

Independent or Employee? Losing Your Right to Choose



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The Nail Extension Jaime Schrabek

When booth rental is not a legal business model, what options do beauty professionals have other than employment or salon ownership?

We may soon find out in California where a proposed law (AB 5*) http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB5 would limit the choice to rent a booth to those providing hair services only. You read that correctly: just hair. If you think this law would only impact California, consider this a warning. Every beauty professional regardless of state of residence should consider how such legislation would affect their businesses.

Before you react, let me guess. First, you had no idea that booth rental was not legal in California. Secondly, you think that's crazy, and can't imagine that ever happening where you live. Thirdly, you assume there must be some loophole to justify how you want to work. Fourth, you won't take any action to ensure your choices are legal.

While most of us can explain our choice to work in the beauty industry, what cannot be explained is our collective ignorance and apathy about *how* we work. Why aren't we more aware and concerned about the laws that govern us?

We're in danger of losing our right to choose and many don't seem to care. How did we get to this point? When given choices, we've often made the wrong ones. Instead of accepting responsibility for our bad choices, we blame others for our failures and illegal behavior. There's plenty of blame to share with these people:

- Salon owners who choose to operate large salons, but cannot afford to compensate staff legally.
- Beauty pros who demand more compensation from salon owners than what's financially feasible.
- Salon owners and beauty pros who underreport their income and evade taxes.
- Consumers who expect professional beauty services to be "affordable," often at the expense of their own health and safety and the welfare of service providers.
- Government agencies with limited resources unable to adequately educate and enforce their own regulations.
- Beauty schools insist that students don't want to learn about "business" because it's not covered on the licensing exam.

- Legislators who don't understand our industry and should seek more diverse input and better information.

- Manufacturers that don't want to get involved or defend us against deregulation.

- Trade publications that implicitly endorse bad actors and normalize questionable practices.

- Trade organizations that advocate for only a portion of our industry, despite their purported missions.

If that makes you feel any better about your past choices and current circumstances, it shouldn't. We should know better and act accordingly.

For decades, many salon owners have failed to accept the legal and financial obligations of having workers in their businesses.

Repeated warnings against misclassification have been ignored while workers have routinely tolerated salon owners who treat workers like employees but issue 1099s rather than W2s; do not withhold or pay employment taxes; do not pay the equivalent of minimum wage for hours worked; insist that commission-only makes workers "independent contractors;" and do not compensate for overtime hours or mandatory breaks.

If the success of a business depends on defrauding its workers, that business is a fraud. If a salon owner cannot operate legally, then they should not operate at all. Fraudulent, unethical salon owners do not deserve recognition, admiration or financial benefits. Instead, they should be apologizing for their choices, pleading for amnesty and remedying their labor and tax practices immediately.

It's far better to be right than redeemed. Let's start by getting informed and taking responsibility for our individual choices. Let's work together and hold each other accountable to serve the best interests of the industry as a whole.

Recent indications that AB 5 will be amended to include estheticians, but not manicurists, reinforces the perception that manicurists and nail salon owners, in particular, are far too problematic to be given the right to choose. Apparently, legislators believe that restricting work options will solve worker misclassification and exploitation, especially of "immigrant" nail techs.

On the contrary, denying licensed manicur-



ists the opportunity to booth rent based on their scope of practice would be discriminatory and likely unenforceable. If enacted, this law would disadvantage more than 130,000 licensed nail professionals in California, many of whom operate as independent businesses within a licensed salon environment.

We must demand laws that affect beauty licensees apply fairly and equally to all.

Want to take action to protect our industry?
Contact your state representatives directly by email,

phone or social media: <https://openstates.org/>.

** Given the popularity of booth rental, the significant impact of last year's California Supreme Court decision known as Dynamex on the beauty industry has been difficult to manage. Recent legislation, known as AB 5, authored by Assembly Member Lorena Gonzalez, D-San Diego, would clarify the Dynamex decision and most important, exempt certain professions, like "A worker providing hairstyling or barbering services."*

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