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Do California's New Restrictions on Independent Contractors Apply Retroactively?

California Employment Law Update Blog on **August 17, 2018**

On May 1, we reported on the California Supreme Court's opinion in *Dynamex Operations West, Inc. v. Superior Court*, in which the Supreme Court set forth the standard for determining if a worker may properly be classified as an employee or independent contractor. *See Cal. Employment Law Blog* (May 1, 2018). An issue that the Court did not address is whether its opinion should be applied retroactively or prospectively only. To the frustration of many, on June 20 the Court itself denied a petition for rehearing that asked the Court to consider that very issue.

Despite the Supreme Court's unwillingness to take up the issue, at least for now, it's an issue that the lower courts are being asked to determine now on a daily basis. One of the first such decisions came from an Orange County Superior Court judge who ruled that Dynamex should be applied both prospectively and retrospectively. Johnson v. Imperial Showgirls, Orange Cty. Super. Ct. (Aug. 5, 2015).

In Johnson, a class of exotic dancers alleged they had been misclassified as independent contractors and were owed additional compensation as employees. A key issue was whether Dynamex should be applied retrospectively. If so, it would be used to determine if the dancers had been misclassified; if not, then Dynamex could be used only to determine the dancers' current status.

The general rule is that judicial decisions are given retroactive effect, and the trial court pointed to that rule in reaching its decision. The court also noted that the Supreme Court could have, but chose not to, make a statement that its decision applied only prospectively. In addition, the court noted that the Supreme Court had denied petitions for rehearing and refused any efforts to reconsider or amend its original decision. This, in the trial court's view, provided additional support for its conclusion that, in line with the usual rule, Dynamex is to be applied retrospectively.

We will continue to monitor decisions on this issue. In the meantime, California employers should continue to use Dynamex to analyze *any* existing independent contractor arrangements regardless of when they were formed.

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