as the work performed for the hiring entity.

Once this new law became effective on January 1, 2020, it upended the traditional sense of the force when it came to independent contractor work and the gig economy as a whole. Suddenly, workers all across the state began to wonder if they were contractors or employees, and businesses became rightfully concerned about the status of their workers. Of course, there was only one logical question that next came to mind: if the Bounty Hunters' Guild were located in California, would the Mandalorian be a contractor or an employee? We'll examine all three prongs and see for ourselves.

### **Prong A: Is The Mandalorian Free From Direction And Control Of The Guild?**

A worker connects to a central meeting point and receives the opportunity to take on a number of jobs located in various geographic areas. The worker can accept or reject the jobs without any consequence, and can generally work as much or as little as possible. If the worker accepts the job, the hiring entity doesn't say how to get the work done – just to get it done. Sound like a typical rideshare or delivery driver? Sure...and also like the Mandalorian's relationship with the Guild.

We learn very early on in the series that the Guild receives bounty hunting missions and doles them out to its members. As the first episode unfolds, we see our hero completing his first set of missions – using his own tools, his own methods, and his own timeframe. We also see him being offered additional jobs but turning them down because they lack sufficient value to him. That doesn't deter the head of the Guild from considering him for future and more lucrative work, which suggests that there are no negative consequences to turning down work. We learn there are "Guild rates" for the jobs, but the Mandalorian negotiates with the Guild for payment in an alternate form of currency, further demonstrating his independence and the existence of a true arm's-length business relationship between the two.

We also hear something about the "bounty hunters' code," which pretty much consists of some basic rules: don't kill another bounty hunter, don't steal someone else's bounty, and don't ask about the bounty after you have delivered it. We learn right away that these "rules" are more like suggestions, as (spoiler alert) they are all violated in the first few episodes. But even if the rules were followed, they generally follow along the same lines as the basic expectations that most gig economy companies ask their workers to adhere to (don't discriminate, don't assault, don't harass, don't steal, etc.).

For these reasons, it appears that the Guild would satisfy ABC Test Prong A and could demonstrate that the Mandalorian is free from its direction and control.

### **Prong C: Is The Mandalorian Customarily Engaged In An Independently Established Trade Of The Same Nature?**

For dramatic purposes, we're hyperspeeding ahead to Prong C, and once again it appears that the

Guild can satisfy this prong as it relates to the Mandalorian. In fact, most of the first eight episodes of the series portray the Mandalorian engaging in the independently established trade of bounty hunting outside of the Guild's referral service (mild spoilers in the next paragraph).

We see him helping villagers on a primitive world ward off marauders in exchange for lodging and money. We see him helping to capture a notorious assassin for money. And we see him teaming up with a former business partner on a daring prison-break mission for – you guessed it – money. All of these jobs were negotiated on his own and without the help of the Guild, proving that he is fairly well-established as an independent presence.

We also learn that the Mandalorian is a highly prized worker who is able to negotiate relatively high rates compared to other workers. This is because of his well-earned reputation as being “the best in the parsec.” This further cements his independent status.

Some might argue that the Mandalorian has not incorporated his business as far as we know (we are unsure about taxing authorities in this time and place in the Star Wars universe), and he doesn't seem to advertise his services to the public or potential customers. Still, while these are typical hallmarks of Prong C, they are not statutory requirements, and no court in California has yet said they are necessary to satisfy this prong. So it appears that the Guild can also prove that the Mandalorian satisfies Prong C.

### **Prong B: Does The Mandalorian Perform Work That's Outside The Usual Course Of The Guild's Business?**

And now, once we arrive at Prong B, we run in to same significant hurdle that most gig economy companies encounter when they examine the ABC test for their business. How can the Guild prove that a bounty hunter is performing work that is outside the usual course of its bounty hunting business?

Now, to be fair, we don't know the full backstory about the Guild. Perhaps it takes on many other kinds of transactions and business besides bounty hunting (which would make the name “Bounty Hunters' Guild” rather odd, but still). Maybe it also coordinates investigative work, or assassinations, or spying, or various other criminal endeavors.

If it doesn't, though, it might run into trouble. As the California Supreme Court said when first introducing the ABC test to the state in the now-infamous *Dynamex* decision, a retail store can satisfy Prong B when it hires an outside plumber to repair a leak in a bathroom on its premises or an outside electrician to install a new electrical line, but not when it retains someone to perform general retail services.

But what if the Guild argues that it isn't really in the bounty hunting business? This sounds far-fetched at first. What if the Guild says it is merely a “marketplace” that connects willing bounty hunters to a broad audience of customers?

And let's take it one step further – what if its business is more diverse than we are currently aware? What if the customers, in fact, used the Guild to get a chance to browse the options of services the bounty hunters offered beyond just retrieving bounties (such as spying or assassinating)? This would allow the Guild to argue that the bounties collected by the Mandalorian and other bounty hunters were merely incidental to its usual course of business. To support this claim, what if the Guild could prove that it has never been directly dependent on bounty hunting referral fees as a primary source of revenue?

These are the main arguments being advanced by gig economy companies and other businesses using independent contractor labor in California as they try to overcome Prong B. It is still early in the game, and we haven't yet had a sufficient number of court decisions or regulatory opinions on these arguments to be able to make a pronouncement one way or the other. For now, though, we'll say that the Guild can't overcome Prong B when it comes to the Mandalorian or its other bounty hunters, and therefore must treat him like an employee. (Good luck having him provide sufficient photo identification to complete the I-9 form, or keeping track of workplace injuries for workers' compensation purposes.)

## Conclusion

The fact that even someone as solitary and independent as the Mandalorian would probably be considered an employee under California's AB-5 is a sign that the law goes too far. Though well-intentioned, it sweeps up far too many workers who would prefer to operate as contractors into employee status. If other states want to follow California's lead by providing a safety net to these kinds of workers, they should instead consider wholesale regulatory reform to adapt our 20th-century workplace laws to the 21st century.

We'll keep our eyes peeled for the second season of the Mandalorian to see if our analysis changes as more information about the Guild gets revealed. Until next May 4th, make sure to follow our Gig Economy blog, and may the force be with you.

*If you liked this post, you might appreciate the author's previous attempts to compare Star Wars characters to gig economy workers: **Would The Government Classify Rey As A Contractor or Employee? (July 2016)** and **Would Chewbacca Be A Contractor Or Employee Under The New "ABC" Test? (May 2018)**.*

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