

California Supreme Court Clarifies Test for Independent Contractor Classification



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Earlier this year, the California Supreme Court issued its landmark ruling in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, No. S222732 (Cal. Sup. Ct. Apr. 30, 2018), which simplified and clarified the test for determining whether a worker is an independent contractor or an employee for the purposes of California's Industrial Work Commission (IWC) wage orders.

The *Dynamex* Court unanimously adopted a standard that presumes that all workers are employees and puts the burden on the classifying entity to prove that an employer-employee relationship doesn't exist. In doing so, *Dynamex* rejected the nearly 30-year-old analysis established in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations*, 796 P.2d 399 (Cal. 1989). The Court concluded that Borello's highly nuanced, multi-factor test "makes it difficult for both hiring businesses and workers to determine in advance how a particular category of workers will be classified."

In light of the history and remedial purpose of California's wage orders (which set guidelines for minimum wage, overtime, meal and rest breaks, exempt status and working conditions), the Court adopted the straightforward "ABC Test" used by other states.

Under the newly adopted "ABC test," a worker is an independent contractor to whom a wage order does not apply only if the hiring entity establishes all of the following:

A. the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract and in fact;

B. 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.

It is important to note that the ABC test is not a complete departure from existing law, as each of the ABC factors were already part of the Borello analysis.

Moving forward, the simplified ABC test will reduce uncertainty about worker classifications and make it more difficult for companies to misclassify workers (thereby denying them the benefits and protections of various wage orders). It will also protect companies from unfair competition by ensuring equal application of the law.

Dynamex is certain to have a significant impact on companies throughout California and attorneys who work for businesses, as well as those who work with individuals, should watch out for misclassification issues and advise their clients about this new rule.

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