



PGA



August 8, 2019

The Honorable Lorena Gonzales
California State Assembly Member
P.O. Box 942849
Sacramento, CA 94249-0080

The Honorable Toni G. Atkins
Senate President pro Tempore
State Capitol, Room 205
Sacramento, CA 95814

Re: Assembly Bill 5 - Workers Status: Employees and Independent Contractors

Dear Assembly Member Gonzales and Senator Atkins:

On behalf of the National Golf Course Owners Association, The Professional Golfers' Association of America (the "PGA of America"), and the Golf Course Superintendents of America, we submit the following comments regarding AB-5.

We respectfully request that Teaching Professionals in the golf industry ("Teaching Professionals") who meet the common law independent contractor test described below be included as an exempted class in CA AB-5 - Workers Status: employees and independent contractors.

With more than 1,000 golf courses located at 850-plus facilities throughout California, at any given time of day or day of the week, you will find Teaching Professionals providing golfers young and old lessons that will enable them to better enjoy a healthy lifestyle. These men and women are the teachers of the industry. Their students come from all economic sectors of our communities. If these facilities are forced to convert these Teaching Professionals from independent contractors to part-time employees, the additional costs and administrative burden will result in less Teaching Professionals engaged and fewer California residents able to receive coaching and lessons.

These Teaching Professionals, many of whom are members of the PGA of America, have a long history in California of providing the teaching and coaching services as an independent contractor. The Teaching Professional arrangement with a golf facility is typically predicated upon the following which meets the common law independent contractor test adopted in *S.G. Borello & Sons, Inc.* (applicable in AB-5 to the exempted positions delineated therein):

- The Teaching Professional has 100% control over his/her working hours: The facility does not act as a booking agent or otherwise control those hours. The Teaching Professional has sole discretion to decide which clients from who they will provide services.
- The Teaching Professional uses his/her own funds to purchase requisite supplies used in connection with providing services.
- The Teaching Professional sets his/her own rates for services performed (greater than two times minimum wage).

- The Teaching Professional's access to the facility is per an agreement between teacher and facility akin to a traditional lessor/lessee arrangement specifically and often differentially negotiated between teacher and facility.
- The Teaching Professional can provide lessons at numerous golf facilities -- his/her arrangement with a particular facility is non-exclusive.
- The Teaching Professional is responsible for generating his/her clientele and schedules his/her own appointments
- The Teaching Professional has the final say on who his/her students are going to be; the facility cannot direct the professional to accept any students nor direct the professional to conduct any kind of individual or group activity sponsored or promoted by the facility.

Enabling the California golf industry to retain the role played by the genuinely independent teaching golf professional would not contradict the clear intent of the court's Dynamex decision to protect California's strong presumption in favor of employee status. We respectfully ask the California legislature to consider language to accommodate this very narrow class of teaching golf professionals that would directly benefit the growth of the California golf industry that depends on continued high-quality instruction. Without the exclusion, there will be less Teaching Professionals engaged and fewer California residents able to receive coaching and lessons.

Regards,



Rhett Evans
CEO, Golf Course Superintendents Association
of America



Jay Karen
CEO, National Golf Course Owners Association



Stephen F. Mona
Executive Director, WE ARE GOLF



Seth Waugh
CEO, PGA of America