

B Corp Primer

What is a Certified B Corp? Is it different than a benefit corporation?

Chris Cohen Law

111 W Topa Topa St
Ojai, California 93023



(805) 669-6606

chris@chriscohenlaw.com

www.chriscohenlaw.com

Please note that this information does not constitute legal advice. It is provided solely as an informational resource.

B Corp Certification

“B Corporation” (or “B Corp”) is a third party certification related to the environmental and social responsibility of a business. It is provided by a nonprofit called B Lab. In addition to certifying businesses as B Corps, B Lab also advocates for state legislation to create a new corporate form, called a benefit corporation—which is different than a B Corp, as explained below. B Lab also provides impact measuring and reporting tools for businesses through a program called B Analytics.

Businesses achieve B Corp certification from B Lab through a three-step process:

1. First, the business must meet a “performance requirement” by earning a minimum score of 80 out of 200 on an impact assessment. The assessment measures the practices and policies of the business over the past year as they relate to environmental and social responsibility, accountability, and transparency. B Lab verifies the answers provided by the business.
2. Second, depending on the type of legal entity the business operates as (corporation, LLC, etc.), the business may have to amend its articles to institutionalize stakeholder interests into its governing documents. For example, if the company is an LLC, it must amend its Operating Agreement to require all managers of the LLC to give due consideration to all employees, stakeholders, and the environment in decisions made on behalf of the company. In California and other states where the benefit corporation entity exists, the business must elect benefit corporation status within four years of the first effective date of the legislation or two years of initial certification, whichever is later.
3. Third, the company pays annual dues to B Lab based on annual sales. Dues range from \$500 for companies with up to \$999,000 in annual sales, to \$25,000 for companies with more than \$100 million in sales.

Once certified, the business can refer to itself as a Certified B Corporation and use the B Corp seal and logos.

The California Benefit Corporation

The term B Corp and “benefit corporation” are often used interchangeably, but they are different. A benefit corporation is a form of the for-profit corporate legal entity under California Corporations Code §§14600–14631. It was created by statute in California in 2011 and is offered by some other states as well, but not all. There are several important differences between traditional corporations and benefit corporations. For example, a benefit corporation's main purpose must be to create a general public benefit—not just to engage in lawful business activity. It may also identify one or more specific benefits as its purpose, like preserving the environment, for example. The fiduciary duties of a benefit corporation's directors are broader than those of a traditional corporation as well; rather than considering impacts of an action on the corporation itself, they must also consider impacts on other stakeholders, including shareholders, employees, customers, and the environment. A benefit corporation must also make a commitment to transparency by providing its shareholders with an annual benefit report describing how it pursued the creation of a general public benefit.

A California benefit corporation does not have to be a Certified B Corp, but it can be. In addition to the confusingly similar names, several other factors often create confusion regarding the corporate form and the third party certification:

- A benefit corporation must have the corporation's public benefit measured by a third-party standard that defines, reports, and assesses the overall corporate social and environmental performance. Many benefit corporations use B Lab's impact assessment to achieve this, although other standards may be used.
- A business does not have to be a corporation in order to be a Certified B Corp. It can be a sole proprietorship, LLC, or other business entity. However, if a corporation wants to be a Certified B Corp, it must be a benefit corporation if it exists in a state that has adopted benefit corporation legislation, as explained above.

Certain procedural requirements are required for a standard California corporation or other entity to convert to a California benefit corporation. Please feel free to contact me for additional information.