



Highlands Recreation District

1851 Lexington Avenue • San Mateo, CA 94402

(650) 341-4251 • Fax (650) 349-9627

www.highlandsrec.ca.gov

"A Community Place to Learn, Grow & Play"

Strategy Session Board Meeting Packet

March 24, 2024

12:00 P.M. – Special Board Meeting

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"A Community Place to Learn, Grow & Play"

Updated Agenda

Topic: HRD Strategy Session Meeting

Time: March 24, 2024 12:00 PM Pacific Time (US and Canada)

Location: 1851 Lexington Ave., San Mateo, CA 94402

Board meetings are held in-person, with a Zoom participation option provided to the public as a courtesy. The public is encouraged to participate in whatever form they are most comfortable. If participating remotely via Zoom, see details below:

Topic: HRD Strategy Session Meeting

Time: Mar 24, 2024 12:00 PM Pacific Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/89200520364?pwd=x8GdyN3zOgUkfVjAKIbANI2YkEBIMv.1>

Meeting ID: 892 0052 0364

Passcode: 495443

Dial by your location

+1 669 444 9171 US

Find your local number: <https://us06web.zoom.us/j/kc8BX3SN8z>

1. Call to Order
2. Introduction of Guests
3. Communications, Announcements & Public Comments
4. New Business:
 - a. Discussion: Organizational Strategy
 - b. Discussion/Motion: EEC Assistant Director Pay Range & Job Description
 - c. Discussion/Motion: Amend/Extend Christopher Gurr Interim General Manager Contract
 - d. Discussion/Motion: General Manager Recruiter Contract

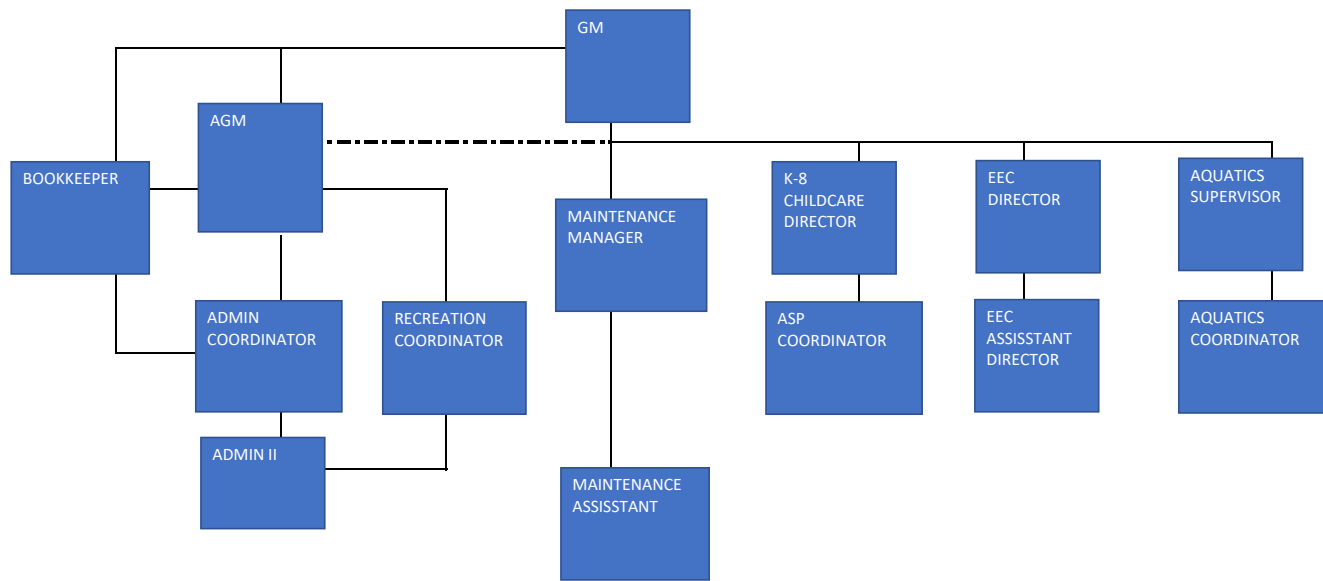
- e. Discussion/Motion: Reclassify Bookkeeper Position to Fulltime RNE-1
- f. Discussion/Motion: Private Swim Lesson Instructor, Swim Team Coach & ASP Head Teacher Benefits/Classification Recommendations
- g. Discussion: Report from Interim General Manager on First 90 Days Insights
- h. Discussion: Board's Vision for the District
- i. Discussion: Organizational Goal Setting through FY24-25
- j. Discussion: 3 to 5 Year Planning
- k. Discussion: Plan for next strategy meeting(s)

5. Adjournment

Public comments can be submitted to the District prior to the meeting by emailing admin@highlandsrec.ca.gov. Public comments will also be taken on each agenda item during the meeting. Comments received by email prior to 3 pm on the day of the meeting will be forwarded to the Board prior to the meeting, made a part of the public record, and be available for public review at this link: <https://highlandsrec.ca.gov/hrd-board-meetings>.

To comment orally in real time during the meeting, you may use the Zoom "raise hand" function on your computer screen or the *9 function on your phone.

Board Meetings are accessible to people with disabilities. Individuals who need special assistance or disability-related modification or accommodation (including auxiliary aids or services) to participate in this meeting; or who have a disability and wish to request an alternative format for the agenda, meeting notice, agenda packet or other writings that may be distributed at the meeting, should contact the Board Secretary at generalmanager@highlandsrec.ca.gov. Notification in advance of the meeting will enable the District to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it. Public records that relate to any item on the open session agenda for a regular board meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all members, or a majority of the members of the Board. The Board has designated the office of the Highlands Recreation District, located at 1851 Lexington Ave, for the purpose of making those public records available for inspection. The agenda, meeting notice, agenda packet and other writings distributed to the Board in connection with this meeting are also available for public review at this link: <https://highlandsrec.ca.gov/hrd-board-meetings>.



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MEMORANDUM

Date: March 24, 2024
To: HRD Board of Directors
From: Meg Catmull, Assistant General Manager
Re: EEC Assistant Director Pay Range and Job Description

BACKGROUND:

The current approved range for the EEC Assistant Director position is \$25.00-\$30.00/hour; the current approved range for EEC Teachers is \$26.00-\$34.00. The EEC Assistant Director role is currently vacant and staff is bringing the pay range and job description to the attention of the Board of Directors for consideration prior to posting the job externally.

DISCUSSION:

Please see salary survey attachment (Attachment 3).

The EEC Assistant Director Job Description was reviewed, and minor revisions were made to adjust the education requirements and emphasize certain job responsibilities such as assisting with classroom coverage as needed.

RECOMMENDATION:

To provide a competitive range that is also comparable with other positions within the District, staff is recommending the Board consider a pay range for the EEC Assistant Director position in the amount of \$30.00-\$38.00/hour.

FISCAL IMPACT:

The annual range for the EEC Assistant Director position's base pay is approximately \$52,000-\$62,400. The proposed increase would be a range of \$62,400-\$79,040 which would be \$10,400-\$16,640 higher than the current range per year.

ATTACHMENTS:

Attachment 1: 2022 EEC Assistant Director Job Description
Attachment 2: 2024 EEC Assistant Director Job Description
Attachment 3: HR Edge Salary Survey

A HIGHLANDS RECREATION DISTRICT • JOB DESCRIPTION

ADOPTED BY THE GENERAL MANAGER	April 2022	JOB TITLE EARLY EDUCATION ASSISTANT DIRECTOR	Non-exempt
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Position Summary

Under the direct supervision of the Early Education Director, the Early Education Assistant Director provides day-to-day administration of the Early Education Center. The Early Education Center is a childcare center providing group care to children from ages 3 months through age 5 and is governed by the provisions specified in the California State Care Regulations.

Essential Functions

- Demonstrate the ability and competencies to lead others in order to achieve identified outcomes in creating an impact, strengthening our resources, and protecting the District.
- Increase staff capability and motivation through recruitment, development, leadership, evaluation, and interactive feedback.
- Develop and monitor the budget to achieve financial goals.
- Establish and grow meaningful relationships with parents.
- Ensure maintenance of required children, family, and program files.
- Ensure compliance with applicable State, welfare, and education department codes and those regulations adopted and administered under Title 22 Licensing and Titles V California Code of Regulations.
- Prepare and submit accurate and timely reports and correspondence as required.
- Maintain effective community relations.
- Ensure satisfactory maintenance and appearance of the Early Education Center.
- Set and maintain standards for children’s behavior using non-punitive methods which teach self-discipline while supporting children’s self esteem
- Work directly with the District staff to schedule enrichment classes and keep accurate attendance record.
- Assist the promotion and scheduling of enrichment classes with the program families.
- Attend all special events and extra activities with all other employees.
- Perform other duties as assigned.

Essential Knowledge & Abilities

- Must have demonstrated administrative and supervisory experiences in a childcare program.
- Must be flexible and able to maintain a positive and supportive working relationship with staff, parents, volunteers, and children.
- Must be familiar with learning development theories and be able to plan and administer a comprehensive program designed to meet educational and childcare objectives.
- Must have the ability to develop and administer budgets and maintain fiscal records.
- Must be able to deal with confidential information in a professional manner.
- Have knowledge of Physical Education programming which includes but is not limited to, indoor and outdoor activities relevant to pre-school age children.
- Ability to organize tasks, establish systems, and delegate work and responsibility to others.
- Ability to solve problems and take action as needed.
- Ability to instill trust and respect from staff, children, and parents.

Qualifications

1. Minimum of 5 years work experience in a childcare center and previous Lead Teacher and/or Director experience in a preschool, early education setting.
2. AA degree required, BA in early childhood or a related field is preferred.
3. At least 15 college level units in early childhood development, including 3 units in infant/toddler development and 9 units in supervision and administration.

Additional Requirements

- Must possess and maintain a valid CA Driver’s license.
- Successfully pass a physical exam.
- Receive Department of Justice fingerprint clearance.
- Possess and maintain certification in infant and child CPR.

Physical Demands

Visual and auditory ability to observe and respond to critical incidents and the physical ability to act swiftly in an emergency situation. Ability to lead and interact in group activities and perform related physical skills and the ability to stand, walk, sit, stoop, kneel or crouch. Ability to climb, push, and pull and lift and carry objects up to 20 pounds.

Additional Information:

- It may be necessary to perform other duties as assigned.
- This position is considered to have a supervisory or disciplinary relationship over minors.
- This job description is not intended to be all inclusive. It is understood that the employee will perform other duties if requested by the General Manager. Job descriptions are reviewed periodically and may be revised if deemed necessary. This job description is not a written or implied contract.

Acknowledgement and Receipt

I acknowledge that I have received, read, and sought clarification of any questions I have about the contents of this job description.

Employee Signature	Date	Print Name
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Supervisor Signature	Date	Print Name
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A HIGHLANDS RECREATION DISTRICT • JOB DESCRIPTION

ADOPTED BY THE GENERAL MANAGER	March 2024	JOB TITLE EARLY EDUCATION ASSISTANT DIRECTOR	Non-exempt
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Position Summary

Under the direct supervision of the Early Education Director, the Early Education Assistant Director provides day-to-day administration of the Early Education Center. The Early Education Center is a childcare center providing group care to children from ages 3 months through age 5 and is governed by the provisions specified in the California State Care Regulations.

Essential Functions

- Demonstrate the ability and competencies to lead others in order to achieve identified outcomes in creating an impact, strengthening our resources, and protecting the District.
- Increase staff capability and motivation through recruitment, development, leadership, evaluation, and interactive feedback.
- Develop and monitor the budget to achieve financial goals.
- Establish and grow meaningful relationships with parents.
- Ensure maintenance of required children, family, staff, and program files.
- Ensure compliance with applicable State, welfare, and education department codes and those regulations adopted and administered under Title 22 Licensing and Titles V California Code of Regulations.
- Prepare and submit accurate and timely reports and correspondence as required.
- Maintain effective community relations.
- Ensure satisfactory maintenance and appearance of the Early Education Center.
- Set and maintain standards for children’s behavior using non-punitive methods which teach self-discipline while supporting children’s self esteem
- Work directly with District staff to schedule enrichment classes and keep attendance records.
- Assist in providing classroom coverage as needed.
- Assist the promotion and scheduling of enrichment classes with the program families.
- Attend all special events and extra activities with all other employees.
- Perform other duties as assigned.

Essential Knowledge & Abilities

- Preferred leadership and/or administrative experiences in a childcare program.
- Must be flexible and able to maintain a positive and supportive working relationship with staff, parents, volunteers, and children.
- Must be familiar with learning development theories and be able to plan and administer a comprehensive program designed to meet educational and childcare objectives.
- Must have the ability to develop and administer budgets and maintain fiscal records.
- Must be able to deal with confidential information in a professional manner.
- Have knowledge of Physical Education programming which includes but is not limited to, indoor and outdoor activities relevant to pre-school age children.
- Ability to organize tasks, establish systems, and delegate work and responsibility to others.
- Ability to solve problems and take action as needed.
- Ability to instill trust and respect from staff, children, and parents.

Qualifications

1. Minimum of 5 years work experience in a childcare center with preferred previous Lead Teacher and/or Director experience in a preschool, early education setting.
2. BA in early childhood or a related field is preferred.
3. At least 15 college level units in early childhood development, including 3 units in infant/toddler development and 9 units in supervision and administration.

Additional Requirements

- Must possess and maintain a valid CA Driver’s license.
- Successfully pass and physical exam.
- Receive Department of Justice fingerprint clearance.
- Possess and maintain certification in infant and child CPR.

Physical Demands

Visual and auditory ability to observe and respond to critical incidents and the physical ability to act swiftly in an emergency situation. Ability to lead and interact in group activities and perform related physical skills and the ability to stand, walk, sit, stoop, kneel or crouch. Ability to climb, push, and pull and lift and carry objects up to 20 pounds.

Additional Information:

- It may be necessary to perform other duties as assigned.
- This position is considered to have a supervisory or disciplinary relationship over minors.
- This job description is not intended to be all inclusive. It is understood that the employee will perform other duties if requested by the General Manager. Job descriptions are reviewed periodically and may be revised if deemed necessary. This job description is not a written or implied contract.

Acknowledgement and Receipt

I acknowledge that I have received, read, and sought clarification of any questions I have about the contents of this job description.

Employee Signature	Date	Print Name
Supervisor Signature	Date	Print Name



EEC ASSISTANT DIRECTOR SALARY SURVEY

Geography	Effective Date	Base Pay			
		Base 25 th	Base 50 th	Base 75 th	Base Avg.
All United States	Mar 1, 2024	\$ 73,000	\$ 83,400	\$ 96,200	\$ 86,300
San Francisco Metro Area	Mar 1, 2024	\$ 79,100	\$ 90,400	\$ 104,200	\$ 93,500



MEMORANDUM

Date: March 24, 2024
To: HRD Board of Directors
From: Meg Catmull, Assistant General Manager
Re: Christopher Gurr Interim General Manager Contract

BACKGROUND

Christopher Gurr is currently working as the District's Interim General Manager on a contractual basis. The current contract was approved by the Board of Directors at the January 12, 2024 Special Board Meeting. That contract was for a 90-day period working up to 20 hours per week at \$140/hour.

DISCUSSION

The 90-day contract period will be ending on April 11, 2024. With the Ad Hoc General Manager Recruitment Committee recommending final interviews for the permanent General Manager to be held in the month of May, there is a need for additional Interim General Manager coverage.

Another consideration of the contract is the initial 20 hour per week constraint within the contract which has not been adequate for the scope of work required for the position.

FISCAL IMPACT

At \$140 per hour, extending the contract hours to up to 30 hours per week could constitute an additional \$1,400 per week cost for the District.

RECOMMENDATION

To avoid any disruption in this interim period, it is being recommended that the Board consider extending the current contract with the Interim General Manager with an amendment to the contract to allow hours worked in addition to the originally stipulated 20 hours per week and to pay the IGM the additional hours to-date as invoiced (see itemized weekly breakdown). The intention of the IGM will be to work around 25-30 hours per week, but with the flexibility to work additional hours if deemed in the best interest of the District.

ATTACHMENTS

Attachment 1: Christopher Gurr Additional Hours Invoices
Attachment 2: Christopher Gurr Interim General Manager Contract

INVOICE FOR SERVICES RENDERED

Number:	GURR073a
Date:	2/16/2024
Net:	15

FROM: Christopher Gurr
Address: 1752 Yorktown Road San Mateo, CA 94402 Tel: 650 346 8155

BILL TO: Highlands Recreational District 1851 Lexington Ave. San Mateo CA 94402

From	Description	Hours	Rate	Amount
2/12	Interim General Manager Consulting Addistional Hours	0	140	0
2/13	Interim General Manager Consulting Addistional Hours	0	140	0
2/14	Interim General Manager Consulting Addistional Hours	2	140	280
2/15	Interim General Manager Consulting Addistional Hours	6	140	840
2/16	Interim General Manager Consulting Addistional Hours	6	140	840
	General & Professional Liability Insurance	0	0.00	0.00
				0.00
TOTAL		14		1,960.00

INVOICE FOR SERVICES RENDERED

Number:	GURR075a
Date:	3/1/2024
Net:	15

FROM: Christopher Gurr
Address: 1752 Yorktown Road San Mateo, CA 94402 Tel: 650 346 8155

BILL TO: Highlands Recreational District 1851 Lexington Ave. San Mateo CA 94402

From	Description	Hours	Rate	Amount
2/26	Interim General Manager Consulting	0	140	0
2/27	Interim General Manager Consulting	0	140	0
2/28	Interim General Manager Consulting	0	140	0
2/29	Interim General Manager Consulting	2	140	280
3/1	Interim General Manager Consulting	4	140	560
	General & Professional Liability Insurance	0	0.00	0.00
				0.00
TOTAL		6		840.00

INVOICE FOR SERVICES RENDERED

Number:	GURR076a
Date:	3/1/2024
Net:	15

FROM: Christopher Gurr
Address: 1752 Yorktown Road San Mateo, CA 94402 Tel: 650 346 8155

BILL TO: Highlands Recreational District 1851 Lexington Ave. San Mateo CA 94402

From (week ending)	Description	Hours	Rate	Amount
1/19	Interim General Manager Consulting Additiobnal Hours	4	140	560
1/26	Interim General Manager Consulting Additiobnal Hours	8	140	1120
2/2	Interim General Manager Consulting Additiobnal Hours	5	140	700
2/9	Interim General Manager Consulting Additiobnal Hours	14	140	1960
	General & Professional Liability Insurance	0	0.00	0.00
				0.00
TOTAL		31		4,340.00

INVOICE FOR SERVICES RENDERED

Number:	GURR077a
Date:	3/8/2024
Net:	15

FROM: Christopher Gurr
Address: 1752 Yorktown Road San Mateo, CA 94402 Tel: 650 346 8155

BILL TO: Highlands Recreational District 1851 Lexington Ave. San Mateo CA 94402

From	Description	Hours	Rate	Amount
3/4	Interim General Manager Consulting	0	140	0
3/5	Interim General Manager Consulting	0	140	0
3/6	Interim General Manager Consulting	0	140	0
3/7	Interim General Manager Consulting	4	140	560
3/8	Interim General Manager Consulting	5	140	700
	General & Professional Liability Insurance	0	0.00	0.00
				0.00
TOTAL		9		1,260.00

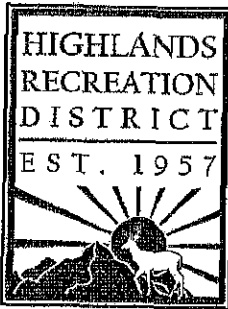
INVOICE FOR SERVICES RENDERED

Number:	GURR078a
Date:	3/15/2024
Net:	15

FROM: Christopher Gurr
Address: 1752 Yorktown Road San Mateo, CA 94402 Tel: 650 346 8155

BILL TO: Highlands Recreational District 1851 Lexington Ave. San Mateo CA 94402

From	Description	Hours	Rate	Amount
3/11	Interim General Manager Consulting	0	140	0
3/12	Interim General Manager Consulting	0	140	0
3/13	Interim General Manager Consulting	0	140	0
3/14	Interim General Manager Consulting	6	140	840
3/15	Interim General Manager Consulting	5	140	700
	General & Professional Liability Insurance	0	0.00	0.00
				0.00
TOTAL		11		1,540.00



Highlands Recreation District

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INDEPENDENT CONTRACTOR AGREEMENT

It is agreed between the Highlands Recreation District (HRD), and Christopher Gurr
(Contractor), as follows:

1. **Contract Term** The term of this Agreement shall as specified in Exhibit A unless terminated earlier by the HRD.
2. **Services to be performed by Contractor** In consideration of the payments hereinafter set forth, Contractor shall perform services for HRD in accordance with the terms, conditions and specifications set forth herein and in Exhibit B attached hereto. Time and location of services to be provided are at the sole discretion of Contractor. However, if services are to be provided on HRD property, HRD shall advise of available time(s) and location(s) from which to choose. All other terms of service indicated in Exhibit B are determined by Contractor and agreed to by HRD, and can be revised upon mutual agreement during the term of this Agreement.
3. **Payments** In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and any Exhibit A, HRD shall make payment to Contractor in the manner specified herein and in Exhibit A
4. **Taxes** Contractor shall provide HRD with a completed W-9 form. HRD will provide Contractor with 1099 report of payments made to Contractor for services rendered. Contractor is solely responsible for all State and Federal tax liability for services provided to and payments made to Contractor by HRD.
5. **Relationship of the Parties** Contractor agrees and understands that the work/services performed under this Agreement are performed as an Independent Contractor and not as an employee of the HRD and that Contractor acquires none of the rights, privileges, powers or advantages of HRD employees. The contractor attests that they are an independently established trade, occupation or business. Contractor must provide proof that he/she is maintaining a business entity separate from status as an individual providing services.
6. **Insurance** The HRD requires that the Contractor obtain and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him or her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all operations under this Agreement, whether such operations be by him or herself or by any Subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence. Minimum coverage level requirements are indicated in Exhibit A. A certificate showing the HRD as the named insured shall be provided to the HRD before the activity may begin.
7. **Hold Harmless** Contractor agrees to indemnify and defend the HRD, its employees and agents from any and all claims, damages and liability in any way occasioned by or arising out of the negligence of the contractor in the performance of this agreement, including any sanctions, penalties or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended.
8. **Confidentiality** All data produced or compiled by Contractor shall be considered confidential unless it can be obtained as public record and shall not be shared with a third party without the prior written consent of HRD. All financial, statistical, personal, technical, and other data and information relating to the HRD's operations which is made available to the Contractor in order to carry out this Agreement shall be presumed to be confidential. Contractor shall protect said data and information from unauthorized use and disclosure by the observance of the same or more effective procedures as the HRD requires of its own personnel. The Contractor shall not, however, be

required by this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the Agreement or is rightfully obtained from third parties.

9. **Non-Assignability** Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of HRD, and any attempted assignment without such prior written consent in violation of this Section shall automatically terminate this Agreement.
10. **Termination of Agreement** The HRD may, at any time from execution of Agreement, terminate this Agreement, in whole or in part, for the convenience of the HRD, by giving written notice specifying the effective date and scope of such termination. Termination shall be effective on a date not less than thirty days from notice. In the event of termination, all finished or unfinished documents, data, studies, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the HRD and shall be promptly delivered to the HRD. In the event of termination, Contractor shall be paid for all work satisfactorily performed until termination, except where the HRD General Manager determines the quality or quantity of the work performed is unacceptable. Such payment shall be that portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.

This contract may be immediately terminated, at the sole discretion of HRD, in the event Contractor is arrested and/or convicted of a felony offense under the law of any state of these United States.

11. **Payment of Permits/Licenses** It shall be the Contractor's responsibility to obtain any license, permit or approval required from any agency for work/services to be performed for HRD. Such permits, as specified in Exhibit A must be obtained at Contractor's own expense, prior to commencement of said work/services or forfeit any right to compensation under this Agreement. Contractor shall provide proof of all said certifications on or before the first day of the contract period. If Contractor will be in the presence of HRD patrons under the age of 18, Livescan fingerprinting will be required. Any negative results from Livescan are ground for immediate termination of this Agreement.
12. **Retention of Records** Contractor shall maintain all records related to this Agreement for no less than three years after the HRD makes final payment or after termination of this contract and all other pending matters are closed. All records shall be subject to the examination and/or audit by agents of the HRD, the State of California and/or Federal grantor agencies.
13. **Compliance with State, Federal, and Local Laws, regulations, and Ordinances.** Contractor and all subcontractors shall ensure compliance with all state, federal and local laws or rules applicable to performance of the work required under this contract, and shall execute all necessary certifications of compliance therewith.
14. **Merger Clause** This Agreement, including Exhibit "A" attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the HRD General Manager. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of the body of this agreement shall prevail. This Agreement, or facsimile proposal of the Agreement, constitutes the entire Agreement between HRD and Contractor. Further, liability referenced to in section 5 is limited to Contractor's negligence during the Contractor's performance under this contract.
15. **Governing Law** This Agreement, including any exhibits, shall for all purposes be deemed subject to the laws of the State of California, and in the event of a lawsuit concerning this Agreement shall be venue in the County of San Mateo.
16. **Harassment and Bullying** See Exhibit C for the HRD Policy Against Harassment. This applies to contractors, public visitors, customers and anyone else whom employees come into contact with at work. Any violation to section C may result in termination as outlined in Section 10.

EXHIBIT C

POLICY AGAINST HARASSMENT

The District strives to provide a work environment where all employees can work together comfortably and productively. Each individual has the right to work in a professional atmosphere that promotes equal opportunity and prohibits discriminatory practices, including sexual and other forms of prohibited harassment. Such prohibited harassment is unacceptable and will not be tolerated.

The District prohibits harassment of any of its employees, volunteers, interns, or contractors based on an individual's race, religion, color, gender, sex, including breastfeeding and conditions related to such, age, national origin, ancestry, marital status, military and veteran status, medical condition, sexual orientation, gender identity, gender expression, genetic characteristics, physical or mental disability, or any other legally protected characteristic. Our workplace is not limited to the District's facilities, but may also include client and vendor facilities, as well as anywhere a business-related function is taking place.

Prohibited workplace harassment may take either of two forms. It may entail "quid pro quo" harassment, which occurs in cases in which employment decisions or treatment are based on submission to or rejection of unwelcome conduct, typically conduct of a sexual nature. Workplace harassment may also consist of offensive conduct based on one or more of the protected groups above that is so severe or pervasive that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as being fired or demoted).

Prohibited harassment includes, but is not limited to, epithets, slurs, derogatory comments or jokes, intimidation, negative stereotyping, threats, assault, or any physical interference with the employee's normal work or movement. Harassment may also include written or graphic material placed on walls, bulletin boards or elsewhere on the District's premises, or circulated in the workplace that denigrates, shows hostility or aversion towards an individual or group because of the characteristics identified above, using demeaning or inappropriate terms or epithets, indecent gestures, crude language, sabotaging the victim's work, or engaging in hostile physical conduct.

Whether or not the person means to give offense or believes his or her comments or conduct is welcome is not the focus. Rather, the District's policy is violated when other employees, whether recipients or mere observers are, in fact, reasonably offended by comments or conduct based on race, religion, color, gender, sex, age, national origin, ancestry, marital status, military and veteran status, medical condition, sexual orientation, disability, gender, gender identity, gender expression or genetic information.

COMPLAINT PROCEDURE

The District encourages any employee, intern, or contractor who believes he or she has been harassed or who has witnessed harassment to report that conduct to a management employee regardless of the identity of the offender. The District also encourages individuals who believe they are being harassed to firmly and promptly notify the offender that his or her behavior is unwelcome. Because this may be difficult, such direct communication is not a requirement of filing a complaint.

An employee or contractor who believes that he or she has been harassed by any employee, vendor, client, or other business contact of the District should immediately report the incident to a management employee. If the immediate supervisor is involved in the conduct, or for some other reason the employee feels uncomfortable making the report to that supervisor, the employee should report directly to the General Manager. Complaints may be made outside of business. The District encourages prompt reporting of complaints so that the District can take appropriate action. However, late reporting of a complaint will not, in and of itself, preclude the District from taking remedial action.

Any supervisor who sees or hears about conduct that may constitute a violation of this policy must immediately contact the General Manager. The District will not retaliate, nor will it tolerate retaliation, against employees who complain in good faith about harassment in the workplace. The District will investigate any such report and will take whatever corrective action is deemed necessary, including disciplining or discharging any individual who is found to have violated this policy.

INVESTIGATING AND RESOLVING THE COMPLAINT

The District will promptly investigate all allegations of prohibited harassment that are brought to its attention. The investigation will be in as confidential a manner as is practical and appropriate under the circumstances. Employees and supervisors have a duty to cooperate in the District's investigation of alleged harassment. Upon completing its investigation, the District will communicate its findings and intended actions to the complainant and to the individual accused of harassment.

Individuals found to have violated this policy will be disciplined and possibly terminated. In addition, failing to cooperate or providing false information during an investigation shall be grounds for disciplinary action, including termination. Although the District has limited authority to discipline a non-employee harasser (such as a client, customer, contractor, vendor, or supplier), it will take remedial action aimed at ensuring that the conduct stops.

Employees who believe they have been harassed may, within one year of harassment, file a complaint of discrimination with the California Department of Fair Employment and Housing. The nearest office is located at:

Bay Area Regional Office 39141

Civic Center Drive, Suite 250

Fremont, CA 94538

(800) 884-1684

If the Department finds evidence of harassment and settlement efforts fail, a public hearing or lawsuit may ensue. Remedies ordered can include back pay and reinstatement as well as civil penalties. Employees are protected by law from retaliation for opposing any practices contrary to this policy, or for filing a complaint or otherwise participating in proceedings of the Department of Fair Employment and Housing.

SEXUAL HARASSMENT

Sexual harassment is a form of prohibited harassment requiring special mention. Sexual harassment is defined as unwelcome sexual conduct of any nature that creates an offensive or hostile work environment or unwelcome sexual conduct that is made a condition of working at the District. It may also be in the form of non-sexual, offensive conduct that is directed at an employee because of his or her gender. Sexual harassment, like other forms of prohibited harassment, will not be tolerated.

Examples of prohibited sexual harassment include unwelcome sexual conduct such as:

- Verbal harassment (e.g., sexual requests, comments, jokes, slurs);
- Physical harassment (e.g., touching, kissing); and
- Visual harassment (e.g., posters, cartoons or drawings of a sexual nature).

Harassing conduct does not have to be motivated by sexual desire in order to constitute prohibited sexual harassment.

Sexual harassment is not limited to conduct motivated by sexual attraction. It may occur between members of the opposite sex or members of the same sex. It includes sexual harassment, gender harassment, threats of sexual violence, and harassment based on pregnancy, childbirth, or related medical conditions, regardless of their sexual orientation, sexual desire, or intent of the harasser. It includes offensive non-sexual conduct directed at an employee because of his or her gender.

The District's policy rests on the fundamental precept that each employee must treat all others with respect, dignity and professionalism. Deviation from that standard will not be tolerated. The District encourages anyone who is a victim of sexual harassment or who witnesses such conduct to report it using the Discrimination, Harassment and Retaliation Complaint Procedure below.

FREEDOM FROM BULLYING

The District will not tolerate bullying behavior by any individual in the organization. This policy shall apply to all employees, regardless of his or her employee status.

We define bullying as repeated inappropriate behavior, either direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment. Such behavior violates our policies, which states all employees will be treated with dignity and respect.

Our District promotes a workplace culture where all employees are able to work in an environment free of bullying behavior. We encourage employees to report instances of bullying behavior. Reports of this type will be treated seriously, investigated promptly and impartially. Bullying may be intentional or unintentional. When an allegation of bullying is made, the intention of the alleged bully is irrelevant, and will not be given consideration when considering corrective action.

The District further encourages employees to report concerns of assault, battery, or other bullying behavior of a criminal nature to the local Law Enforcement Agency. We require any supervisor who witnesses bullying behavior, irrespective of reporting relationship, to immediately report this conduct to a Supervisor or the General Manager. The District will protect an employee who reports bullying conduct from retaliation or reprisal.

We consider the following types of behavior examples of bullying:

Exclusion: Socially or physically excluding or disregarding a person in work-related activities.

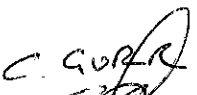

Gesture bullying: Non-verbal threatening gestures; glances that can convey threatening messages.

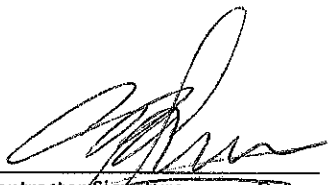
Physical bullying: Pushing, shoving, kicking, poking, tripping, assault or threat of physical assault, damage to a person's work area or property

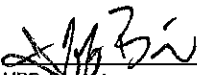
Verbal bullying: Slandering, ridiculing or maligning a person or his or her family; persistent name calling that is hurtful, insulting or humiliating; using a person as the butt of jokes; abusive and offensive remarks.

Individuals who believe they have experienced prohibited conduct, or who have concerns about such matters, should report their concerns in writing to a management staff, or the General Manager. Individuals should not feel obligated to report their complaints to their immediate supervisor first before bringing the matter to the attention of one of the other designated representatives identified above. The availability of this complaint procedure does not preclude Individuals who believe they are being subjected to bullying conduct from promptly advising the offender that his or her behavior is unwelcome and requesting that such behavior immediately stop.

Employees found in violation of this policy may be subject to disciplinary corrective action, up to and including termination. Independent contractors found to be in violation of this policy may be subject to contract cancellation.


Name:  Jeff Brier
Company: _____ (650) 341-4251
Phone: 650 346 8155 generalmanager@highlandsrec.ca.gov
Email Info: christplecgurr@yahoo.com


Contractor Signature _____ Date _____

 1-12-24
HRD Signature _____ Date _____

EXHIBITS A & B

Contract Term: Contract shall end on April 11, 2024. Contract may be renewed if Contractor and HRD mutually agree in writing.

Invoice: Invoicing by Contractor is required. Contractor shall provide HRD with an invoice indicating name, address, tax ID number, hours worked, rate and total amount due. Contractor shall provide such invoicing on at least a monthly basis.

Hourly Rates: \$140/hour. No benefits or other compensation.

Work: Serve as HRD General Manager on an interim basis, while HRD recruits a permanent General Manager. Maximum 20 hours/week.

Insurance: Professional and General Liability Coverage limits required for this Contractor's activity shall be \$1,000,000 per occurrence. Cost to be reimburse by HRD.

Required Licenses/ Certificates: Proof maintaining business entity separate from status as an individual providing services. (LLP, LLC, established sole proprietorship, etc.).

1733766.1



MEMORANDUM

Date: March 24, 2024
To: HRD Board of Directors
From: Meg Catmull, Assistant General Manager
Re: General Manager Recruiter Contract

BACKGROUND:

The District has been operating with an interim part time General Manager since January 12, 2024. At the January 9, 2024 Regular Board meeting, the Board designated Board Members Aquino and Ut to a General Manager Recruitment Ad Hoc Committee. At the February 13, 2024 Regular Board Meeting, the Board of Directors authorized the Interim General Manager to hire a recruiter for the purpose of recruiting a new General Manager.

DISCUSSION:

If negotiations with the Recruiter and General Manager Recruitment Ad Hoc Committee have been successful, the committee will present a contract for the Board to review at the March 24, 2024 Strategy Session.

FISCAL IMPACT:

Unknown- pending contract negotiations.

RECOMMENDATION:

The recommendation may be presented at the March 24, 2024 Special Meeting, pending the General Manager Recruitment Ad Hoc Committee of the Board.



MEMORANDUM

Date: March 24, 2024
To: HRD Board of Directors
From: Meg Catmull, Assistant General Manager
Re: Bookkeeper Position Reclassification to Fulltime RNE-1

BACKGROUND:

The Bookkeeper position is currently classified as a part time position within the District. The position was reclassified from full-time RNE-1 to part time in 2023. After review, it has been shown that the role requires full-time hours.

DISCUSSION:

To meet the needs of the District, the bookkeeper position is anticipated to work an average of 37.5-40 hours per week. This is in alignment with the previous bookkeeper's actual hours which averaged 37 hours per week in 2022 and the current bookkeeper's actual hours which averaged roughly 38 hours per week in 2023. Now that the bookkeeper has become acclimated to the regular daily, weekly, and monthly requirements of the position it has become clear that it is not feasible to complete the work required within the constraints of part-time hours.

Being that the position is anticipated to work an average of 37.5-40 hours per week on a consistent and ongoing basis, a full-time benefits classification would be most applicable for this position.

FISCAL IMPACT:

The primary costs associated with reclassifying a position from part-time to full-time would be the cost of benefits and the payment of additional hourly wages.

The District cost for benefits would depend on the employee's benefits elections and their age. Our two primary benefits providers are Principal and Kaiser Permanente. Kaiser could range \$397.65-1,516.68 per month which is age dependent and subject to change each plan year. Principal benefits would be approximately \$75-130 per month per employee, also subject to change slightly each plan year. Paid time off benefits such as Vacation, Floating Holiday, and Holiday pay would be dependent on pay rate; the approved range for the Bookkeeper position

is \$32.00-43.30/hour. RNE-1 employees are also eligible for CalPERS 457 plans with a District contribution of \$20 per pay period and Simple IRA matching up to 3%.

RECOMMENDATION:

To properly categorize the position and correctly classify the benefits for this position, it is recommended that the Board approve the reclassification of the Bookkeeper position to full-time RNE-1. This would put the Bookkeeper's benefits in alignment with other similar hourly full-time positions within the District.



MEMORANDUM

Date: March 24, 2024

To: HRD Board of Directors

From: Meg Catmull, Assistant General Manager

Re: Private Swim Lesson Instructor, Swim Team Coach & ASP Head Teacher
Benefits/Classification Recommendations

BACKGROUND

At the Regular Board of Directors Meeting on March 12, 2024 the Board approved a new Benefits Classification of RNE-3 for employees whose positions may not be classified as full-time but who work an average of more than 30 hours per week. The roles/employees currently not classified as full-time but who have recently been working an average of more than 30 hours per week are the Private Swim Lesson Instructor, Swim Team Coach, Bookkeeper and ASP Head Teachers. Information on the bookkeeper classification and recommendations is contained in a separate memorandum.

DISCUSSION:

Private Swim Lesson Instructor- A review and evaluation of duties and hours has been completed and this employee is scheduled for approximately 25 hours per week on an ongoing basis which would not meet the requirements for the RNE-3 classification. Retaining this staff member could be a challenge in the coming months as medical benefits are important to this employee.

Swim Team Coach- Due to CA Labor Law, the employee is unable to be reclassified as a contractor at this stage (see Attachment 1). A review and evaluation of duties and hours has been completed and given the hours for swim practices and swim meets, the employee will maintain RNE-3 benefits and status when applicable by working an average of more than 30 hours per week, per the policy. In conversations with the employee, they have expressed that keeping benefits, especially medical benefits, is something that is important to them.

ASP Head Teachers- The department is being directed to reduce the number of head teachers working 30+ hours per week down from three to two for the 2024-2025 School Year. The program does benefit from having two staff members who are able to consistently work a higher number of hours as this aids in the pickup of kindergarten children from the school and coverage during full-day camps. These two staff members would receive benefits per the RNE-3 policy.

RECOMMENDATION:

The recommendation is to allow the Swim Team Coach and ASP Head Teachers (as needed and as applicable- see discussion items above) to qualify as RNE-3. There is an additional recommendation to allow the private swim lesson instructor to qualify as RNE-3 should a staffing need arise for more than 30 hours per week of private swim lessons that the District is otherwise unable to staff.

FISCAL IMPACT

Approximate Annual Cost of RNE-3 Classified Employee Benefits*	
Medical	\$4,800-\$15,000
Dental	\$684.24
Vision	\$72.48
Life	\$54.00
A D & D	\$21.60
STD	\$220-\$320
LTD	\$110-\$200
Total	\$6,000-\$16,352.32
*Per year, per RNE-3 employee	

Annual RNE-3 Benefits Costs Per Employee Elections					
Department	Private Lesson Instructor	ASP Head Teacher	ASP Head Teacher	ASP Head Teacher	Swim Team Coach
Medical	Benefits Termed	\$ -	\$ 5,851.92	\$ 6,489.84	\$ 6,489.84
Dental		\$ -	\$ -	\$ 684.24	\$ 684.24
Vision		\$ -	\$ 72.48	\$ 72.48	\$ -
Life		\$ 54.00	\$ 54.00	\$ 54.00	\$ 54.00
A D & D		\$ 21.60	\$ 21.60	\$ 21.60	\$ 21.60
STD		\$ 306.96	\$ 271.56	\$ 227.28	\$ 306.96
LTD		\$ 151.44	\$ 133.92	\$ 112.08	\$ 151.44
Total		\$ 534.00	\$ 6,405.48	\$ 7,661.52	\$ 7,708.08

ATTACHMENTS:

Attachment 1: Independent Contractors

Independent contractor versus employee

▶ [español](#)

Free seminar for the Trucking/Motor Carrier Industry. Learn about AB 5 and how to determine if a worker is an independent contractor or employee. Join the Labor Commissioner and EDD on August 24 or September 13. Sign up today www.dir.ca.gov/dlse/Training.htm.

In September of 2019, Governor Newsom signed [Assembly Bill \(AB\) 5](#) into law. The new law addresses the “employment status” of workers when the hiring entity claims the worker is an independent contractor and not an employee.

1. Q. What is AB 5 and what does it do?

A. AB 5 is a bill the Governor signed into law in September 2019 addressing employment status when a hiring entity claims that the person it hired is an independent contractor. AB 5 requires the application of the “ABC test” to determine if workers in California are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the Industrial Welfare Commission (IWC) wage orders. The California Supreme Court first adopted the ABC test in *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903. Among other things, AB 5 and later AB 2257 added a new article to the Labor Code addressing these issues (sections 2775-2787).

2. Q. What is the ABC test?

A. Under the ABC test, a worker is considered an employee or an independent contractor, unless the hiring entity satisfies three of the following conditions:

- The worker is free from the control and direction of the hiring entity in connection with the performance of the work under the contract for the performance of the work and in fact;

How can we help you today?



- The worker performs work that is outside the usual course of the hiring entity’s business; and
- The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

3. Q. How do you apply the ABC test to worker relationships?

A. Below is a summary of the California Supreme Court’s explanation of how to apply the ABC test.

Part A: Is the worker free from the control and direction of the hiring entity in the performance of the work, both under the contract for the performance of the work and in fact?

- The hiring entity must establish that the worker is free of such control to satisfy part A of the ABC test. (Dynamex, 4 Cal.5th at 958.)
- A worker who is subject, either as a matter of contractual right or in actual practice, to the type and degree of control a business typically exercises over employees would be considered an employee. (Id.)
- Depending on the nature of the work and overall arrangement between the parties, a business need not control the precise manner or details of the work in order to be found to have maintained the necessary control that an employer ordinarily possesses over its employees. (Id.)

PART B: Does the worker perform work that is outside the usual course of the hiring entity’s business

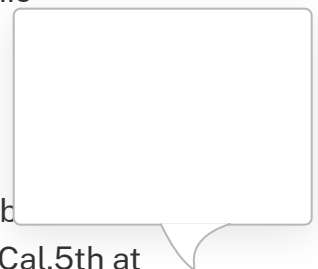
- The hiring entity must establish that the worker performs work that is outside the usual course of its business in order to satisfy part B of the ABC test. (Dynamex, 4 Cal.5th at 959.)
- Contracted workers who provide services in a role comparable to that of an existing employee will likely be viewed as working in the usual course of the hiring entity’s business. (Id.)
- Examples where services are not part of the hiring entity’s usual course of business:
 - When a retail store hires an outside plumber to repair a leak in a bathroom on its premises.



- When retail store hires an outside electrician to install a new electrical line. (Id.)
- Examples where services are part of the hiring entity’s usual course of business:
 - When a clothing manufacturing company hires work-at-home seamstresses to make dresses from cloth and patterns supplied by the company that will thereafter be sold by the company.
 - When a bakery hires cake decorators to work on a regular basis on its custom-designed cakes. (Id. at 959-960.)

PART C: Is the worker customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity?

- The hiring entity must prove that the worker is customarily and currently engaged in an independently established trade, occupation, or business. (Dynamex, 4 Cal.5th at 963.)
- The hiring entity cannot unilaterally determine a worker’s status simply by assigning the worker the label “independent contractor” or by requiring the worker, as a condition of hiring, to enter into a contract that designates the worker an independent contractor. (Dynamex, 4 Cal.5th at 962.)
- Part C requires that the independent business operation actually be in existence at the time the work is performed. The fact that it could come into existence in the future is not sufficient. (See Garcia v. Border Transportation Group, LLC (2018) 28 Cal.App.5th 558, 574.)
- An individual who independently has made the decision to go into business generally takes the usual steps to establish and promote that independent business. Examples of this include:
 - Incorporation, licensure, advertisements;
 - Routine offerings to provide the services of the independent business to the public or to a number of potential customers, and the like. (Dynamex, 4 Cal.5th at 962.)



- If an individual's work relies on a single employer, Part C is not met. For example, Part C was not satisfied where a taxi driver was required to hold a municipal permit that may only be used while that driver is employed by a specific taxi company. (See Garcia, 28 Cal.App.5th at 575.)

4. Q. Do AB 5 and Labor Code sections 2775 et seq. require use of the ABC test in all situations?

A. No. There are situations where the ABC test will not apply:

- Sometimes the Legislature or the Industrial Welfare Commission has defined the employment relationship in a specific way. In such cases, the ABC test will not otherwise apply to establish employee status or employer liability. Rather, the specific language contained in the IWC wage orders, the Labor Code, or Unemployment Insurance Code will remain in effect.
- Additionally, where a court determines the ABC test cannot apply for a reason other than an express exception, the Borello test, described in Question 5 below, will apply. For example, if a court were to determine in a particular case that the ABC test is preempted by an applicable federal law, the Borello test would be used.
- Finally, the ABC test may not apply for certain occupations and contracting relationships. See Question 7 below.

5. Q. What is the Borello test?

A. The California Supreme Court established the Borello test in S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations (1989) 48 Cal.3d 341. The test relies upon multiple factors to make that determination, including whether the potential employer has all necessary control over the manner and means of accomplishing the result desired, although such control need not be direct, actually exercised or detailed. This factor, which is not dispositive, must be considered along with other factors, which include:

1. Whether the worker performing services holds them out as being engaged in an occupation or business distinct from that of the employer;
2. Whether the work is a regular or integral part of the employer's business;



3. Whether the employer or the worker supplies the instrumentalities, tools, and the place for the worker doing the work;
4. Whether the worker has invested in the business, such as in the equipment or materials required by their task;
5. Whether the service provided requires a special skill;
6. The kind of occupation, and whether the work is usually done under the direction of the employer or by a specialist without supervision;
7. The worker's opportunity for profit or loss depending on their managerial skill;
8. The length of time for which the services are to be performed;
9. The degree of permanence of the working relationship;
10. The method of payment, whether by time or by the job;
11. Whether the worker hires their own employees;
12. Whether the employer has a right to fire at will or whether a termination gives rise to an action for breach of contract; and
13. Whether or not the worker and the potential employer believe they are creating an employer-employee relationship (this may be relevant, but the legal determination of employment status is not based on whether the parties believe they have an employer-employee relationship).

Borello is referred to as a “multifactor” test because it requires consideration of all potentially relevant facts – no single factor controls the determination. Courts have emphasized different factors in the multifactor test depending on the circumstances. For example, where the employer does not control the work details, an employer-employee relationship may be found if (1) the employer retains control over the operation as a whole, (2) the worker's duties are an integral part of the operation, and (3) the nature of the work makes detailed control unnecessary. (See *Cab Cooperative, Inc. v. Workers' Compensation Appeals Board* (1991) 226 Cal.App.3d 1288.)

As the Supreme Court has explained, Borello “emphasizes statutory purpose as the touchstone for deciding whether a particular category of workers should be considered employees

rather than independent contractors for purposes of social welfare legislation.” (Dynamex, 4 Cal.5th at 935.) The emphasis on statutory purpose “sets apart the Borello test for distinguishing employees from independent contractors from the [common law] standard . . . in which the control of details factor is given considerable weight.” (Id.)

6. Q. How does the ABC test compare to the Borello test?

A. Both the Borello test and the ABC test assume that the worker is an employee and the hiring entity must prove that the worker is an independent contractor.

However, the ABC test is designed to make it easier for both businesses and workers to determine in advance whether a worker is an independent contractor or an employee. In other words, it is aimed at being more predictable than the multifactor approach used under Borello.

Unlike the ABC test — in which the inability of the hiring entity to demonstrate any part of the three-part test means that the worker is not an independent contractor — under the Borello test, no single factor determines whether a worker is an employee or an independent contractor. As described above in Question 5, courts consider all potentially relevant factors on a case-by-case basis in light of the nature of the work, the overall arrangement between the parties and the purpose of the law.

7. Q. Do AB 5 and Labor Code sections 2775 et seq. require use of the ABC test to determine if a worker is an independent contractor for all occupations in California?

A. No. While the ABC test is the applicable test for most workers, for some occupations and industries Labor Code sections 2775 et seq. apply the Borello multifactor test, described above. For certain occupations, the Borello test applies without further requirements. However, for other occupations and industries the Borello test applies instead of the ABC test only after the hiring entity satisfies other requirements first. Finally, for certain real estate licensees and repossession agencies, standards under the California Business and Professions Code will continue to apply.

To summarize:

Occupations where the Borello test applies instead of the ABC test under Labor Code sections 2775 et seq.:

- Certain occupations in connection with creating, marketing, promoting, or distributing sound recordings or musical compositions
- Certain licensed insurance agents, brokers, and persons who provide 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
- Certain licensed physicians, surgeons, dentists, podiatrists, psychologists, or veterinarians
- Certain licensed attorneys, architects, landscape architects, engineers, private investigators and accountants
- Certain registered securities broker-dealers or investment advisers or their agents and representatives
- Certain direct salespersons
- Certain manufactured housing salespersons
- Certain licensed commercial fishers (only through December 31, 2025 unless extended by the Legislature)
- Certain newspaper distributors or carriers (only through December 31, 2024 unless extended by the Legislature)
- Certain persons engaged by an international exchange visitor program
- Certain competition judges
- Certain home inspectors, 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 9 of that code.

Occupations or contracting relationships where Labor Code sections 2775 et seq. requires that additional requirements must first be met in order to use the Borello test instead of the ABC test:

- Certain professional services contracts for marketing; human resources administration; travel agents; graphic design; grant writers; fine artists; enrolled agents licensed to practice before the IRS; payment processing agents; still photographers / photojournalists; videographers; photo editors to a digital content aggregator; freelance writers, translators, editors, copy editors, illustrators, or newspaper cartoonists; content contributors, advisors, producers, narrators, or cartographers for a journal, book, periodical, evaluation, other publication or educational, academic, or instructional work in any format or media; licensed barbers, cosmetologists, electrologists, estheticians, or manicurists (manicurists only through December 31, 2024); specialized performing arts Master Class Instructors, appraisers, registered professional foresters, and data aggregators, as defined. Borello applies to determine whether the individual is an employee of the hiring entity if initial requirements are met.
- Relationships between two individuals working on a single engagement event, defined as a stand-alone non-recurring event in a single location, or a series of events in the same location no more than once a week. Borello applies if initial requirements are met.
- Certain individuals performing work under a subcontract in the construction industry, including construction trucking (with certain specific conditions applicable to construction trucking only through December 31, 2024). Borello and Labor Code section 2750.5 apply to determine whether the individual is an employee of the contractor if initial requirements are met.
- Certain service providers who are referred to customers through referral agencies to provide services including, but not limited to, graphic design, web design, photography, tutoring, consulting, youth sports coaching, caddying, wedding or event planning, services provided by wedding event vendors, minor home repair, moving, errands, furniture assembly, animal services, dog walking, dog grooming, picture hanging, pool cleaning, yard cleanup, and interpreting. Borello applies to determine whether the service

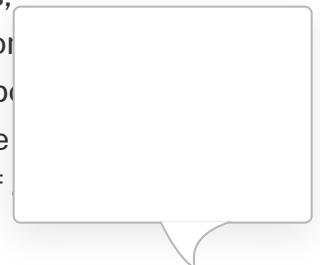
provider is an employee of the referral agency if initial requirements are met.

- The following services are excluded: services provided in an industry designated as a high hazard industry, janitorial, delivery, courier, transportation, trucking, agricultural labor, retail, logging, in-home care, or construction services other than minor home repair.
- Certain individuals performing services pursuant to a third party's contract with a motor club to provide motor club services. Borello applies to determine whether the individual is an employee of the motor club if initial requirements are met.
- Certain bona fide business-to-business contracting relationships. Borello applies to determine whether the business providing services is an employee of the business contracting for the services if initial requirements are met.

For two specific industries, special rules under Labor Code section 2778(b) require examination under the Business and Professions Code:

- Certain real estate licensees, for whom the test of employee or independent contractor status is governed by section 10032(b) of the Business and Professions Code. (If that section is not applicable, then Borello is the applicable test for purposes of the Labor Code, except ABC will be the applicable test for purposes of workers' compensation as of July 1, 2020.)
- Certain repossession agencies, for which the determination of employee or independent contractor status is governed by Section 7500.2 of the Business and Professions Code.

The exemptions from the ABC test for certain industries, occupations, or contracting relationships may involve some complicated rules and criteria which are not set forth above. Employers and workers should seek independent advice or counsel if they have questions about the applicability of an exemption to their particular case.



8. Q. When do the changes from AB 5 become effective?

- A. The law became effective January 1, 2020. However, different timeframes apply depending on the circumstances:
- **For purposes of IWC wage orders and violations of the Labor Code relating to wage orders:** The ABC test was already in effect for these purposes (as explained in a Labor Commissioner’s Office [Opinion Letter](#)) prior to 2020 due to the Dynamex Supreme Court decision. AB 5 is intended to codify — meaning write into the Labor Code — the ABC test from Dynamex, which has been the law in California since the opinion was issued in 2018.

Recognizing that the ABC test already applies to certain claims (wage order claims and Labor Code claims relating to wage orders) that pre-date January 1, 2020, section 2785 also provides that the exemptions from the test for certain occupations (see Question 7) apply to these claims. The hiring entity would not be required to use the ABC test with respect to these claims if it establishes that the job or occupation falls within one of the exemptions - including if the claim involves work performed before January 1, 2020.

- **For purposes of all other Labor Code provisions not relating to IWC wage orders:** The ABC test must be used for these purposes beginning January 1, 2020 (unless an exemption from the test applies for certain occupations – see Question 7).
- **For purposes of the Unemployment Insurance Code, including determining eligibility for Unemployment Insurance, Disability Insurance, and Paid Family Leave benefits:** The ABC test must be used for purposes of the Unemployment Insurance Code beginning January 1, 2020. This change will affect how the Employment Development Department (“EDD”) determines eligibility for Unemployment Insurance, Disability Insurance, or Paid Family Leave which considers how much a worker earns as an employee during “base periods.” In making this determination, EDD will use the ABC test to determine whether the worker is an employee or an independent contractor for work performed on or after January 1, 2020. (unless an exemption from the test applies for certain occupations — see Question 7).

For more information on how the EDD uses base periods to determine eligibility for these benefits, please see [How Unemployment Benefits Are Computed \(DE 8714AB\)](#) or [Calculating Disability Insurance Benefit Amounts](#) (for Disability Insurance and Paid Family Leave benefits).

- **For purposes of Workers' Compensation Insurance:** The ABC test must be used for this purpose beginning July 1, 2020. This means that for a worker who experiences a compensable injury on or after this date, the ABC test will apply to determine whether the worker is an employee or independent contractor (unless an exemption from the test applies for certain occupations — see Question 7).

9. **Q. Does AB 5 mean that workers will automatically be reclassified as employees instead of independent contractors?**
- A. No. Labor Code section 2775 starts with an assumption that all workers are employees, and provides the test that a hiring entity would have to satisfy to prove that the workers are independent contractors. Employers may wish to evaluate their working arrangements and ensure they are appropriately classifying their workers as required under the law, and workers may file a claim if they believe they have been misclassified (see Question 15).
10. **Q. If a hiring entity has a worker sign an agreement stating that the worker is an independent contractor, does not make payroll deductions or withholdings for taxes or Social Security for the worker, and at the end of the year provides the worker with an IRS Form 1099 rather than a W-2, does this mean the worker is an independent contractor?**
- A. No. Being labeled an independent contractor, being required to sign an agreement stating that one is an independent contractor, or being paid as an independent contractor (that is, without payroll deductions and with income reported by an IRS Form 1099 rather than a W-2), is not what determines employment status. The ABC test — or where appropriate, the Borello test or the common law standard under Labor Code sections 2775 et seq. (see Questions 2, 5, and 7 above) — are used to determine employment status. An employer cannot change a person's status from that of an employee to one of an independent contractor by requiring a

written agreement to that effect or by giving them an IRS Form 1099 instead of a W-2.

11. **Q. Are there penalties for misclassifying workers as independent contractors?**

A. Yes. In addition to penalties that may be assessed for wage violations associated with a worker being misclassified as an independent contractor, there are civil penalties for willful misclassification. Under Labor Code section 226.8, which prohibits the willful misclassification of individuals as independent contractors, there are civil penalties of between \$5,000 and \$25,000 per violation. Willful misclassification is defined as voluntarily and knowingly misclassifying an employee as an independent contractor.

12. **Q. What difference does it make if a worker is an employee rather than an independent contractor?**

A. California's wage and hour laws (e.g., minimum wage, overtime, meal periods and rest breaks, etc.), workplace safety laws, and retaliation laws protect employees, but not independent contractors. Additionally, employees can go to state agencies such as the Labor Commissioner's Office to seek enforcement of these laws, whereas independent contractors must resolve their disputes or enforce their rights under their contracts through other means.


13. **Q. Do AB 5 and Labor Code sections 2775 et seq apply to public entities?**

A. Yes. However, many provisions of the Labor Code and most sections of the IWC Wage Orders do not apply to public employees. (See, e.g., *Johnson v. Arvin-Edison Water Storage District* (2009) 174 Cal.App.4th 729.) AB 5 does not change that

14. **Q. Do AB 5 and Labor Code sections 2775 et seq. apply to volunteers and interns?**

A. No. AB 5 and the ABC test apply to the question whether someone is an employee or an independent contractor. There are separate standards that apply to the question whether someone is an employee rather than a volunteer or intern. (Please see the


Division of Labor Standards Enforcement Policy and Interpretations [Manual](#) and [Opinion Letters](#) for more information.)

15. **Q. What should workers do if their employer keeps them under independent contractor status when they think they should be considered an employee?**
- A. A worker can file one or more of the following:
- A [wage claim](#) with the Labor Commissioner’s Office
 - A [Report of Labor Law Violation](#) with the Labor Commissioner’s Office for widespread violations affecting a group of workers
 - A lawsuit in court
16. **Q. Are there protections if a worker is retaliated against because the worker complains about being misclassified and losing out on employee rights like being paid overtime?**
- A. Yes. Workers who face discrimination or retaliation in any manner whatsoever — for example, if the employer fires a worker because they complain about being classified as an independent contractor or not being paid overtime, or because the worker filed a claim or told the employer that they intend to file a claim with the Labor Commissioner — can file a discrimination/retaliation complaint with the Labor Commissioner’s Office. However, it is important to note that the Labor Commissioner does not have jurisdiction over most workers who are in fact independent contractors. The worker can also file a lawsuit in court against the employer instead of filing a complaint first with the Labor Commissioner’s Office.
17. **Q. Is there a grace period for employers to get into compliance with their payroll tax obligations after the effective date of AB 5?**
- A. No. Employers must pay any payroll taxes that are due by the employees they have as of January 1, 2020. If employers have not yet registered with EDD as an employing unit, they are encouraged to register and begin filing and paying their payroll taxes (based on established due dates per calendar quarter) through EDD’s online [e-Services for Business](#) .
18. **Q. How are employment status determinations made by EDD for purposes of Unemployment Insurance or State Disability**

Insurance benefits?

- A. EDD may make employment determinations through an employment tax audit or through determining a claim for Unemployment Insurance (UI) or State Disability Insurance (SDI) benefits. For work performed prior to January 1, 2020, employment status will be determined by the existing provisions of Unemployment Insurance Code section 621(b), which requires EDD to use the Borello test. For work performed on or after January 1, 2020, EDD will determine employment status based on the tests provided in AB 5.
19. Q. Do existing statutory exclusions to employment under the Unemployment Insurance Code remain in effect after the passage of AB 5?
- A. The Unemployment Insurance Code excludes certain types of services from the Code's definition of employment, which affects who is eligible for Unemployment Insurance benefits. These exclusions remain in effect after AB 5.
20. Q. What risks do employers face under the Unemployment Insurance Code for not properly classifying employees?
- A. If EDD finds that workers are misclassified as independent contractor(s) when they should be classified as employee(s), employers face significant risks related to failing to comply with their obligations under the Unemployment Insurance Code. These risks include under-paying their taxes and having to pay their employees' share of payroll taxes, both of which may result in incurring penalties and interest.
21. Q. What are the tax implications if a worker is classified as an independent contractor for federal tax purposes and employee for California tax purposes?
- A. The Franchise Tax Board, the state entity that administers personal income and franchise tax, has provided [guidance on how to answer this question its webpage](#).
22. Q. Can workers be considered employees under California law if they are not considered employees under federal law?

- A. Yes. Workers may be considered employees and have protections under California law, even if they are determined not to be employees under federal law. This is because the tests used to determine employee status under California law differ from the tests used under federal law, such as the federal Fair Labor Standards Act (FLSA).

For more information, please visit [*the Labor & Workforce Development Agency Employment Status Portal*](#) .

Updated: January 2023



STRATEGY SESSION GOALS

Board Goals in Black

GM Goals in Green

Facilities (Fit for Future)

- Pool – “Improve pool operations and reduce closures through targeted investments in facilities and enhancing services”
 - Support/oversee pool staff in updating facility assessment for pool and develop cost estimates for improvements (Meg/Dan)
 - Measurement:
 - Completed assessment by end of FY
 - Support pool staff in creating a more welcoming and fun environment, while reducing costs/frequency of closures (maintenance) (JB/Meg/Dan)
 - Measurement:
 - Participant Surveys
 - Reduction in closure times, repair needs, repair/maintenance costs
 - Increase in facility use
 - Added attraction: Climbing Walls
- IT – “Modernize IT systems and develop long-term plan for managing IT infrastructure”
 - Work with Ashu to review + inventory current IT machines/systems, identifying hardware/software needs and data storage/access updates and recommendations (JB/Meg)
 - Measurement:
 - All machines updated
 - One Drive Organization
 - Assess and determine need for update to phone system
- “Finish stairs and deck improvement project”
 - Oversee contractor(s) + manage project (JB)
 - Measurement:
 - Completed project by November 2023

Finances

- “Meet revenue and OpEx goals (in line w/ FY 2023-24 Budget)”
 - Support and oversee staff’s budget development and fiscal practices/actions to stay within budget guidelines
 - Research and consider alternate forms of funding
 - Measurement:
 - At or above revenue projections
 - At or below expense projections

- “Modernize accounting and AP/AR systems”
 - Support and oversee staff’s progress with learning/owning current systems/practices and assessing/making suggestions for modernization (JB/Bea)
 - Measurement:
 - Maintain current level of accounting/bookkeeping quality and reliability
 - Identify and incorporate more efficient accounting (AP/AR, reporting, etc.) Practices
 - Timeline will depend on how long it takes new staff to learn and get comfortable with previous practices (they are taking notes for change throughout the training and learning process – making a few “tweaks” along the way, but nothing significant until after training/learning process is completed)

- “Create Cost Allocation Model”
 - Support staff in the process of tracking job responsibilities and expenses to determine “normal” % distribution of time/funds by department (Meg/Cynthia)
 - Measurement:
 - Communicate strategy for developing cost allocation model by Quarter 3 of FY
 - List categories of shared expenses and how will we divide (not exact %’s, but how will division be determined)
 - Figure out if it’s worth it to proceed

Staffing (People + Culture)

- “Formalize staff development and recognition plan”
 - Support and oversee work group to formalize professional development and recognition plan (JB/Meg/Mike/Cynthia)
 - Measurement:
 - Completed Employee Manual
 - Merit System in place
 - Ranges updated
 - Steps/Tiers set
 - Seasonal review templates/performance data created/used
 - Consistent orientation process
 - Staff Surveys
 - Timeline for each varies – incorporated by Q2 (at the latest) of FY
 - Personal
 - Continue MS Program coursework
 - Attend Regional Conference/Seminar

Culture/Community (People + Culture)

- “Increase opportunity for/improve engagement (participation) in community engagement (style) events”
 - Task staff with creating (and/or incorporating) 2 new community engagement style events and begin an official volunteer program (Meg/Rec Coordinator)
 - Measurement
 - 2 new events
 - Volunteer Program development

Programming/Events (People + Culture)

- “Develop more inclusive offerings across age and interest (the Place to Be!)”
 - Start with complete Program Assessment/Review to assess needs (Meg/Rec Coordinator)
 - Measurement:
 - Reduction in cancelled programs (due to low enrollment/interest)
 - Broaden the reach of some current offerings to include access for different ages (build on success of other age groups – target “associations” of those age groups)
 - Participant Surveys