Sex Workers as Workers: Evaluating the Impact of California’s A.B. 5 on Erotic Dancers

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**Abstract**

*In 2019, California enacted A.B. 5, which made it more difficult for employers to classify their workers as independent contractors rather than employees. The new law, which codified and expanded the scope of the so-called “ABC” test articulated by the California Supreme Court the preceding year in Dynamex v. Superior Court, forced the re-classification of many workers formerly classified as independent contractors, not always to the workers’ preference. One group affected by the new law is erotic dancers, who have traditionally been classified as independent contractors. As A.B. 5 was being debated, dancers split publicly on the issue, dividing into pro-independent contractor and pro-employee/A.B. 5 camps. The pro-independent contractor camp expressed concerns about the impact of employee status on dancers' privacy, work flexibility, and earnings. In contrast, the pro-employee camp welcomed the opportunity to acquire more rights in the workplace, including the right to unionize.*

*To evaluate the impact of A.B. 5 on erotic dancers, I interviewed more than 50 dancers at 12 clubs in southern California (primarily Los Angeles and Orange counties) about their work experiences before and after re-classification. Fortunately, A.B. 5 was enacted recently enough that there are many dancers with experience as both. The interviews attempted to evaluate the changes (if any) to dancers’ work lives along three axes: privacy, flexibility, and profits. While A.B. 5 has impacted dancers unequally, on the whole, neither the best nor worst forecasts have been realized. The most important benefit of A.B. 5, I suggest, is its recognition of dancers as workers. The question moving forward is how to build upon this reconceptualization of dancers so that industry-specific regulation can focus on the concerns of dancers as workers, rather than as potential victims or criminals.*

Introduction

In 2019, California enacted A.B. 5,[[1]](#footnote-1) which codified and expanded a new, more restrictive test for classifying workers as independent contractors created by the California Supreme Court the year before in *Dynamex Operations West v. Superior Court*.[[2]](#footnote-2) *Dynamex* is a third-generation test for classifying workers as independent contractors. It replaced the multi-factor *Borello* test (which itself replaced the earlier “control” test) with a three-factor, or “ABC,” test. [[3]](#footnote-3) As Alexander Kondo and Abraham Singer have explained, the ABC test “is dramatically more inclusive than either the control test or the economic realities test and has the potential to alter the scope of who is covered by employment protections quite significantly.”[[4]](#footnote-4) More specifically, the ABC test places the burden on the employer to prove three elements to classify a worker as an independent contractor:

(A) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for such work and in fact; (B) that the worker performs work that is outside the usual course of the hiring entity’s business; and (C) that 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.[[5]](#footnote-5)

The ABC test made it difficult for employers to classify their workers as “independent contractors,” which many had been doing to keep their costs down and limit the scope of their liability in potential tort claims. A.B. 5 did not simply codify *Dynamex*, which only applied to wage orders by the Industrial Welfare Commission; it expanded the ABC test to a wide range of employment benefits, including unemployment insurance and workers’ compensation. As the legislature explained in A.B. 5, “It is the intent of the Legislature in enacting this act to ensure workers who are currently exploited by being misclassified as independent contractors instead of recognized as employees have the basic rights and protections they deserve under the law, including a minimum wage, workers’ compensation if they are injured on the job, unemployment insurance, paid sick leave, and paid family leave.”[[6]](#footnote-6)

Although targeted toward new “gig” workers, like Uber and Lyft drivers, A.B. 5 caught various types of workers within its sweep, not all of whom have appreciated the mandatory re-classification.[[7]](#footnote-7) One group of workers affected by A.B. 5 is erotic dancers, who have long been classified as independent contractors in California and other states. Almost immediately, a divide among dancers over re-classification opened up.

In February 2019, after *Dynamex* but before A.B. 5 was enacted, porn actress and former stripper Stormy Daniels wrote an Op-Ed for the *Los Angeles Times* arguing *against* the re-classification of erotic dancers from independent contractors to employees.[[8]](#footnote-8) Daniels emphasized the anonymity, flexibility, and independence that, in her experience, were the chief benefits of independent contractor status for dancers. As independent contractors, she wrote, dancers “set their own hours. They show up for work on the days they are able to, allowing them to give priority to things like writing a term paper, studying for a test or putting their children to bed at night.”[[9]](#footnote-9) Moreover, “We move from club to club, going where the money is best.”[[10]](#footnote-10) This flexibility within and between workplaces was the basis for dancers’ independence. As independent contractors, they can resist pressure from management in the performance of their work. “If we are classified as employees, club managers would be empowered to dictate those conditions.”[[11]](#footnote-11) For instance, she explained, “Employers might require us to give free nude performances for customers we don't feel comfortable with. These are highly personal decisions, and the power to make them should be exclusively in the hands of dancers.”[[12]](#footnote-12) According to Daniels, employee status would also undermine the anonymity that so many dancers desire to be able to work in the industry. As a stigma surrounds sex work, dancers often keep their work from their friends and families. Filling out employment forms would give the club and the government “detailed personal information about myself.”[[13]](#footnote-13) She thus urged the state legislature to “undo the damage imposed by the *Dynamex* standard on exotic dancers.”[[14]](#footnote-14) Although not mentioned in the op-ed, Daniels was, and remains at the time of this writing, a spokesperson for Deja Vu, an international strip club chain.[[15]](#footnote-15) At that time, Deja Vu was involved in a number of lawsuits involving the misclassification of its dancers.[[16]](#footnote-16) So there was a very real question about whether Daniels was genuinely speaking for herself as a dancer or for the company and its interests.

Around the same time as Daniels’ Op-Ed, a friend of mine who was working as a dancer at a Deja Vu club in southern California decided that she was going to quit dancing after her manager informed her that she was going to be re-classified as an employee. Like Daniels (although she had not read Daniels’ Op-Ed), she emphasized the anonymity, flexibility, and independence that independent contractor status provided for her. As an independent contractor, she told me, she could tell the managers to “fuck off” if they wanted her to do something she did not want to do. For instance, she often made enough money just from her stage shows so that she did not need to do many, if any, lap dances or private shows. But the club did not make any money from her stage shows. If she was spending too much time in the backroom rather than on the floor, and a manager wanted her on the floor giving private shows, she felt that she had the power to resist. Additionally, she did not want any evidence to exist of her being a stripper, which she felt would be compromised by the documentation requirements for employees.[[17]](#footnote-17) Her story suggests that Daniels was expressing a dancer’s viewpoint.

At the other end of the public debate was Antonia Crane, co-founder of Soldiers of Pole, an organization focused on unionizing dancers.[[18]](#footnote-18) For Crane, re-classification means the opportunity to organize. In an interview with *Los Angeleno*, Crane explained that “Our glittering femme workforce is unmuzzled from ‘Independent Contractor’ status, which means we are free to associate, commiserate and gather, earn minimum wage and work reasonable hours and receive health insurance and workers comp. Better yet, we can form a union where we have the power to negotiate for better.”[[19]](#footnote-19) Like Daniels, Crane emphasized flexibility as a principal attraction of the work. “As strippers, we want to be free to work when we need money to support our lives.”[[20]](#footnote-20) But for Crane, that flexibility, and the independence that flows from it, can be achieved only through collective action, which is possible only when dancers are classified as employees.[[21]](#footnote-21) Somewhat ironically, re-classification has made unionization more urgent, as clubs have “retaliated” against dancers through “financial violence,” such as arbitration agreements, the release of claims forms, house fees, and increasing the clubs’ percentage of the splits with dancers for each dance.[[22]](#footnote-22) Re-classification for Crane, then, is simply a starting point, an opening for dancers to acquire full rights in the workplace, primarily through unionization.[[23]](#footnote-23)

The media has grabbed onto the Daniels-Crane divide and predictably framed it in dyadic terms.[[24]](#footnote-24) Dancers are framed as either pro-independent contractor or pro-employee status. However, focusing solely on the public debate between dancers can obscure the views of dancers who are not engaged in, or in many cases even aware of, this public debate. We must question, at least at the outset, whether these are the only possible viewpoints. We need to know more about the lived work experiences of dancers both as independent contractors and employees. A.B. 5 offers an opportunity to do just that. The re-classification of erotic dancers after A.B. 5 is recent enough that there are many dancers who have, or have had, experience as both independent contractors and as employees.

To get to this lived work experience, I interviewed over fifty dancers at numerous strip clubs in southern California, mostly in Los Angeles and Orange counties. Many dancers had experience as both independent contractors and as employees, and many had experience as only employees. Both sets of dancers were full of insight. While many who had worked as independent contractors preferred that status, those with experience only as employees generally had no complaints about that status. But their bare preferences tell us little about how A.B. 5 has impacted dancers. Two key, if somewhat unsurprising, conclusions drawn from this study are that (a) A.B. 5 has impacted dancers unevenly, and (b) dancers generally do not understand the full complement of rights they now enjoy as employees. In some cases, dancers have no idea what re-classification means for them as workers.

With respect to the concerns about anonymity, flexibility, and independence that Stormy Daniels raised, the story is complicated, but the worst of her predictions were not revealed in the interviews for this study. Dancers’ lived work experience varies considerably, as dancers seek different things from their work. For some, dancing is a permanent, full-time job. For others, it’s a temporary job (sometimes measured in years) to help the dancer achieve other employment goals, such as owning a business. For others still, it is a part-time gig to earn extra money. There are dancers who are higher-earners and those who are lower-earners. Some are on the economic margins of society, while others are living relatively comfortably. There are high school dropouts, college graduates, law students, married women and divorcees, single unattached women and single mothers, business owners, and McDonald’s workers. The youngest woman I interviewed was 19, while the oldest was 50. While documenting the entire range of the dancers’ lived work experiences is beyond the scope of this study, acknowledging this variability is important for understanding the impact of A.B. 5 on dancers’ work lives, and should shape how regulators move forward as they think about how to continue to improve the working lives of dancers.

**I. The Road to Re-Classification: From the Right to Control Test to A.B. 5**

On one level, A.B. 5 did a simple thing: it codified the California Supreme Court’s test in *Dynamex*, which departed from an earlier test it had developed in *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations*.[[25]](#footnote-25) *Borello* itself was a reform of the earlier common law “control” test, which was created to address the problem of vicarious tort liability for employers in the late nineteenth and early twentieth centuries.[[26]](#footnote-26) As labor regulations became more common, placing greater regulatory responsibilities upon employers, courts developed more nuanced tests to distinguish between employees and independent contractors. *Borello*’s multi-factor test was developed in response to the rapid rise of the service industry in the second half of the 20th century.[[27]](#footnote-27) By 2018, however, the gig economy, especially that portion based upon platform apps, had put pressure upon the *Borello* test; the factors made it relatively easy for employers to classify workers as independent contractors who probably should have been classified as employees. Dynamex was intended to foreclose what the court saw as misuse or abuse of the *Borello* test.[[28]](#footnote-28)

Independent contractor status was originally developed to deal with employer tort liability. Employers were not vicariously liable for independent contractors as they were for employees.[[29]](#footnote-29) As Roscoe Steffen explained, “The description … runs in terms of ‘control,’ a person who undertakes to complete a specified job according to his own methods and without being subject to the control of his employer as to the means of doing the work is an independent contractor.”[[30]](#footnote-30) Steffen predicted that courts would change the definition of “independent contractor” in order to bring workers within workers’ compensation and other employee safety and benefits laws.[[31]](#footnote-31) But California continued to use the “control of details” test even as it considered the independent contractor-employee distinction in the context of social welfare legislation.[[32]](#footnote-32) As the Court explained in *Tieberg v. Unemployment Insurance Appeals Board* (1970), “the principle test” was whether the employer “has the right to control the manner and means of accomplishing the result desired.”[[33]](#footnote-33) Even in these cases, however, the courts began to chip away at the control test by adding “secondary factors” for courts to consider.[[34]](#footnote-34)

In *Borello*, the California Supreme Court departed clearly from the right to control test for purposes of social welfare legislation. The Court noted that the control test had originally been developed to deal with vicarious liability, but that the definition of employment was not limited to the common law conceptions.[[35]](#footnote-35) Instead, it was capable of statutory redefinition.[[36]](#footnote-36) The Court then moved the “secondary factors” to primary status as a fact-intensive ad hoc test.[[37]](#footnote-37) “In sum,” the California Supreme Court explained in *Dynamex*, “the *Borello* court concluded that in determining whether a worker should properly be classified as a covered employee or an excluded independent contractor with deference to the purposes and intended reach of the remedial statute at issue, it is permissible to consider all of the various factors set forth in prior California cases, in Labor Code section 2750.5, and in out-of-state cases adopting the six-factor test.”[[38]](#footnote-38)

*Borello*’s more nuanced approach, however, created uncertainty in the gig economy, where businesses hiring “gig” workers sought to classify them as independent contractors to avoid labor costs and payroll tax liability.[[39]](#footnote-39) As the *Dynamex* court explained, “if a worker should properly be classified as an employee, the hiring business bears the responsibility of paying federal Social Security and payroll taxes, unemployment insurance taxes and state employment taxes, providing worker’s compensation, and … complying with numerous state and federal statutes and regulations governing wages, hours, and working conditions of employees.”[[40]](#footnote-40) *Borello*’s factors made it possible for employers to rely upon any one of eight factors to classify its workers as independent contractors, however insignificant or tangential that factor may have been to the actual work relationship.[[41]](#footnote-41) Recognizing this problem, the *Dynamex* court decided to follow other jurisdictions that had developed the ABC test to minimize both confusion and evasion.

As Alexander Kondo and Abraham Singer have explained, the ABC test “is dramatically more inclusive than either the control test or the economic realities test and has the potential to alter the scope of who is covered by employment protections quite significantly.”[[42]](#footnote-42) The ABC test dispenses with factors and places the burden on the employer to prove three elements to classify a worker as an independent contractor:

(A) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for such work and in fact; (B) that the worker performs work that is outside the usual course of the hiring entity’s business; and (C) that 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.[[43]](#footnote-43)

*Dynamex* thus addresses the problems of hirers relying upon a single factor as the basis for classifying its workers as independent contractors. *Dynamex*’s chief limitation, at least from the perspective of employee rights, was that its protective sweep was limited to wage orders by California’s Industrial Welfare Commission.

Recognizing *Dynamex*’s limitations, the California legislature enacted Assembly Bill 5, which codified and extended its holding. The California legislature adopted the Supreme Court’s policies behind the revised test. However, its purported larger concern is “the erosion of the middle class and the rise of income inequality,” which it attributed in part to the misclassification of workers as independent contractors.[[44]](#footnote-44) The consequences of misclassification, the legislature determined, have been the loss of “significant workplace protections, the unfairness to employers who must compete with companies that misclassify, and the loss to the state of needed revenue from companies that use misclassification to avoid obligations such as payroll taxes, payment of premiums for workers’ compensation, Social Security, unemployment, and disability insurance.”[[45]](#footnote-45)

A.B. 5 did not, then, simply codify *Dynamex*; it used the ABC test to and thus extend a wider range of employment benefits, including unemployment insurance and workers’ compensation. A.B. 5 did not expressly determine that certain workers were or were not independent contractors. Rather, it determined that the ABC test was the main test for making that determination. Workers exempted from A.B. 5 are not automatically independent contractors. Rather, their categorization depends upon the *Borello* test. But, the ultimate result of A.B. 5 has been to classify workers as employees unless they fall into one of the numerous exceptions.

The response to A.B. 5 by many independent contractors subject to re-classification was critical. Journalists have been among those most reported on for their opposition to the new law. Free-lance journalists are concerned with the loss of flexibility in their work or the loss of work entirely, as employers were not going to bring them on as employees.[[46]](#footnote-46) On the employer side, Uber and Lyft went so far as to put the re-classification question to the voters in a state ballot initiative, Proposition 22.[[47]](#footnote-47) The ride-share companies invested millions of dollars in support of the initiative, which included advertisements of Uber and Lyft drivers saying that they preferred to be independent contractors because of the scheduling flexibility it provided, without ever explaining why flexibility would be threatened by A.B. 5.[[48]](#footnote-48) The act itself states that “[n]othing in this act is intended to diminish the flexibility of employees to work part-time or intermittent schedules or to work for multiple employers.”[[49]](#footnote-49) Uber and Lyft won, as the voters approved the initiative.[[50]](#footnote-50) However, after the passage of Proposition 22, a California court struck down the initiative as unconstitutional after it was challenged by aggrieved drivers.[[51]](#footnote-51)

Unlike other types of jobs in the gig economy, erotic dancers did not need the ABC test to be categorized as employees. Erotic dancers have been winning misclassification lawsuits for decades under the more nuanced tests.[[52]](#footnote-52) The lawsuits, however, had little effect on re-classifying dancers. The clubs simply paid the damages and continued business as usual. What A.B. 5 did for dancers was to make it unnecessary to litigate the question of classification and to extend the benefits of employee status beyond wages and hours. To my knowledge, Deja Vu was the only club to re-classify dancers as employees between *Dynamex* and the enactment of A.B. 5. At least one of its clubs, in City of Industry (now defunct), lost a slew of dancers as a result. But since A.B. 5, most clubs in southern California, including all of the clubs I visited, have reclassified their dancers. Some dancers I interviewed reported that they had worked at clubs that let the dancers choose their classification status.[[53]](#footnote-53) One dancer, for instance, mentioned that her former club let the dancer choose, while her current club “kind of force you” to be employees.[[54]](#footnote-54) All the dancers interviewed for this study, however, reported that they were currently classified as employees by the club at which I interviewed them.

**II. The Interviewing Process**

Two common problems with doing research with sex workers are access and trust. In order to gain access, some researchers have turned to participant observation.[[55]](#footnote-55) That was not a real option for me. I could not be a dancer, nor did I have the interest in, or time to, work a front-door job, which would not have necessarily given me the access I needed. One female researcher who studied erotic dancers did so with the permission of the clubs.[[56]](#footnote-56) However, as a woman, access to clubs can be difficult. It is not uncommon for clubs to require women to have an escort to enter the club, as clubs want to avoid the “jealous girlfriend” problem.[[57]](#footnote-57) Female researchers have been denied access to the clubs as a single woman.[[58]](#footnote-58) As a male researcher, I had no problems with access. I simply paid the entrance fee and struck up conversations with dancers. Occasionally, however, I had problems with trust.

Many dancers I spoke with were happy to tell their stories and were diligent about making sure that they answered all my questions. Part of the reason is that dancers are already quite comfortable striking up conversations with customers. When I told them I was doing work on dancer rights, they often opened up about their experiences. Moreover, I did not ask any questions about the sexual aspects of their work, focusing solely on workplace issues, as well as tangential questions about how they found their way into dancing. Occasionally, a dancer hesitated in answering questions. When I asked one dancer what the dance splits were between the club, the dancer, she responded, “I don’t think I’m supposed to tell you that.”[[59]](#footnote-59) I responded that that was fine, and if she felt uncomfortable answering any other questions to just say so. Other dancers may have avoided this by saying that they did not know the answer. Yet, some dancers did not hold back in any way. One dancer started chanting playfully, “Shut ‘em down! Shut ‘em down!” as I wrote down some of her complaints about her club.[[60]](#footnote-60)

But this experience also illustrates another trust problem that did arise on occasion, which is that some dancers suspected that I was not a law professor doing research, but a regulator, or perhaps even a club spy. For instance, one dancer recognized me a couple of weeks after I interviewed her. She said she had just been thinking about me and whether I was actually a law professor. I confirmed that I was who I told her I was, and that seemed to be good enough. After requesting a follow-up interview with another dancer, she expressed surprise that my project was legitimate, telling me that she thought I was simply giving her a line. I was similarly surprised because she had been so forthcoming in our initial interview. So trust could have been more of a problem than it initially appeared.

Generally, I took a passive approach to interviewing dancers. I tended to go to the clubs early in the night shift, or during the day shift, when there were usually fewer customers.[[61]](#footnote-61) I wanted to mitigate interfering with dancers’ earning opportunities as much as possible. I also chose to wait for dancers to approach me and strike up a conversation. I never approached a dancer to initiate an interview unless we were already acquaintances. Even if a dancer approached me, I let the conversation develop as naturally as possible. Often, an interaction did not lead to an interview. Some dancers would simply ask if I wanted a dance. When I said “no,” they would move on to another customer.

During conversations with dancers, I waited for the dancer to ask what I did for a living. At that point, I would tell her I was a law professor. Again, this did not always lead to an interview. Sometimes, the dancer would begin telling me a story about a legal problem she was involved in. One dancer got miffed at me when, after telling me a story about a criminal matter she was involved in, I told her that criminal law was not my field. Our conversation ended shortly after that. But if a dancer asked me what I did as a law professor, I took that as an opportunity to tell them about the project. Usually, this opened the door to an interview.

After a few clumsy attempts to describe the project, I decided the easiest and quickest way to explain it was as a study of “stripper rights.” That would lead the dancer to inquire further, at which point I explained that I was interested in her experience as a worker, especially if she had experience as both an independent contractor and as an employee. I would then ask the dancer whether she would be willing to let me interview her, explaining to her that her participation would be anonymous. No dancer flat-out declined at that point. Some, however, said they would consent to the interview only if I got a dance with them. Such *quid pro quo* requests were rare. More common was the dancer who would ask for a dance after the interview. I always declined. However, since I was interviewing dancers at their work while they were working, I usually tipped them for their time after the interview. This had an unintended consequence, which was to build up goodwill with the dancer. Sometimes, I was unable to complete an interview, either because the dancer was called to the stage or because the DJ announced a dance special requiring the dancers to circulate and solicit dances. If it was because of a dance special, the dancer would first ask if I wanted a dance. I would say no, but tip them for their time. Sometimes, the dancer would say, “I’ll come back, even if you don’t pay me.”

Some dancers actually got excited by the project. It seemed they had been waiting to tell their story for a long time. One dancer told me toward the end of our interview that it was “cathartic” to tell her story.[[62]](#footnote-62) Other dancers, however, needed prompting. For them, I had to ask more specific and guided questions and, in a few cases, basic yes-or-no questions. My initial questions were open-ended, especially in the early interviews. Initially, I was interested in simply whether dancers preferred independent contractor or employee status. But the pandemic helped me to think more deeply about the implications of employee status, and to ask more pointed questions. As I learned more about the differences between the clubs and heard more stories, I was able to ask more specific questions, like whether they had applied for unemployment benefits during the pandemic, were interested in or supportive of a strippers’ union, how they filed their taxes, their tip-out practices, and whether they supported licensing requirements for dancers. I also asked questions to get some biographical information from the dancers. These questions included age, race/ethnicity, whether they had children, other jobs, or were students. I also asked them how long they had been dancing and how they got into the business. After the pandemic, when I conducted the bulk of the interviews, I also asked them what they did while the clubs were closed.

Not all of the dancers had experience as both independent contractors and as employees. For the dancers whose experience was only as an employee, I simply asked them about their workplace conditions, their perceptions of management, and generally how they liked working as employees. I also asked them about what they did during the pandemic, and we generally had longer conversations about how they got into the business. A handful of dancers, but an increasing number, only began dancing after California re-opened following the pandemic in April 2021. Despite their limited experience, they were often full of insight into the business, especially as newcomers.

Finally, in an effort to preserve the dancers’ anonymity, I have refrained from using either the dancer’s real name (if I know it, which is rare), or their stage names. Instead, I have randomly assigned each dancer the name of a flower or plant.[[63]](#footnote-63) I have also refrained from identifying the club or the city where I interviewed the dancer, as such information could compromise the dancer’s anonymity. I do, however, provide the dates of the interviews.

**III. Privacy, Flexibility, and Profits**

The primary set of concerns with the classification of dancers as employees concerns “privacy, flexibility, and profits.”[[64]](#footnote-64) The privacy concerns are rooted in the formal documentation required of employees, the filing of taxes, and the potential for data breaches, which could reveal dancers’ identities as dancers.[[65]](#footnote-65) Given the stigma that surrounds erotic dancers, many, as Stormy Daniels explained in her Op-Ed,[[66]](#footnote-66) worry about their identity being revealed. Flexibility generally concerns scheduling, and profits involve the ability to earn quick cash on a daily basis. Critics of re-classification remain dubious about whether the ostensible benefits of employee status outweigh the benefits of independent contractor status for dancers. Prior to A.B. 5, it was not clear that re-classification had much, if any, impact on the protection of dancers. “In the unique industry of exotic dancing,” DeMarr Moulton has observed, “classification as an employee results in only marginal increases in employee benefits and protections.”[[67]](#footnote-67) On the one hand, dancers do not typically work enough hours to qualify for overtime, and since they are tipped employees, they are entitled to a lower minimum wage.[[68]](#footnote-68) On the other hand, a worker’s classification as an employee has no effect on that worker’s status for purposes of other statutes like Title VII or the National Labor Relations Act.[[69]](#footnote-69) Moulton’s focus, however, was classification lawsuits under the federal Fair Labor Standards Act, which deals only with hours and wages. By contrast, A.B. 5 provides employees with a broader range of social welfare benefits like workers’ compensation and unemployment benefits. Nonetheless, Moulton does provide an initial framework for understanding the impact of re-classification on dancers.

In general, dancers’ perceptions about the impact of A.B. 5 fell broadly along three sometimes porous lines. Many reported no significant changes to their lives as dancers. Many dancers, however, held strong views critical of A.B. 5. One dancer, for instance, said that she preferred independent contractor status “125%!”[[70]](#footnote-70) Still others appreciated the benefits that come with employee status. The dancers’ opinions, however, were often based either upon an incomplete understanding of what A.B. 5 provides to employees or a focus on their most immediate concern — quick cash on a daily basis. Dancers who looked more into the future tended to appreciate the ability that employee status provided, such as building credit or providing future financial security or stability. This is not to suggest that we should privilege one view over another; they can (and should) work together. Despite these general impressions, though, dancers’ perceptions about re-classification grew more complicated once we began to dig into the details of what A.B. 5 offered. This was especially true for dancers who were opposed to re-classification. However, it is clear that dancers’ perceptions of re-classification did not always match their lived experience with it.

*A. Privacy and Flexibility*

No dancer interviewed raised privacy as an employment issue. One dancer was fairly dismissive of it as a significant concern.[[71]](#footnote-71) This is particularly interesting given the emphasis that Stormy Daniels and other opponents of re-classification have placed upon it.[[72]](#footnote-72) However, the dancers for whom this was a concern may have left the business before re-classification, like my friend whose experience I discussed at the beginning of this piece.[[73]](#footnote-73) One dancer who had experience dealing with background checks noted that the business names for clubs were usually street addresses or other benign names. She thought it would be difficult to be able to determine that an employer was a strip club simply by looking at payroll documents, thus assuaging possible privacy concerns.[[74]](#footnote-74) Another dancer, who turned to live streaming when the clubs were closed during the pandemic lockdown, expressed concern about her privacy as an online entertainer, but not as a dancer. She felt that her followers, who were computer-savvy, could probably track her down quite easily.[[75]](#footnote-75) This is a general concern among webcam models.[[76]](#footnote-76) In fact, one of the reasons that Hyacinth preferred dancing to camming was because dancing provided her with considerably more anonymity. The potential for data breaches or other ways that dancers’ employment and tax documents could be discovered is apparently too remote from dancers’ consciousness to be a meaningful consideration for many of them, or at least clearly outweighed by their earning potential as dancers.

The extent to which the dancers have perceived an increase in management control has been somewhat dancer-dependent. The vast majority of dancers reported being satisfied with the management at their current club. This could have been a trust issue, something the dancers were unwilling to tell me for fear of repercussions. Some, however, were able to offer some specifics. Cleanliness and security were often high on dancers’ criteria for determining good management. For example, Acacia appreciated her club for having strict no-touching policies.[[77]](#footnote-77) She had experience at a different club where she felt like the customers were “perverts,” and felt the club did little to protect the dancers from them.[[78]](#footnote-78) Another dancer appreciated that her managers would point her toward good tippers.[[79]](#footnote-79)

Many dancers employed before and after re-classification in employment status noted no significant change in management policies. No dancer reported significant changes in dress codes. However, it may be more of a management issue at clubs that are struggling. One dancer who had experience at a couple of clubs with poor reputations noted that many of their dancers tended not to take care of themselves very well.[[80]](#footnote-80) Dancers with experience only as employees and not as independent contractors reported that they did not encounter any problems with respect to employment flexibility.[[81]](#footnote-81) They continued to control their schedules, which was their most important concern.

Some dancers were not shy about complaining about management at clubs where they had worked in the past. However, the complaints were typically unrelated to re-classification. Rather, they were general complaints, such as “[t]hey would yell at the dancers for no reason.”[[82]](#footnote-82) Another dancer said that she left her first club after the manager threw a dancer’s belongings onto train tracks behind the club because the dancer failed to earn enough money to pay her house fee.[[83]](#footnote-83) Dancers who referred to some other clubs as “whorehouses,” were generally complaining about poor management, not the fact that prostitution occurred at the club. Their main problem was that selling sex was an unwritten policy at the “whorehouse” clubs. Daisy, for instance, reported that she had been fired from a club because she would not provide “extras.”[[84]](#footnote-84) A dancer’s current club may have allowed such behavior, but left the decision to each dancer.[[85]](#footnote-85) Some dancers who made this complaint said they did not care if dancers sold sex, but that it should be done out of sight.[[86]](#footnote-86)

One change mandated by re-classification that a couple of dancers pointed out was the mandatory break. This was not a management-dictated change, though; it is required by state law for employees.[[87]](#footnote-87) The dancers who complained about this change bemoaned the lost opportunity to make money; they felt that they could get a dance during the time they had to take a break.[[88]](#footnote-88) Given that there can be a great deal of downtime for dancers between dances, the mandatory break is probably less necessary for dancers than for other workers. From my observation, dancers spend a lot of time sitting by themselves on their phones or chatting with other dancers. There are definite lull periods throughout any shift for almost every dancer. This is especially true for slower shifts, generally day shifts and night shifts, Sundays through Wednesdays. But even Fridays and Saturdays can be slow, especially around holidays. Some clubs have few customers no matter the shift. Despite the lulls, some dancers appreciated the breaks. One dancer gleefully explained that at her club, “They let us smoke [marijuana]!”[[89]](#footnote-89) For that dancer, the breaks were necessary to deal with the anxiety that the job produced.

The most commonly reported new club-imposed work requirement, especially among dancers with experience as independent contractors, was a minimum number of hours per shift. Some dancers were unperturbed by this requirement, noting that as independent contractors, they had already worked more than the now-required minimum shift hours.[[90]](#footnote-90) Dancers who only had experience as employees appeared to have no problem with the requirement, either. One dancer did not like having maximum hours; she wanted the opportunity to work two shifts as she did as an independent contractor.[[91]](#footnote-91) The dancers who did take issue with the minimum shift hours requirements were those who would club hop. If the club was slow for a particular shift, they would move to another club where there might be more customers.[[92]](#footnote-92) Others simply wanted the freedom to leave at any time.[[93]](#footnote-93)

It might be that southern California is unique in terms of minor increases in management control post-reclassification because there are so many clubs throughout the southern California region, from Los Angeles to San Bernardino to San Diego.[[94]](#footnote-94) Clubs can be non-nude, topless, or fully nude, which can shape the work that dancers do. Nude clubs cannot sell alcohol, while topless and non-nude clubs can.[[95]](#footnote-95) It was rare for a dancer to report having worked at only one club unless they were new to dancing.[[96]](#footnote-96) When dancers can easily move to a different club, management has less incentive to implement stricter rules, especially if a dancer can take a clientele with her. I also encountered dancers who had moved to southern California from other states. One came immediately from Washington state and reported also having worked in Atlanta.[[97]](#footnote-97) Moreover, many dancers noted that the southern California clubs compete not only with one another but with out-of-state clubs as well, particularly those in Las Vegas. One dancer said that she was planning to start seeking work in Las Vegas for one weekend a month.[[98]](#footnote-98) Another told me that a friend of hers fled to North Carolina after re-classification and now dances happily at clubs in that state as an independent contractor.[[99]](#footnote-99) Mobility, then, can mitigate the potential dangers of over- or micro-management of dancers. One dancer, in fact, noted this. She told me that her club had tried to force dancers to work consistent shifts not long after reclassification, but that the club backed away from the requirement after it began to lose dancers.[[100]](#footnote-100) In areas where there is little to no competition, managers and owners might feel more empowered to regulate their dancers more rigorously.

Moreover, just because clubs classify their dancers as independent contractors does not mean that they do not attempt to control the work environment. The Dancers Resource is an app designed to educate dancers about clubs around the country, as well as the life and work of dancing.[[101]](#footnote-101) Several posts on their Instagram page have been about that very effort. One post was a photograph of a handmade sign stating, “You are only allowed 30 minutes to get ready upstairs…you will be forced to come downstairs unready.”[[102]](#footnote-102) The Dancers Resource commented: “Lmao the mf audacity.”[[103]](#footnote-103) Another post a few days earlier was of a sign posted in a Miami club barring synthetic hair, extensions, weaves, and lace wigs.[[104]](#footnote-104) In the comments to both posts, many dancers turned to their status as independent contractors to question the clubs’ authority to impose such requirements.[[105]](#footnote-105) It appears, then, that club management will attempt to control dancers’ working conditions whether they classify their dancers as employees or as independent contractors.

Other than some slight changes to scheduling, reclassification does not appear to have changed management style post-A.B. 5, at least with respect to the dancers interviewed for this study. Only one dancer noted that the club has “more say over your clothes.”[[106]](#footnote-106) Even the scheduling problem was perceived to be minor for those dancers who complained about it. However, this could have been an area where trust may have played a role in dancers’ responses. If the dancers feared that I was actually working for management, they might not have wanted to criticize management. Participant observation studies are necessary to understand the full scope of management practices within these clubs. But there does not seem to be a perceived need to over-manage dancers. Another reason for the apparent lack of increased managerial control is that many dancers do not need motivation from their managers to perform their jobs well. “We’re here to make money, so of course we want to look good and get dances,” was a common refrain. Competition between clubs, dancer self-interest, and a critical mass of consistent clientele all appear to be contributing to the dampening of increased managerial control of dancers due to re-classification.

*B. Profits*

The most important driving force with respect to dancers’ perceptions of A.B. 5 is its impact on their profits. This impact occurs at both the front and back ends. On the front end are wages, stage fees or quotas, dance splits between dancer and club, and tip-outs. On the back end is tax liability. A.B. 5 has generated clearly identifiable changes at both ends: house fees have increased, the dancers’ portion of the split has declined, and tax deductions have been eliminated. However, the effects of these changes on dancer income have been uneven.

The most obvious change that comes with re-classification is hourly wages. However, several dancers dismissed its significance, noting that they could make their shift wages with a single dance. “It’s just minimum wage,” many dancers stated. Low- or inconsistent earners, however, were more likely to appreciate being able to earn something on slow nights. Tulip, who has been dancing for ten years, appreciated wages for bringing her more stability, and appreciated employee status more generally for providing more potential rights.[[107]](#footnote-107) “There are nights when I don’t make anything. So it’s nice to still be able to get some money,” Larkspur stated.[[108]](#footnote-108) Larkspur has been working as a dancer for seven years (mostly as an independent contractor) and is fairly disciplined in terms of her work schedule. She was one of many dancers who said that they treat dancing as their job, that she is punctual, and every night attempts to earn as much money as possible. For her, minimum wage is a bonus at the end of the month.

Complicating matters is that some dancers are confused about the deductions that come with employee status. Amaranth, for instance, said that her initial checks were around $100, but at the time of the interview, they had fallen to around $60. She did not know why her checks were smaller, as she was not working fewer hours. She was also confused by a “medical” deduction (probably Medicare) that she asked her manager about. He was not able to explain it to her, other than to say that it was something that she was going to get in the future. “Why can’t you give me that money now?!” she complained.[[109]](#footnote-109) Wages, then, appear to be a minor bonus at best. And as few, if any, clubs allow dancers to work overtime, the ability to earn overtime wages is fleeting. Some dancers bemoaned the fact that they could no longer work more than 8 hours a day if they wanted.[[110]](#footnote-110)

Tax deductions have played an important role in dancers’ public opposition to re-classification. At a dancer protest against re-classification, for instance, one dancer displayed a sign reading “1099,” which is the tax form used by independent contractors, and another displayed a sign reading “Pussy Power” next to it.[[111]](#footnote-111) One advantage of being an independent contractor is the ability to deduct the costs associated with being a dancer. As Acacia explained, “This shit [clothes and makeup] is expensive.”[[112]](#footnote-112) The shift to employee status forecloses deductions for such expenses. The intentional placing of the sign “Pussy Power” next to the “1099” sign in this context thus involves the recognition of the very real costs involved in being a dancer, and the ability to have those costs accounted for in their tax liability. Tax deductions operate, in this sense, to recognize and affirm dancers’ independence and autonomy.

Despite the political salience of dancer tax-payer status, most dancers I interviewed did not know how to report their income on their taxes, either as employees or as independent contractors. One dancer who began her career as an independent contractor told me that as an independent contractor, she did not have to report her income.[[113]](#footnote-113) When I responded that she did, in fact, have to file as an independent contractor, she said emphatically, “No, you don’t.” And that was how that conversation ended. Another dancer said that her husband had handled her taxes when she was married. Now that she is divorced, she admitted to struggling with figuring out how to file her taxes.[[114]](#footnote-114) Another dancer confessed to not knowing how to report her tips.[[115]](#footnote-115) And yet another said that she did not report her taxes as an independent contractor simply because she never received any documents saying that she worked at the club.[[116]](#footnote-116) Filing taxes as an independent contractor can be complex,[[117]](#footnote-117) and dancers reported that they received no guidance from the clubs.[[118]](#footnote-118) Some dancers preferred employee status because it made filing taxes easier, as they did not have to chase down receipts for clothes, makeup, and other work-related expenses that are deductible for independent contractors but not for employees.

Some dancers have welcomed employee status because it has helped them to build up their credit. Salvia’s tax filing practices are illustrative. For Salvia, like the other dancers who are diligent about filing their taxes, building up her credit is her central concern. Prior to working as a dancer, Salvia had worked as a waitress. After beginning work as a dancer, she held on to both jobs. Rather than filing taxes as an employee for her waitressing job and as an independent contractor for her dancing job, Salvia simply used her waitressing job to report her tips from her dancing job. When I asked her why she did that, she said that she wanted to be able to explain all the money in her bank account. After she was reclassified as a dancer-employee, Salvia quit her waitressing job because she could now report all her tips as a dancer-employee. When I asked why that was so important for her, as other dancers seemed primarily concerned with minimizing their tax liability, she said she was trying to build up her credit. She had already built enough to rent her own apartment and buy a car at the time of the interview. She is now in the process of saving up to buy a home.[[119]](#footnote-119)

Employee status, however, has not helped all dancers build up their credit. Allysum, for instance, purchased a home while working as an independent contractor. After being re-classified as an employee, however, she was unable to refinance because her income was too low.[[120]](#footnote-120) However, she noted that she reported more income as an independent contractor than she does as an employee because she had more deductions as an independent contractor.[[121]](#footnote-121) Anise said that she reported enough to qualify for a loan but not enough so that she owed taxes.[[122]](#footnote-122) Acacia suggested that this was a broader trend, noting that some dancers fear reporting too much.[[123]](#footnote-123)

Those dancers who have filed taxes as independent contractors and as employees generally preferred independent contractor status because of the ability to deduct items like clothing, makeup, and travel expenses as business expenses. But these dancers, like most gig workers, did not seem to understand the complex reporting requirements for independent contractors, such as filing quarterly, competing and confusing 1099 forms, and other compliance costs for independent contractors.[[124]](#footnote-124) One dancer reported being four years behind in filing her taxes and had no idea that she had to file quarterly as an independent contractor.[[125]](#footnote-125) Another reported owing $5000 filing as an independent contractor, while getting a refund as an employee.[[126]](#footnote-126)

While being able to deduct the costs of being a dancer has had an impact on how dancers have viewed re-classification, it seems to have had relatively little impact on the dancers interviewed in this study. Some dancers bemoaned not being able to claim deductions for clothing and makeup despite the fact that they never filed taxes when they worked as independent contractors. Similarly, some dancers bemoaned the Social Security and Medicare withholdings from their paychecks, while not even understanding them. At the same time, they acknowledged that their wages, even without the deductions, were generally nominal, or a small bonus at the end of the pay period.[[127]](#footnote-127) Other than those looking to build their credit, few dancers appeared to be seriously affected by the tax implications of re-classification, largely because of an apparent general lack of understanding among dancers about how to file taxes.

Where profits have really mattered for dancers are the stage fee/quota and house splits. Shortly after Deja Vu re-classified its dancers, but before A.B. 5 was enacted, the *Los Angeles Times* reported that Deja Vu had begun implementing a variety of changes that cut into dancers’ profits. Deja Vu “is now paying them minimum wage, setting quotas for selling drinks and dances, and slashing their cash commissions to offset the cost of payroll taxes. Some 1,500 strippers have quit working out of state or ‘under the table’ at non-compliant competitors, according to operations director Ryan Carlson.”[[128]](#footnote-128) Except for drink quotas, most of the other clubs followed this script after A.B. 5 went into effect, although without the mass exodus of dancers. At most clubs I visited, dancers who had experience as both independent contractors and as employees reported that the stage fee and/or dance splits had increased after re-classification. The clubs increased their fees in order to be able to cover their new labor costs.[[129]](#footnote-129) As a result, dancers are basically paying for their own wages, as the dances they get are the primary revenue sources for the clubs. Nevertheless, one of the most striking discoveries in this study was that dancers were split on this issue. While many dancers were understandably upset by the increased charges and fees, other dancers viewed them from a communalistic lens and saw them simply as a cost of engaging in this type of work.

Stage fees have always been controversial for dancers, at least in California.[[130]](#footnote-130) The “stage fee,” or what clubs now call a “quota,” is what the dancer pays to the club for the privilege of working at the club. The stage fee/quota seems to have increased, in some cases significantly, since re-classification.[[131]](#footnote-131) One dancer, with “lots” of experience, stated that the fee was as high as $40 at her club before reclassification, but at the time of the interview was $180.[[132]](#footnote-132) The fee at a topless club jumped from $40 to $140.[[133]](#footnote-133) A dancer at yet another club reported that the stage fee did not change, that it was $140 both before and after re-classification. However, another dancer at that same club reported that the post-reclassification fee was $180.[[134]](#footnote-134) Stage fees are generally higher at nude clubs than at topless clubs. For instance, the fee at several nude clubs is $180, while the fee at several topless clubs is $100. The difference between nude and topless clubs is due in part to the differences in earning potential; dancers tend to make more money at nude clubs than at topless clubs. But there is variation. One topless club, for example, charges $140, the same as at least one of the nude clubs.

Pre-reclassification, the stage fee was typically collected at the end of each shift. Post-reclassification, the practices vary. Some clubs still collect the fee at the end of the shift. Others, however, keep the entire amount of the cost of a dance until the dancer has met her quota. Once the dancer has met her quota, a cashier takes the payment for the dance from the customer and then hands over the dancer’s portion of the split to the dancer. So, let’s assume the quota is $140, and a VIP dance costs $140. If the dancer’s first dance is a VIP, the dancer earns no money on that dance; the club keeps the entire $140, although the dancer would keep any cash tips she received. However, if a dancer only performed topless dances at $20/dance, it would take her seven dances to meet her quota. Once the quota has been met, the dancer and the club split the cost of the dance. The nude clubs appear to have settled on a 50-50 split. So, if the club charges a customer $20 for a topless dance, the club and the dancer would each take $10 for the dance. Again, the dancer would keep any tips given to her directly by the customer. The dancers’ perceptions about the stage fees varied. At one end, some see it as a mild nuisance. These are probably higher earners, who easily make enough to cover the stage fee. For others, it is more problematic. “The house fee kills me,” one dancer told me. “And the split makes it harder to meet.”[[135]](#footnote-135)

The dance splits between dancer and club have also changed since re-classification. Before A.B. 5, dancers reported that the splits could range from 60%-40% to 80%-20%, with the dancer getting the higher amount. The 80-20 split was a common split for topless clubs, which, because they can sell alcohol, are not as dependent upon dance sales as the nude clubs. I’ve been told that at The Library clubs, which are topless, the dancers make most of their money from their stage shows, and very little from private dances.[[136]](#footnote-136) One dancer who had “lots” of years of experience at many different clubs not only in southern California, but in Chicago, Texas, and Las Vegas, stated that 70-30 was the usual split at the clubs she had worked at around the country.[[137]](#footnote-137) At the nude clubs, the splits appear to have always been lower. The 60-40 split was common before reclassification, but 70-30 was not unheard of. However, dancers occasionally gave conflicting accounts. One dancer, for instance, stated that the pre-reclassification split at her club was 80-20, while another dancer at the same club stated that it was 60-40. Both had experience as independent contractors at that club. Post-reclassification, the nude clubs seem to have settled upon a 60-40 or 50-50 split. One dancer said that she was unsure of the percentage split but that for a $150 30-minute VIP dance, she received $95, and for a 15-minute VIP, she received $65.[[138]](#footnote-138)

Some dancers reported a significant bottom-line impact resulting from the new splits and stage fees. Hyacinth, for instance, reported that a good night for her as an independent contractor was around $1800. Post-reclassification, a good night for her now is about $1000.[[139]](#footnote-139) Amaranth said that her income declined by half, from about $1000/day to around $500/day.[[140]](#footnote-140) Peony reported that her annual income decreased from around $100,000 as an independent contractor to around $25-40,000 as an employee.[[141]](#footnote-141) Surprisingly, however, a more common response was that the dancer perceived no discernible difference in their earnings.[[142]](#footnote-142) Making this more surprising is that the formal dance split has been compromised as clubs have begun to tax the dancer’s portion of the split as a “bonus.” This practice appears to have grown gradually. At one club in the summer of 2021, dancers began reporting that their wages seemed to be getting smaller despite the fact that they were working the same number of hours. They were not sure why, but they said that it appeared that their quota was coming out of their wages.[[143]](#footnote-143) A few months later, I mentioned it casually to a dancer at a different club who had experienced something similar. When she inquired further about it, she realized that her club was treating her portion of the dance split as a bonus and taxing it. Bonuses are taxed at a flat 22% rate, in addition to the 7.5% for payroll taxes, thus reducing the dancer’s portion of the split (50% at her club) by almost a third.[[144]](#footnote-144) This now appears to be a common practice among the clubs, diminishing the value (literally and figuratively) of wages. It may be that dancers are compensating for this by being more aggressive about tips, which form the major portion of dancers’ earnings.

Dancers will often, but not always, ask for a tip after a dance. This is more common for a VIP dance, but some dancers will ask for a tip for any type of dance, and sometimes, even if a lengthy or good conversation with a customer fails to lead to a dance. One dancer asked me if I wanted a nude dance and then quoted me a specific price, which included a tip. But that type of negotiation is rare; tips are usually requested at the end of a dance.[[145]](#footnote-145) Tips are not included in the splits with the house. However, tips (and splits) can be taxed informally through tip-out practices. It’s not uncommon for clubs to have unwritten rules about tipping out other employees at the end of a dancer’s shift, such as the DJ, security, bartenders, and even managers.[[146]](#footnote-146) Tip-outs to non-dancer employees, occasionally including managers, have been a long-standing (and at times controversial) practice within clubs.[[147]](#footnote-147) Clubs often have customs or norms about who should be tipped. Yarrow explained that she tipped everyone 10%, including the manager. Although the manager did not ask for tips, she said that it was “customary” to tip them. If she failed to tip the manager, the manager would ask if she was mad at them.[[148]](#footnote-148) Similarly, Snowdrop said that at her club, if a dancer did not tip the DJ at least $20, “someone comes around and has a talk with you.”[[149]](#footnote-149) Some dancers, however, develop their own tip-out system. Amaranth, for instance, tips out the DJ, the doorman, and the floorwalkers; she does not tip out the bartender. Instead, when a customer agrees to buy her a drink, she always orders the most expensive drink, a $15 coffee drink, which generates a larger tip from the customer.[[150]](#footnote-150) Tip-outs can put a serious dent into a dancer’s earnings, especially after stage fees and decreasing splits. Through these practices, management can conveniently pass off their labor costs for non-dancer employees to the dancers. It can be especially galling when dancers are tipping out employees who do not even respect the dancers for the work that they do.[[151]](#footnote-151)

Dancers are certainly justified in their criticism of stage fees, splits, and tip-outs. The club and non-dancer employees are all battening directly on the dancers’ labor and earnings. Surprisingly, however, not all dancers were bothered by these private taxes. One dancer, who was relatively new to the industry and had little experience as an independent contractor, felt that the 50-50 split was fair.[[152]](#footnote-152) She felt that many dancers, and people in general, were too individualistic and selfish.[[153]](#footnote-153) By contrast, she saw the split as a way of earning money for the club, to help keep them in business so that she could have a job.[[154]](#footnote-154) Another dancer at the same club said that management explained to the dancers that the quota and splits “helps keep the club in business. So that seems fair.”[[155]](#footnote-155) This communal mindset was also evident in the ways that some dancers perceived tip-outs. “We are all in this together,” a club waitress once told me. Even Armeria, for example, who said that the stage fee and splits “killed” her, nonetheless viewed tip-outs as a fair distribution. She felt that “we need to take care of each other.”[[156]](#footnote-156) Amaranth added that she did not mind tipping out employees who make less than she does.[[157]](#footnote-157)

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DeMarr Moulton’s initial framework of privacy, flexibility, and profits is a useful starting point for beginning to understand the effect of re-classification of dancers. However, his warnings about re-classification are more complicated than he could have predicted. While some dancers raised some concerns about their privacy, it was not a prominent concern for dancers with respect to re-classification. The impact on flexibility also appears to be nominal. Dancers have retained significant control over their schedules, as well as the details of their work. The dancers’ chief concern with re-classification has been its impact on their earnings. Yet how significant an impact re-classification has actually had on their earnings compared to their earnings as independent contractors remains unknown. A few dancers reported significant declines in earnings; others reported no change. Some dancers cared little for the wages they received, while others appreciated them as a bonus at the end of the pay period.[[158]](#footnote-158) Yet it is clear that dancers would be earning more money with lower stage fees/quotas and better splits, whether or not their earnings have changed since re-classification. A question that arises, then, is whether the dancers are receiving anything in return for the costs of re-classification.

**IV. Reaping the Benefits**

Most of the benefits dancers are entitled to as employees go unrealized. Some employee benefits only accrue if the employee works full-time, and clubs generally do not allow dancers to work full-time or overtime. Few dancers reported suffering work injuries, although other studies have uncovered such injuries.[[159]](#footnote-159) One dancer reported that she fell off of a stage once but was not seriously injured.[[160]](#footnote-160) In a casual conversation with another dancer, she explained that she stopped doing some pole tricks after she suddenly realized how dangerous they were. I replied that at least she would have workers’ compensation if she did. She responded that such compensation would not get anywhere close to paying her bills.[[161]](#footnote-161) And no dancer reported significant sex discrimination or harassment by other employees.[[162]](#footnote-162) Sexual assault by customers, however, remains a pervasive threat for dancers, especially in the private rooms.[[163]](#footnote-163) Maternity leave could be a benefit that dancers might appreciate. But no dancer brought it up.[[164]](#footnote-164) So, many of the potential benefits of employee status appear to be fleeting, at least for the moment.

If there is one benefit of employee status that dancers agreed on, it is unemployment benefits. Although not normally a concern for dancers, the pandemic highlighted its importance. Many dancers received unemployment benefits during the pandemic. “That unemployment shit came *through*!” one dancer told me excitedly.[[165]](#footnote-165) Another dancer at a different club, who only returned to California after the lockdown was lifted and who held strong views against A.B. 5 in general, acknowledged the significance of such benefits. She said that she felt bad for her friends in Washington, who, as independent contractors, were ineligible for unemployment benefits.[[166]](#footnote-166) When I pointed out that she was only eligible for unemployment benefits because of A.B. 5, she laughed, realizing that her views on A.B. 5 were more nuanced than she realized. Another dancer, at yet a different club, was unaware that she had been eligible for unemployment during the pandemic. She had worked at a grocery store during the initial quarantine. When I asked if she would have worked at the store if she had received unemployment, she said no.[[167]](#footnote-167)

Even dancers who were able to find other employment during the pandemic appreciated the options that unemployment benefits provided. Hyacinth, for example, turned to non-nude live streaming during quarantine. Many dancers also turned to OnlyFans, a website that allows them to post pictures and videos for which they can charge their subscribers a monthly fee and/or a pay-per-view. Hyacinth reported that she was successful as a live-streamer.[[168]](#footnote-168) She said that she acquired 100,000 followers rather quickly and reported that there were a few months when she made as much money live streaming as she did dancing.[[169]](#footnote-169) She found live streaming exhausting, though, and took time away from it periodically, using unemployment benefits to help her through those months**.**[[170]](#footnote-170)

Unemployment benefits highlight how dancers evaluate re-classification — it is often based on how well the dancer understands the full scope of her rights as an employee. Those who see re-classification as simply a matter of wages and hours are less likely to appreciate A.B. 5; it does nothing for their most immediate interest, which is cash at the end of a shift. If dancers understand nothing about re-classification other than wages and hours, and their chief aim is quick cash, they appear to be less likely to appreciate re-classification. This is especially true for high-earners, who could earn in a single dance what they make in wages for an entire shift.

Dancers who appreciated re-classification were generally more future-thinking. They viewed employee status as a means to building credit for financing big-ticket items, like a car or a home. Larkspur also pointed to employee status as helping to make her eligible for Social Security … in about 30 years. “It might not be much, but every little bit will help,” she noted.[[171]](#footnote-171) Salvia told me that employee status allowed her to quit her other jobs so that she could report her tips more easily. Since she wants to buy a house in the near future, she reports as much income as she can.[[172]](#footnote-172) Peony also said that she reports as much income as she could for the same reason. Peony understood that she did not need to be an employee to report her income. Whether dancers understood how to report income or the extent to which they were actually building their credit, employee status provided a certain stability and legitimacy that they lacked as independent contractors, at least from the perspective of personal finance.[[173]](#footnote-173)

Another potential benefit of re-classification is the opportunity to unionize. Dancers have been trying to unionize since the 1940s.[[174]](#footnote-174) One dancer, *sua sponte*, said “What we need around here is a union.”[[175]](#footnote-175) She was the only dancer to bring up the issue on her own, and she got excited when I told her about Antonia Crane’s Soldiers of Pole. Tulip was, like many others, open to unionization. “Unions could bring a lot of good into these places,” she said.[[176]](#footnote-176) But she also recognized a significant impediment to unionization. “[Y]ou’ll find a lot of dancers don’t care one way or another. When I was 19, I would’ve said ‘whatever.’ But I didn’t know anything then. Now as a mother I appreciate those types of things. Back then I was just like let me make my money. A lot of dancers here just party or are doing drugs.”[[177]](#footnote-177) Indeed, many dancers did not even understand what a union is or what it does. When I explained it simply as a way for dancers to negotiate collectively with the clubs for specific rights within the workplace, most dancers were at least open to the idea. “Who wouldn’t want more rights?” Lantana queried.[[178]](#footnote-178) One dancer who was uninterested in unions opposed them on libertarian grounds.[[179]](#footnote-179) These dancers, however, were generally dancing as a side job.

While A.B. 5 has had some positive effects, they have been uneven. From a basic cost-benefit analysis, it is not immediately apparent that the benefits outweigh the costs, and there is good reason to suspect that the financial costs that clubs are imposing upon dancers are greater than the benefits re-classification has provided. Unemployment benefits were certainly important during the pandemic, but outside of that context, it’s not clear how much of a benefit that will be to dancers going forward. And unionization is, as of now, a great unrealized benefit. With at least a base of openness to the idea, it is puzzling that organizers have not made more inroads in this area. But, as Tulip explained, the transiency of dancers, their ability to work at other clubs, and the relative youth of the workforce generally pose obstacles to unionization. There has been one successful unionization since A.B. 5 went into effect at the Star Garden in North Hollywood. But they are still struggling to improve their working conditions.[[180]](#footnote-180) While A.B. 5 goes beyond simply providing and regulating wages and hours by providing access to other employment benefits, many of these are beyond the reach of, or of little value to, dancers. Re-classification alone is thus insufficient for changing the work conditions for dancers. Moreover, despite the fact that A.B. 5 now treats sex workers as workers, regulators often remain trapped in dated conceptions of sex work and sex workers. A 2020 bill demonstrates how problematic sex work remains in the minds of regulators.

**V. Sex Work as *Sex* Work: Moving Backwards**

Sex trafficking remains the primary lens through which regulators view sex work; every sex worker is a potential (perhaps even likely) sex trafficking victim, and if not, then a criminal-in-waiting.[[181]](#footnote-181) This “frozen discourse” of sex worker as either victim or criminal continues to dominate the perception of sex work despite evidence that sex trafficking is rare, especially in the erotic dancing field.[[182]](#footnote-182) The dancers I interviewed for this study began working out of necessity, interest, desire, or curiosity, not as a result of coercion.[[183]](#footnote-183) Yet, despite the paltry evidence of trafficking and A.B. 5’s recognition of dancers as workers, a bill introduced into the California legislature in 2020, A.B. 2389, threatened to undo that work by re-emphasizing the *sex* in sex work.

A.B. 2389 was introduced by two Democratic legislators, Assemblywomen Lorena Gonzales from San Diego and Christina Garcia from Bell Gardens.[[184]](#footnote-184) Assemblywomen Gonzalez was also a sponsor of A.B. 5. According to reports, A.B. 2389 was initially proposed by the International Entertainment Adult Union (IEAU),[[185]](#footnote-185) which is “a non-profit labor organization approved by the Department of Labor since 2015,” and the only such union representing the adult industry.[[186]](#footnote-186) The IEAU has three chapters: the Exotic Dancer Guild, the Adult Performers Actors Guild, and the Adult Film Crew. At first blush, the bill seemed promising. According to the Legislative Council’s Digest, the bill is characterized as “Adult performers: employee rights.” With A.B. 5, dancers are now clearly employees, and it is always useful to clarify their rights. Section 1(e) identified education as a major goal for sex workers. “Education on safety and working rights for adult entertainment workers is necessary,” the bill states. It is clear from my interviews for this study that dancers do not understand the full scope of their rights as employees. One dancer had no idea what the difference between independent contractors and employees meant; she did not even understand that she received wages because she was now an employee.[[187]](#footnote-187) Education about dancers’ rights as employees is thus a laudable goal.

However, in the next clause of the same sentence, the Bill identified its narrow, myopic scope with respect to the employee rights of dancers. “[I]n the absence of regulation significant criminal activity has historically and regularly occurred, and depression and suicide rates have risen.”[[188]](#footnote-188) No statistics were provided to support these claims.[[189]](#footnote-189) Beyond that, the findings announced only the most conclusory “declarations,” including that “[s]afety, general welfare, and working conditions in the adult entertainment industry are a major high risk and concern.”[[190]](#footnote-190) The findings failed to identify who is at risk or what the risks are, except three sections later where it identifies “the exploitation of minors in the adult industry” and “human trafficking.”[[191]](#footnote-191) Yet, oddly, the very next section identified “[t]he avoidance of tax payments;”[[192]](#footnote-192) little in the remainder of the bill addressed the tax avoidance issue.[[193]](#footnote-193) Ultimately, the findings section in the bill, as originally drafted, was removed. The omission of the findings section was not replaced with a more data-driven set of findings.

This omission speaks to the assumptions about sex work — sexual violence and harassment are presumed. Sexual violence and harassment are certainly concerns in the sex work industry, but the bill did not focus on the most common danger dancers face. It is not trafficking but sexual assault that a dancer is more likely to experience.[[194]](#footnote-194) Dancers commonly express concerns about customers who attempt to push dancers’ boundaries. For lap dances, dancers are generally more able to maintain boundaries, in part because the dances are shorter in duration, but also because the areas in which lap dances are given are generally more easily surveilled by the club. It is in the private rooms where dancers feel more vulnerable. As Tulip explained, “You’re stronger than me and can hold me down. These shoes are hard to get off because they have a strap in the back so I wouldn’t be able to hit you with it. Some of the girls are high or drunk themselves. So that can create a problem. And guys come in drunk already, and I’ve seen some crazy shit.”[[195]](#footnote-195) A dancer at a topless club said that she had stopped doing private dances because management did not police the rooms very well.[[196]](#footnote-196) But A.B. 2389 would have done little to address those problems.

Despite the Legislative Council’s characterization of A.B. 2389 as concerned with “employee rights,” it actually identifies the employee as a threat in need of regulation. The bill’s licensing requirement makes this clear, as it treats dancers themselves as the objects of regulation rather than attempting to secure better working conditions for them.[[197]](#footnote-197) Requiring dancers to get a license before they can work can create a barrier to entry for people at the economic margins needing quick money. One dancer, who had worked in states that required a license, told me that she did not believe that the license was a barrier to entry. According to her, barriers to entry are those that prevent dancers from getting their money immediately.[[198]](#footnote-198) That dancer, however, had a college degree and other means of income. Another dancer who was initially unsure whether the licensing requirement would provide a barrier to entry ultimately came to the conclusion that it could after thinking it through for a few moments. She is a young single mother who tried to understand the requirement from the perspective of a dancer more on the economic margins than even she was when she started. [[199]](#footnote-199) The certificate requirement also bypasses those most in need of training — owners, managers, and other non-dancer employees at the clubs. Since the managers run the clubs, they are in the best position to prevent sexual violence from occurring in the first instance and to respond most effectively when such situations arise. Ultimately, the licensing requirement was replaced by a certificate requirement. But the burden was still placed on the party least able to pay for it, as the dancer was required to pay the worker for the training rather than the club.[[200]](#footnote-200)

Some scholars have expressed concern with the “regulatory precarity” of sex work, or the under-enforcement of labor and employment law within adult businesses.[[201]](#footnote-201) This has been more of a problem in the porn industry than in dancing. But, by focusing on the dancers rather than on their working conditions, A.B. 2389 would have done little to enhance the enforcement of labor and employment law within the dancing industry. As Antonia Crane of Soldiers of Pole stated, “AB2389 is a bill that ... is dressed to look like it seeks to protect adult entertainers, when in fact, it seeks to further criminalize them.”[[202]](#footnote-202) The Adult Performers Actors Guild (APAG) criticized its parent union for its participation in drafting A.B. 2389. In an interview, APAG President Alana Evans stated, “We are shocked, disgusted, and angry that our parent union did this without discussing it with APAG, without discussing it with the industry and without discussing it with stakeholders.”[[203]](#footnote-203) The bill was revised extensively,[[204]](#footnote-204) but the pandemic ultimately shut down its consideration, as the legislature was forced to focus on COVID-related matters.[[205]](#footnote-205) Assemblywoman Garcia, however, promised to take up the matter again in the future, but to date has not.[[206]](#footnote-206) Focusing on sex trafficking at the expense of addressing dancers’ actual working conditions within clubs would, unfortunately, be a step backward from A.B. 5’s (perhaps unintended) promise in recognition of dancers as workers.

**VI. Sex Work as Work**

If there is one clear positive effect of A.B. 5 with respect to its impact on erotic dancers, it is that it construes dancers as *workers*.[[207]](#footnote-207) Hopefully, this will begin a shift in our conception of the sex worker from an emphasis on *sex* to an emphasis on *worker*,[[208]](#footnote-208) although A.B. 2389 suggests that road is long. Nonetheless, such a shift would be valuable to create a regulatory regime centered on the dangers to the sex worker as a worker. While extending the protections of employment law to exotic dancers is a positive movement, it is not a panacea. First, it requires that the dancers be aware of their rights and to actually avail themselves of those rights. This is more easily done with maternity leave, disability, or unemployment. It is more difficult with respect to sexual harassment and assault issues. Many dancers are already on the economic margins, and thus unlikely to pursue such protections. And, there seem to be few options currently available to address the “financial violence” of increased stage fees/quotas, reduced dance splits, and tip-out norms.

Unionization does not appear to be a viable option on a broad scale because of the transiency and youth of most of the workers and dancers’ general desire for anonymity. But even unions have on occasion cast their members as sex trafficking victims, and strangely as threats to themselves, as the IEAU’s involvement in A.B. 2389 demonstrates.[[209]](#footnote-209) I’m not sure how or why a sex worker could trust the IEAU after such a poorly drafted and hostile bill like A.B. 2389. But unionization is probably not going to be a viable option on a broad scale, though it may be successful in individual cases. As Gregor Call has explained, “There is still no shining exemplar of ‘regular’ unionization to guide and inspire sex workers in their quest for social, political, and economic justice.”[[210]](#footnote-210)

One of the major problems facing strip clubs is management. Until managers and owners understand the true value of their employees, and their need for protection, dancers will remain vulnerable. Owners and managers are probably unlikely to move in this direction until more women and/or dancers own or manage clubs, or until owners and managers are subject to regulatory liability for their treatment of dancers. Club owners also need to rethink their business models to make them less dependent upon dancer labor for their revenue. But there will be little incentive to do so if they are left free to set quotas, dance splits, and tip-outs.

Nevertheless, by reconceptualizing dancers as employees, and focusing on their well-being as employees rather than independent contractors, we can begin to focus on the well-being of the dancers as workers. However, this requires more than merely re-classifying dancers as employees or some hybrid category, such as “dependent contractor” or “independent employee.”[[211]](#footnote-211) There is no categorical approach that will adequately protect dancers as employees or as human beings. As some scholars have suggested, dancers would probably best be served by abandoning the independent contractor-employee distinction/discourse and rethinking employment law on altogether new terms.[[212]](#footnote-212)

While A.B. 5 enables us to see dancers as workers, not just *sex* workers, access to many of the protections it affords will likely remain fleeting without a coordinated effort on multiple fronts, including publicity, lobbying and legislation, new business models, and legal aid groups directed toward the protection of dancer-workers. A full complement of rights and conditions making it possible for dancers to ply their trade as safely as possible can be achieved only by addressing the specific problems that dancers face in their workplace directly, such as safety, cleanliness, and wage and earnings protections, not by treating them as victims or criminals-in-waiting.

1. A.B. 5, 2019-2020 Reg. Sess. (Cal. 2019). [↑](#footnote-ref-1)
2. Dynamex Operations West v. Superior Court, 4 Cal.5th 903 (2018). [↑](#footnote-ref-2)
3. S.G. Borrello & Sons, Inc. v. Department of Industrial Relations, 48 Cal.3d 341 (1989). For a discussion of the control test, see Roscoe T. Steffen, *Independent Contractor and the Good Life*, 2 U. Chi. L. Rev. 501 (1935). [↑](#footnote-ref-3)
4. Alexander Kondo & Abraham Singer, *Labor Without Employment: Toward a New Legal Framework for the Gig Economy*, 34 A.B.A. J. of Lab. and Emp. L. 331, 348–49 (2020). [↑](#footnote-ref-4)
5. *Dynamex*, 4 Cal.5th at 916­­–17. [↑](#footnote-ref-5)
6. Cal. A.B. 5 § 1(e). [↑](#footnote-ref-6)
7. *See, e.g.*, Katie Kilkenny, *“Everybody is Freaking Out”: Freelance Writers Scramble to Make Sense of New California Law,* Hollywood Rep. (Oct. 17, 2019), https://www.hollywoodreporter.com/news/general-news/everybody-is-freaking-freelance-writers-scramble-make-sense-new-california-law-1248195/. [↑](#footnote-ref-7)
8. Stormy Daniels, *Keep Strippers Independent: California Shouldn’t Force Exotic Dancers to Become Employees*, L.A. Times, February 6, 2019, at A11. [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. *Id.* [↑](#footnote-ref-10)
11. *Id.* [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. *Id.* [↑](#footnote-ref-13)
14. *Id.* [↑](#footnote-ref-14)
15. Jordan Gartner, *Stormy Daniels Named Spokeswoman for Adult Entertainment Group Déjà Vu Services*, WPTV (Oct. 28, 2018), https://www.wptv.com/news/national/stormy-daniels-named-spokeswoman-for-adult-entertainment-group-deja-vu-services; Michael Smolens, *Stormy Daniels vs. Lorena Gonzalez and Calif. Labor Law*, San Diego Union-Trib. (Feb. 10, 2019), https://www.sandiegouniontribune.com/news/columnists/michael-smolens/sd-me-smolens-stormy-daniels-20190210-story.html (“It was in her capacity as a spokeswoman and exotic dancer that Daniels authored an opinion piece in the *Los Angeles Times* last week advocating for independent-contractor status for dancers - which predictably gained nationwide attention”). [↑](#footnote-ref-15)
16. Margot Roosevelt, *Employee or contractor?: State Supreme Court’s decision on classifying workers upends the status of exotic dancers, barber, and others*, L.A. Times (February 24, 2019) (involving over 5,800 dancers at 25 clubs). Generally, the costs of litigation are less than the costs of re-classification, even with a large reward amount. As one dancer has explained, “I signed on to one lawsuit. . . . They paid out, and nothing changed.” Valeriya Safronova, *Strippers are Doing it for Themselves* N.Y. Times (July 24, 2019) (quoting Jacqueline Frances), https://www.nytimes.com/2019/07/24/style/strip-clubs.html. More generally, however, “standalone litigation wins are ineffective for gig workers not just because of a lack of effective judicial enforcement power. They are also ineffective because employee status for workers in a ‘grey zone’ cannot address their vast structural and political inequality with firms.” V.B. Dubal, *Winning the Battle, Losing the War: Assessing the Impact of Misclassification Litigation on Workers in the Gig Economy*, 2017 Wis. L. Rev. 739, 748 (2017). [↑](#footnote-ref-16)
17. While I have no reason to doubt my friend’s account, there was a complicating factor in her tale. At the time that Deja Vu began re-classifying its dancers, between *Dynamex* and A.B. 5, other clubs were not. Had my friend wanted to, she could have moved to another club and continued to work as an independent contractor. And before A.B. 5 was enacted, it was not clear that other clubs would re-classify their dancers. My friend, however, had been in the industry for a decade by that point, and was ready to move on from it, which she did. Re-classification helped to accelerate a decision she was already about to make. [↑](#footnote-ref-17)
18. Antonia Crane, *Soldiers of the Pole: Strippers Fight Back Against Wage Theft*, Los Angeleno (May 2, 2019) https://losangeleno.com/features/strippers-strike-los-angeles/ [https://web.archive.org/web/20190331205944/https://losangeleno.com/features/strippers-strike-los-angeles/]. Apparently, it has recently changed its named to Strippers United. *Strippers United*, https://www.strippersunited.org (last visited Apr. 4, 2024). [↑](#footnote-ref-18)
19. Crane, *supra* note 18. [↑](#footnote-ref-19)
20. *Id.* [↑](#footnote-ref-20)
21. *Id.* [↑](#footnote-ref-21)
22. *Id.* [↑](#footnote-ref-22)
23. *Id.* [↑](#footnote-ref-23)
24. *See, e.g.*, Larry Buhl, *Poles Apart: Exotic Dancers Clash Over Employment Status*, Cap. & Main (April 5, 2019), https://capitalandmain.com/exotic-dancers-clash-over-employment-status-0405. [↑](#footnote-ref-24)
25. *See* Dynamex Operations West v. Superior Court, 4 Cal.5th 903 (2018); S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations, 48 Cal.3d 341 (1989). [↑](#footnote-ref-25)
26. *Dynamex*, 4 Cal.5th at 14-20, 26-27. For an early critique of the control test, and a prediction that the courts would change the definition of “independent contractors “for purposes of bringing them within workmen’s compensation laws,” see Roscoe T. Steffen, *Independent Contractor and the Good Life*, 2 U. Chi. L. Rev. 501 (1935). [↑](#footnote-ref-26)
27. *See* Rebecca E. Zeitlow, *The New Peonage: Liberty and Precarity for Workers in the Gig Economy*, 55 Wake Forest L. Rev. 1087, 1092 (2020). [↑](#footnote-ref-27)
28. As the California Supreme Court explained in *Dynamex*, the ABC test “will provide greater clarity and consistency, and less opportunity for manipulation, than a test or standard that invariably requires the consideration and weighing of a significant number of disparate factors on a case-by-case basis.” *Dynamex*, 4 Cal.5th at 40. [↑](#footnote-ref-28)
29. Roscoe T. Steffen, *Independent Contractor and the Good Life*, 2 U. Chi. L. Rev. 501, 504 (1935). [↑](#footnote-ref-29)
30. *Id.* at 502. [↑](#footnote-ref-30)
31. *Id.* at 508–509. [↑](#footnote-ref-31)
32. *Dynamex*, 4 Cal.5th at 928. [↑](#footnote-ref-32)
33. Tieberg v. Unemp. Ins. Appeals Bd., 2 Cal.3d 943, 946 (1970). [↑](#footnote-ref-33)
34. *Id.* at 15. [↑](#footnote-ref-34)
35. Steffen, *supra* note 29*,* at 502. [↑](#footnote-ref-35)
36. *Id.* at 16. [↑](#footnote-ref-36)
37. S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations*,* 48 Cal.3d 341, 350 (1989). [↑](#footnote-ref-37)
38. Dynamex Operations West v. Superior Court, 4 Cal.5th 903, 932 (2018). [↑](#footnote-ref-38)
39. *See* Kathleen DeLaney Thomas, *Taxing the Gig Economy*, 166 U. Pa. L. Rev. 1415, 1421 (2018), https://scholarship.law.upenn.edu/penn\_law\_review/vol166/iss6/2/. [↑](#footnote-ref-39)
40. *Dynamex*, 4 Cal. 5th at 912. [↑](#footnote-ref-40)
41. A larger problem with *Borello*, and the economic realities test in general, “is that it lists a set of factors for courts to balance without sufficient clarity in the intended guiding principles.” Kondo & Singer, *supra* note 4, at 348. Robert Sprague sees *Borello* as combining the control test and the economic realities test. Robert Sprague, *Using the ABC Test to Classify Workers: End of the Platform-Based Business Model or Status Quo Ante?*, 11 Wm. & Mary Bus. L. Rev. 733, 759 (2020). [↑](#footnote-ref-41)
42. Kondo & Singer, *supra* note 4, at 348–49. [↑](#footnote-ref-42)
43. *Dynamex*, 4 Cal. 5th at 916–917. [↑](#footnote-ref-43)
44. A.B. 5, 2019-2020 Reg. Sess. § 1(c) (Cal. 2019). [↑](#footnote-ref-44)
45. *Id.* [↑](#footnote-ref-45)
46. *See* Katie Kilkenny, *“Everybody is Freaking Out”: Freelance Writers Scramble to Make Sense of New California Law*, Hollywood Rep. (Oct. 17, 2019), https://www.hollywoodreporter.com/news/general-news/everybody-is-freaking-freelance-writers-scramble-make-sense-new-california-law-1248195/. [↑](#footnote-ref-46)
47. Shelly Steward et al., C*alifornia’s Proposition 22 Presents an Alarming Turning Point in Labor Law*, Fairwork, https://fair.work/en/fw/blog/proposition-22/. [↑](#footnote-ref-47)
48. # *See* Tyler Sonnemaker, *Uber and Lyft say the battle over AB-5 is about preserving flexibility for part-time gig workers*, Business Insider (Aug. 21, 2020), https://www.businessinsider.com/uber-lyft-ab5-fight-reveals-dependence-full-time-drivers-2020-8?op=1.

    [↑](#footnote-ref-48)
49. Cal. A.B. 5 § 1(g). [↑](#footnote-ref-49)
50. Order Granting Petition for Writ of Mandate at 2*, Castellanos v. State of California* (No. RG21088725). The Court determined that the initiative infringed the state legislature’s “plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers’ compensation.” *Id*.  [↑](#footnote-ref-50)
51. *Id.* [↑](#footnote-ref-51)
52. Michael LeRoy, *Misclassification under the Fair Labor Standards Act: Court Rulings and the Erosion of Employment Relationships*, 2017 U. Chi. Leg. Forum 327, 344 (2017). [↑](#footnote-ref-52)
53. Interview with Holly (May 13, 2021). [↑](#footnote-ref-53)
54. *Id.* [↑](#footnote-ref-54)
55. *See, e.g.*, Mindy S. Bradley-Engen and Jeffery T. Ulmer, *Social Worlds of Stripping: The Processual Orders of Exotic Dance*, 50 Socio. Q. 29, 29 (2009). [↑](#footnote-ref-55)
56. Siobhan Brooks, Unequal Desires: Race and Erotic Capital in the Stripping Industry 7–8 (2010). [↑](#footnote-ref-56)
57. This occurs when a male customer who already has a partner gets too close to a dancer. The fear is that the customer’s girlfriend will come into the club to confront the dancer. It is impossible to say how much a “problem” it actually is, or whether the escort rule has any affect on it. Mary Nell Trauter, *Doing Gender, Doing Class: The Performance of Sexuality in Exotic Dance Clubs*, 19 Gender & Soc’y 771, 775 (2005). [↑](#footnote-ref-57)
58. Brooks, *supra* note 56. [↑](#footnote-ref-58)
59. Interview with Vinca (July 6, 2021). [↑](#footnote-ref-59)
60. Interview with Lilac (June 23, 2021). When I asked her if that meant that she would lose her job, she said she would just move to another one. [↑](#footnote-ref-60)
61. After southern California re-opened after the worst of the pandemic was over, many clubs opened at reduced days and hours, especially in Los Angeles County. The clubs owned by Discover Entertainment quickly expanded their hours, from three days a week to everyday within the space of a couple of weeks, and shortly thereafter began day shifts. Spearmint Rhino and Deja Vu clubs opened more slowly. Through the summer, they opened only Thursday to Saturday or Sunday, and only for night shifts. In July, they included Wednesday nights. In August, Spearmint Rhino opened every night, but did not open for day shifts. Deja Vu has yet to return to full schedules, operating only Wednesdays through Sundays, and usually only for night shifts. [↑](#footnote-ref-61)
62. Interview with Salvia (June 3, 2021). [↑](#footnote-ref-62)
63. I mentioned this to one dancer, who said that she wanted to know which flower I assigned to her. She wanted to make sure that she was assigned an interesting name, not something like “Cactus Flower.” She was not pleased with the name I ultimately (randomly) assigned to her. [↑](#footnote-ref-63)
64. DeMarr Moulton, *The Unexpected Consequences of Classifying Exotic Dancers as Employees or Independent Contractors under the FLSA*, 95 N.C. L. Rev. Add’m 83, 89 (2016) (referring to FLSA litigation); *see also* Daniels, *supra* note 8. [↑](#footnote-ref-64)
65. Moulton, *supra* note 64, at 89. [↑](#footnote-ref-65)
66. Daniels, *supra* note 8. [↑](#footnote-ref-66)
67. Moulton, *supra* note 64, at 87. [↑](#footnote-ref-67)
68. *Id.* [↑](#footnote-ref-68)
69. *Id*. at 89. [↑](#footnote-ref-69)
70. Interview with Hyacinth (June 14, 2021). [↑](#footnote-ref-70)
71. Interview with Delphinia (March 10, 2021). [↑](#footnote-ref-71)
72. Daniels, *supra* note 8. [↑](#footnote-ref-72)
73. *See supra* Introduction. [↑](#footnote-ref-73)
74. Interview with Delphinia (March 10, 2020). [↑](#footnote-ref-74)
75. Interview with Hyacinth (June 14, 2021). [↑](#footnote-ref-75)
76. Angela Jones, Camming: Money, Power, and Pleasure in the Sex Work Industry 109–133 (2020). [↑](#footnote-ref-76)
77. Interview with Delphinia (March 10, 2020). [↑](#footnote-ref-77)
78. Interview with Acacia (July 29, 2021). [↑](#footnote-ref-78)
79. Interview with Vinca (July 6, 2021). [↑](#footnote-ref-79)
80. Interview with Lantana (June 18, 2021). [↑](#footnote-ref-80)
81. Interview with Cosmos (July 14, 2020); Interview with Delphinia (March 10, 2020). [↑](#footnote-ref-81)
82. Interview with Holly (May 13, 2021). [↑](#footnote-ref-82)
83. Interview with Lantana (June 18, 2021) [↑](#footnote-ref-83)
84. Interview with Daisy (July 3, 2021). [↑](#footnote-ref-84)
85. Interview with Daisy (July 3, 2021). [↑](#footnote-ref-85)
86. Interview with Yarrow (July 10, 2021). [↑](#footnote-ref-86)
87. Cal Lab. Code § 226.7 (West 2024).  [↑](#footnote-ref-87)
88. Interview with Wasabi (July 29, 2021). [↑](#footnote-ref-88)
89. Interview with Camellia (March 1, 2020). [↑](#footnote-ref-89)
90. Interview with Anenome (February 26, 2020). [↑](#footnote-ref-90)
91. Interview with Snowdrop (June 30, 2021). [↑](#footnote-ref-91)
92. Interview with Alyssum (July 29, 2021); interview with Wasabi (July 29, 2021). [↑](#footnote-ref-92)
93. Interview with Kerria (June 18, 2021). [↑](#footnote-ref-93)
94. Although somewhat out-of-date, Thrillist offers a fairly complete list of strip clubs in the City of Los Angeles. Danny Jesen, *Every Single LA Strip Club, Sorted by Neighborhood and Nudity Level*, Thrillist (2017), https://www.thrillist.com/entertainment/los-angeles/la-strip-clubs-fully-nude-topless-bikini-bars. [↑](#footnote-ref-94)
95. There are other types of adult businesses where dancers can and have worked, such as bikini bars where the bartenders wear bikinis, and Vietnamese cafes where the waitresses wear lingerie. There are also differences in local regulatory structures. Orange County, especially Anaheim, tends to regulate adult clubs more strictly than does Los Angeles County. [↑](#footnote-ref-95)
96. One dancer reported that she had been at her club for three years, and that it was the only club at which she had worked. Interview with Yarrow (July 10, 2021). [↑](#footnote-ref-96)
97. Interview with Peony (May 27, 2021). [↑](#footnote-ref-97)
98. Interview with Larkspur (June 18, 2021). [↑](#footnote-ref-98)
99. Interview with Hyacinth (June 14, 2021). [↑](#footnote-ref-99)
100. Interview with Begonia (March 3, 2022). [↑](#footnote-ref-100)
101. The Dancers Resource, https://play.google.com/store/apps/details?id=com.theclubcreep.dancer\_resources (last visited Apr. 12, 2024). [↑](#footnote-ref-101)
102. This sign was printed on paper torn from a spiral notebook, leading to some colorful comments. The Dancers Resource (@thedancersresource), Iɴsᴛᴀɢʀᴀᴍ, (April 19, 2022), https://www.instagram.com/p/CcjTQT9P5KY/?hl=en. [↑](#footnote-ref-102)
103. *Id*. [↑](#footnote-ref-103)
104. The Dancers Resource (@thedancersresource), Iɴsᴛᴀɢʀᴀᴍ, (April 10, 2022), https://www.instagram.com/p/CcjTQT9P5KY/?hl=en. [↑](#footnote-ref-104)
105. The Dancers Resource (@thedancersresource), Iɴsᴛᴀɢʀᴀᴍ, (April 19, 2022), https://www.instagram.com/p/CcjTQT9P5KY/?hl=en; The Dancers Resource (@thedancersresource), Iɴsᴛᴀɢʀᴀᴍ, (April 10, 2022), https://www.instagram.com/p/CcLtznDvhbx/?hl=en. [↑](#footnote-ref-105)
106. Interview with Delphinia (March 10, 2020). [↑](#footnote-ref-106)
107. Interview with Tulip (July 1, 2021). [↑](#footnote-ref-107)
108. Interview with Larkspur (June 18, 2021). [↑](#footnote-ref-108)
109. Interview with Amaranth (July 29, 2021). [↑](#footnote-ref-109)
110. They could, however, work two shifts at two different clubs on the same day, although they would not be eligible for overtime. Some clubs appear to be relaxing their rules on overtime. One dancer told me in passing that the ability to work overtime depended upon the manager. [↑](#footnote-ref-110)
111. Larry Buhl, *Poles Apart: Exotic Dancers Clash Over Employment Status*, Cap. & Main (April 5, 2019), https://capitalandmain.com/exotic-dancers-clash-over-employment-status-0405. [↑](#footnote-ref-111)
112. Interview with Acacia (July 29, 2021). [↑](#footnote-ref-112)
113. Interview with Aster (March 1, 2020). As independent contractors, dancers are required to pay taxes in ways far more complicated than they need to be, such as filing their taxes quarterly. This is a problem for “gig workers” more generally. *See* Thomas, *supra* note 39, at 1422. One dancer with no experience as an independent contractor said that one of the things she disliked about being an employee was that she had to pay taxes. Interview with Clematis (March 5, 2020). [↑](#footnote-ref-113)
114. Interview with Daisy (July 3, 2021). [↑](#footnote-ref-114)
115. Interview with Lantana (June 18, 2021). [↑](#footnote-ref-115)
116. Interview with Amaranth (July 29, 2021). [↑](#footnote-ref-116)
117. Thomas, *supra* note 39, at 1422. [↑](#footnote-ref-117)
118. One dancer told me that in San Francisco, before re-classification, dancers were often referred to a specific accountant who handled their taxes. Interview with Amaranth (July 29, 2021). [↑](#footnote-ref-118)
119. Salvia’s story about how she got into dancing was actually heart-warming. She had been couch surfing since she was 15, after her mother kicked her out of the house. She finished high school and got her associate’s degree from a local community college while living with various friends and relatives. It was after receiving her associate’s degree at 22 that she became a dancer. And it was only after becoming a dancer that she was able to afford to rent her own place. When I asked her if she wished she would have started dancing while she was in college, she said “Fuck yeah, I do!” Interview with Salvia (June 3, 2021). [↑](#footnote-ref-119)
120. Interview with Allysum (July 29, 2021). [↑](#footnote-ref-120)
121. Interview with Allysum (July 29, 2021). [↑](#footnote-ref-121)
122. Interview with Anise (July 29, 2021). [↑](#footnote-ref-122)
123. Interview with Acacia (July 29, 2021). [↑](#footnote-ref-123)
124. *See* Thomas, *supra* note 39, at 1422-23 [↑](#footnote-ref-124)
125. Interview with Nicotiana (June 25, 2021). [↑](#footnote-ref-125)
126. Interview with Scilla (July 2, 2021). [↑](#footnote-ref-126)
127. Interview with Aster (March 1, 2020); interview with Amaranth (July 29, 2021). [↑](#footnote-ref-127)
128. Margot Roosevelt, *Are You an Employee or a Contractor? Carpenters, Strippers, and Dog Walkers Now Face That Question*,L.A.Times (February 5, 2019), https://www.latimes.com/business/la-fi-dynamex-contractors-20190223-story.html. Interestingly, a dancer at a Deja Vu club told me in March 2022 that that club does not charge the dancers a house fee or require a quota. A dancer at a different club told me that at her club, “There was a big meeting about the changes. They said they were going to have cut dancers, and increase prices to cover the costs.” The changes never materialized. Interview with Nicotiana (July 14, 2021). [↑](#footnote-ref-128)
129. Roosevelt, *supra* note 16. [↑](#footnote-ref-129)
130. One dancer told me that the stage fees at clubs she worked at in Atlanta were nominal, sometimes as low as $5. [↑](#footnote-ref-130)
131. Morgan Meaker, *The Gig Law Creating Chaos in California Strip Clubs*, Wired (Oct. 19, 2022), https://www.wired.com/story/gig-economy-strip-clubs/ (“Payment has always varied club to club. But many clubs now say they need to keep the first $100 or $120 a dancer earns from private dances to cover the cost of paying employees minimum wage, and still take a cut of any money dancers make after they reach that threshold.”). [↑](#footnote-ref-131)
132. Interview with Amaranth (July 29, 2021). [↑](#footnote-ref-132)
133. Interview with Salvia (June 3, 2021). [↑](#footnote-ref-133)
134. I have confirmed this figure with other dancers. It is not uncommon for dancers to not know the specifics about their clubs’ fees and charges. Other times, they may know the dollar amount for a dance, but not the proportional split. [↑](#footnote-ref-134)
135. Interview with Armeria (July 29, 2021). [↑](#footnote-ref-135)
136. Interview with Lantana (December 19, 2021). Dancers at the Library are also barred from allowing customers to touch them. It is a fireable offense. [↑](#footnote-ref-136)
137. Interview with Alyssum (July 29, 2021). [↑](#footnote-ref-137)
138. Interview with Snowdrop (June 30, 2021). [↑](#footnote-ref-138)
139. Interview with Hyacinth (June 14, 2021). [↑](#footnote-ref-139)
140. Interview with Amaranth (July 29, 2021). [↑](#footnote-ref-140)
141. Interview with Peony (May 27, 2021). [↑](#footnote-ref-141)
142. Interviews with Tulip (July 1, 2021), Nicotiana (June 25, 2021), Lantana (June 18, 2021), Anenome (Feb. 26, 2020) (“maybe making slightly less, but not enough to make a difference.”), and Camellia (March 1, 2020) (she “couldn’t say” whether her absolute earnings declined). [↑](#footnote-ref-142)
143. Interviews with Lilac (June 23, 2021) and Vinca (July 6, 2021). [↑](#footnote-ref-143)
144. I.R.S. Pub’n. No. 15, (Circular E), Employer’s Tax Guide § 7 (2024). [↑](#footnote-ref-144)
145. It does suggest a way for dancers to set their prices, however. Dancers have complained about not being able to set their own prices, and have argued for unionization as a means to acquire that power. *See* Sascha Cohen, *Strippers are Turning to Old-School Union Tactics to Fight for Fair Wages*, HuffPost (June 13, 2019) (quoting A.M., a dancer). Clubs could create a tipping norm, however, by setting the price for the dance along with language along the lines of “tips are appreciated.” One dancer told me, outside of a formal interview, that she does not do topless dances because the customers usually get handsy and do not tip for a topless dance. For her, those dances were simply not worth it. I suspect that she was a higher earner, and could thus be more selective. Dancers struggling to make their quota cannot be so selective. [↑](#footnote-ref-145)
146. Tipping managers is illegal in California. Cal. Lab. Code § 351. Some dancers said they know this, but tipped the manager anyway as it helps in terms of scheduling. Interview with Sweet Pea (July 1, 2021). A few years ago, there was a rumor that a manager at one club was demanding tips from the dancers. When the dancer would cash out at the end of the night, the manager would call the non-dancer employees into the office so that the dancer would tip them out as well. I heard this rumor from a couple of different dancers who had moved on from that club rather quickly. [↑](#footnote-ref-146)
147. A class-action lawsuit was filed recently in the Central District of California against Synn for illegal tip pools. See *Dancers sue over illegal tip pool*, 23(30) Class Action Prosp’r (April 22, 2020). [↑](#footnote-ref-147)
148. Interview with Yarrow (July 10, 2021). [↑](#footnote-ref-148)
149. Interview with Snowdrop (June 30, 2021). [↑](#footnote-ref-149)
150. Interview with Amaranth (July 29, 2021). [↑](#footnote-ref-150)
151. Crane, *supra* note 18. [↑](#footnote-ref-151)
152. Interview with Buttercup (November 12, 2021). [↑](#footnote-ref-152)
153. *Id.*  [↑](#footnote-ref-153)
154. Interview with Buttercup (November 12, 2021). [↑](#footnote-ref-154)
155. Interview with Lupine (June 25, 2021). Dancing for Lupine was a second job, mostly for additional income and to tap into her exhibitionist side. While I cannot say if that fact has colored her view of fees and splits, it could be a factor. Lupine was “more libertarian” on issues like licensing requirements, training, and unions. I will note that the dancers’ responses here may have reflected a trust issue. I don’t want to discount them, though, as they appeared to be genuine. Whether the fees and splits are actually fair cannot be determined without knowing the clubs’ finances. Dun and Bradstreet provides revenue data for several clubs. However, the numbers seem impossibly low. *See, e.g.*, *The Library Gentlemens Club*, Dun & Bradstreet, https://www.dnb.com/business-directory/company-profiles.the\_library\_gentlemens\_club.d997752d096f7d648b44ac1c8cc3d98c.html (last visited Apr. 12, 2023). [↑](#footnote-ref-155)
156. Interview with Armeria (July 29, 2021). [↑](#footnote-ref-156)
157. Interview with Amaranth (July 29, 2021). [↑](#footnote-ref-157)
158. Interviews with Geranium (March 11, 2020), Tulip (July 1, 2021), Aster (March 1, 2020), Iris (June 16, 2021), and Scilla (July 2, 2021). Geranium (“Every little bit helps”) and Tulip “appreciated” wages. Aster (“It’s just minimum wage.”), Iris (“Minimum wage doesn’t make a difference.”), and Scilla (“basically wages pay for the house fee.”) were more dismissive. [↑](#footnote-ref-158)
159. Heather Berg, *Porn Work, Independent Contractor Misclassification, and the Limits of the Law*, 52 Col. Hum. Rts. Rev. 1159, 1174–1177 (2021).  [↑](#footnote-ref-159)
160. Interview with Vinca (July 6, 2021). [↑](#footnote-ref-160)
161. The conversation occurred on April 20, 2022. [↑](#footnote-ref-161)
162. One dancer was skeptical that a sexual harassment claim could even be successful given the nature of her work. Interview with Yarrow (July 10, 2021). Cf. Kelly C. Timmons, *Hooters: Should There Be an Assumption of Risk Defense to Some Work Environment Sexual Harassment Claims?*, 48 Vand. L. Rev. 1107 (1995). Several dancers noted concerns about sexual assault by customers. Yarrow expressed concern that her club did not do enough to prevent customers’ aggressive behavior in the private rooms. It was particularly problematic for her because the club served alcohol, which lowered dancers’ defenses. Interview with Yarrow (July 10, 2021). I had a conversation with a dancer at a different club who had just returned to the floor a little shaken up after following an experience with a customer who had tried to push her beyond her limits during a VIP dance. She could not quite explain what had happened, but she was clearly affected by it.  [↑](#footnote-ref-162)
163. Dancers report a fair amount of hand combat with unfamiliar customers that does not rise to the level of sexual assault. Preventing sexual assault is certainly one area where clubs need to improve. Panic buttons in the private rooms would be a step in that direction. [↑](#footnote-ref-163)
164. Although unusual, dancers do occasionally work while visibly pregnant. [↑](#footnote-ref-164)
165. Interview with Salvia (June 3, 2021). [↑](#footnote-ref-165)
166. Interview with Peony (May 27, 2021). [↑](#footnote-ref-166)
167. Interview with Primrose (May 29, 2021). [↑](#footnote-ref-167)
168. Interview with Hyacinth (June 14, 2021). [↑](#footnote-ref-168)
169. *Id.*  [↑](#footnote-ref-169)
170. Interview with Hyacinth (June 14, 2021). Another dancer, Acacia, turned to one of the nude camming sites during the pandemic. She said she worked seven days a week camming, and still earned less than she did as a dancer. Interview with Acacia (July 29, 2021). [↑](#footnote-ref-170)
171. Interview with Larkspur (June 18, 2021). [↑](#footnote-ref-171)
172. Interview with Salvia (June 3, 2021) [↑](#footnote-ref-172)
173. Interview with Peony (May 27, 2021). [↑](#footnote-ref-173)
174. Holly Wilmet, *Naked Feminism: The Unionization of the Adult Entertainment Industry*, 7 Am. U. J. Gender, Soc. Pol’y & L. 465 (1999). [↑](#footnote-ref-174)
175. Interview with Lantana (December 19, 2021). [↑](#footnote-ref-175)
176. Interview with Tulip (July 1, 2021). [↑](#footnote-ref-176)
177. Interview with Tulip (July 1, 2021). [↑](#footnote-ref-177)
178. Interview with Lantana (December 19, 2021). [↑](#footnote-ref-178)
179. Interview with Lupine (June 25, 2021). [↑](#footnote-ref-179)
180. *See* Emma Alabaster and Natalie Chudnovsky, *What Happened After the Nation’s Only Unionized Strip Club Reopened in North Hollywood – 6 Months Later,* LAist (Feb. 22, 2024), https://laist.com/news/arts-and-entertainment/the-nations-only-unionized-strip-club-reopens-in-north-hollywood.  [↑](#footnote-ref-180)
181. Gretchen Soderlund and Emma Grant, *Girls (Force to) Dance Naked! The Politics and Presumptions of Antitrafficking Laws*, *in* Collective Action: A Bad Subjects Anthology 121, 122 (Megan Shaw Prelinger & Joel Schalit eds., 2004). [↑](#footnote-ref-181)
182. *Id.* [↑](#footnote-ref-182)
183. *See, e.g.*, LaShawn Harris, Sex Workers, Psychics, and Number Runners (2016); Kimberly Kay Hoang, Dealing in Desire: Asian Ascendancy, Western Decline, and the Hidden Currencies of Global Sex Work (2015); Cecilia Benoit et al., *Would you think about doing sex for money? Structure and agency in deciding to sell sex in Canada*, 31 Work, Emp. & Soc’y 731 (2017). This is not to suggest that sex trafficking cannot or does not occur. Lantana told me, outside of a formal interview, that she has received several offers from customers to be her pimp, but that she does not take them seriously. Nor does she understand their utility; she would just be paying yet another person to do her job. She did mention, however, that a couple of dancers were fired from her club after management learned that they had pimps. Those dancers moved to other clubs.  [↑](#footnote-ref-183)
184. A.B. 2389, 2019-20 Gen. Assemb., Reg. Sess. (Cal. 2020).  [↑](#footnote-ref-184)
185. Christian Britschgi, *California Bill Would Require Occupational Licenses for Porn Actors, Strippers, Cam Girls,* Reason (Feb. 20, 2020, 3:30 PM), https://reason.com/2020/02/20/california-bill-would-require-occupational-licenses-for-porn-actors-strippers-cam-girls/ (screenshotting a tweet from the Assemblywoman).  [↑](#footnote-ref-185)
186. Int’l Ent. Adult Union, https://web.archive.org/web/20191118210855/http://ieauunion.com/?zone=/unionactive/view\_page.cfm&page=WHY20THE2020IEAU (last visited Mar. 10, 2024). The IEAU is also in the process of creating a new chapter for web cam models, Live on the Web (“L.O.W.”). The union has also announced that it “will support” other adult workers like bartenders, cocktail waitresses, bouncers, tattoo artists, legal escorts, and non-professional mixed-martial artists and boxers. I could not find any information about A.B. 2389 on the IEAU’s website. [↑](#footnote-ref-186)
187. Interview with Ginger (July 10, 2021). [↑](#footnote-ref-187)
188. A.B. 2389 § 1(e). [↑](#footnote-ref-188)
189. Finding reliable data for sex trafficking is a major problem. Finding statistics that match the claims about the nature and prevalence of sex trafficking are even more problematic. *See, e.g.*, Sally Engle Merry, *The* Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking (2016); Denise Brennan, *Fighting Human Trafficking Today: Moral Panics, Zombie Statistics, and the Seduction of Rescue*,” 52 Wake Forest L. Rev. 477, 478, (2017)(“A particular set of truths have come to dominate public discourse and policy on trafficking. Stock-in-trade claims about trafficking include the following: more women than men are trafficked; most cases of trafficking happen in the sex sector; incidences of trafficking increase during sporting events, such as the Super Bowl and the World Cup; the best way to end trafficking is to ‘end demand’ for prostitution; and police raids on commercial sex establishments are an effective way to rescue trafficked persons. These claims are so widely circulated that it is hard to know where reality lies. But research grounded in evidence points to the contrary of every one of these claims.”); Lisa Fedina, *Use and Misuse of Research in Books on Sex Trafficking: Implications for Interdisciplinary Researchers, Practitioners, and Advocates*, 16 Trauma Violence & Abuse 188, (2015); Frank Laczko and Marco A. Gramegna, *Developing Better Indicators of Human Trafficking*, 10 World Affs. 179, (2003).  [↑](#footnote-ref-189)
190. A.B. 2389 § 1(e). [↑](#footnote-ref-190)
191. A.B. 2389 § 1(f); The bill did not define “sex trafficking,” which has generally been “elusive.” Julie Dahlstrom, *The Elastic Meaning(s) of Human Trafficking*, 108 Cal. L. Rev. 379, 389 (2020). This elusiveness is useful to the construction of a punitive, carceral state. See, e.g., Elizabeth Bernstein, Brokered Subjects: Sex, Trafficking, and the Politics of Freedom (2019); Marcus A. Sibley, *Attachments to Victimhood: Anti-Trafficking Narratives and the Criminalization of the Sex Trade*,” 29 Soc. & Legal Stud. 699 (2020); Chi Adanna Mgbako, *The Mainstreaming of Sex Workers’ Rights as Human Rights*, 43 Harv. J. L. & Gender 92 (2020); Crystal A. Jackson, *Framing Sex Worker Rights: How U.S. Sex Worker Rights Activists Perceive and Respond to Mainstream Anti-Sex Trafficking Advocacy*, 59 Soc’l Persps. 27 (2016). *See generally* Roger Lancaster, Sex Panics and the Punitive State (2011). [↑](#footnote-ref-191)
192. A.B. 2389 § 1(g). [↑](#footnote-ref-192)
193. *See* A.B. 2389. [↑](#footnote-ref-193)
194. Adrienne Davis, *Regulating Sex Work: Erotic Assimiliationism, Erotic Exceptionalism, and the Challenge of Intimate Labor*, 103 Cal. L. Rev. 1195, 1231–32 (2015). [↑](#footnote-ref-194)
195. Interview with Tulip (July 1, 2021). [↑](#footnote-ref-195)
196. Interview with Yarrow (July 10, 2021). [↑](#footnote-ref-196)
197. A.B. 2389 § 2. [↑](#footnote-ref-197)
198. Interview with Hyacinth (June 14, 2021). [↑](#footnote-ref-198)
199. Interview with Lantana (December 19, 2021). [↑](#footnote-ref-199)
200. A.B. 2389 § 1. [↑](#footnote-ref-200)
201. Berg, *supra* note 159, at 1159. [↑](#footnote-ref-201)
202. Andrew Court, *Porn stars in California revolt against Democrat bill to fingerprint adult entertainers and have them complete ‘sexual violence and harassment’ training*, Daily Mail, (March 1, 2020), https://www.dailymail.co.uk/news/article-8061351/Porn-stars-California-revolt-against-Democrat-bill-FINGERPRINT-adult-entertainers.html  [↑](#footnote-ref-202)
203. Britschgi, *supra* note 185. [↑](#footnote-ref-203)
204. A.B. 2389 § 1. [↑](#footnote-ref-204)
205. JC Adams, *FSC: AB2389 is ‘Done’ in California Assembly as State Pivots to Coronavirus Relief,* XBIZ (May 1, 2020), https://www.xbiz.com/news/251899/fsc-ab2389-is-done-in-california-assembly-as-state-pivots-to-coronavirus-relief.  [↑](#footnote-ref-205)
206. *AB2389 is Done!,* APAGUnion (May 2, 2020), https://apagunion.com/2020/05/02/ab2389-is-done/.  [↑](#footnote-ref-206)
207. This is something that lawmakers have been unwilling to do directly. As Sheerine Alemzadeh has explained, “These analytical difficulties could be remedied through doctrinal development and legislative reform, but courts and lawmakers have been reluctant to actively improve strippers’ working conditions, arguably for fear of being tainted by a morally repugnant enterprise.” Sheerine Alemzadeh, *Baring Inequality: Revisiting the Legalization Debate Through the Lens of Strippers' Rights*, 19 Mich. J. Gender & L. 339, 342 (2013). [↑](#footnote-ref-207)
208. *See* Chi Adanna Mgbako, *The Mainstreaming of Sex Workers' Rights as Human Rights*, 43 Harv. J. L. & Gender 92 (2020) (discussing a larger movement of mainstreaming sex workers’ rights as human rights).  [↑](#footnote-ref-208)
209. *See* Britschgi, *supra* note 185 (discussing A.B. 2389’s regulation of sex workers as threats themselves).  [↑](#footnote-ref-209)
210. Gregor Call, *Collective Interest Organization among Sex Workers*, in Negotiating Sex Work: Unintended Consequences of Policy and Activism 221, 223 (Carisa R. Showden and Samantha Majic, eds., 2014). [↑](#footnote-ref-210)
211. Michael Nadler, *Independent Employees: A New Category of Workers for the Gig Economy*, 89 U. Col. L. Rev. 249 (2018); Miriam A. Cherry & Antonio Aloisi, *Dependent Contractors in the Gig Economy: A Comparative Approach*, 66 Am. U. L. Rev. 635 (2017); Seth Harris and Alan B. Kreuger and Hamilton Project, A Proposal for Modernizing Labor Laws for the Twenty-First Century: The “Independent Worker”(2015). [↑](#footnote-ref-211)
212. *See* Kondo & Singer, *supra* note 4, at 348–49; *see also* Orly Lobel, *The Gig Economy and the Future of Employment and Labor Law*, 51 U.S.F. L. Rev. 51 (2017); Brishen Rogers, *Employment Rights in the Platform Economy: Getting Back to Basics*, 10 Harv. L. & Pol’y Rev. 479 (2016). [↑](#footnote-ref-212)