

California Abandons 30-Year-Old Test for Determining Independent-Contractor Status, Broadens Definition of “Employee”

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On April 30, 2018, the California Supreme Court issued its unanimous ruling in [Dynamex Operations West, Inc. v. Superior Court](#), making it even harder for companies to classify workers as independent contractors (rather than employees). The previous standard used for classifying workers as employees or independent contractors had been in place since 1989 and was based upon a multifactor test that considered, among other factors, the worker’s skill, the method of payment by the hirer, and the nature of the business to determine the level of control exercised over the worker. Companies such as Dynamex had classified their delivery drivers as independent contractors, arguing their drivers had significant control over their own working conditions by being able to set their own hours and drive for multiple companies.

The new standard adopted by the Supreme Court (dubbed the “ABC test”) requires hirers to establish three factors in order to properly classify a worker as an independent contractor – and in the process greatly expands the definition of “employee” under California law:

- A. The worker is free from the control and direction of the hirer in connection with the performance of the work, both under contract for the performance of such work and in fact; and
- B. The worker performs work that is outside the usual course of the hiring entity’s business; and
- C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed by the hiring entity.

Per the Court's ruling, workers in California are presumed to be employees and, therefore, are accorded the myriad protections they enjoy, and it is the employer's burden to satisfy these three "ABC" factors in order to lawfully classify the worker as an independent contractor instead of an employee. As an example, the court stated that a plumber hired by a retail store to repair a bathroom leak is not performing work that is part of the store's usual business and would therefore be considered an independent contractor of that store. However, seamstresses sewing at home using materials provided by a clothing manufacturer would probably be considered employees of the manufacturer.

As a result of this opinion, employers are likely to see fresh challenges by current and former workers, challenging their classification as independent contractors. If a worker should properly be classified as an employee, the employer bears the responsibility for paying federal Social Security and payroll taxes, unemployment insurances taxes and state employment taxes, providing workers' compensation insurance, and complying with federal and California regulations governing the wages, hours, and working conditions of employees. Employers are encouraged to review their current contracts with those whom they have classified as independent contractors to ensure they can meet the requirements of the new "ABC test."

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