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# CALIFORNIA SUPREME COURT DECISION CHANGES EMPLOYEE CLASSIFICATION STANDARDS

The California Supreme Court is testing new waters in protecting workers in a landmark decision. Its recent decision in *Dynamex Operations W., v. Superior L.A. County*, 2018 Cal. LEXIS 3152 (April 30, 2018) could have a significant impact on the classification of individuals as independent contractors or employees in California. Specifically, the Court adopted a standard that makes it more difficult to establish an independent contractor relationship (which could lead to independent contractors being classified as "employees" and expose California employers to a host of "employer" related obligations).

Prior to this decision, courts and administrative agencies in California considered numerous factors in determining how much "control" an entity exerted over the independent contractor/employee. *See S.G. Borello & Sons v. Department of Industrial Relations*, 48 Cal 3d 341 (March 23, 1989) (farm laborers were employees for purposes of the California Workers' Compensation Act because the company had sufficient control over the laborers' work); *compare with Taylor v. Waddell & Reed, Inc*., 2012 U.S. Dist. LEXIS 117258 (S.D.CA. 2012) (Financial Advisors were properly classified as independent contractors for purposes of the California Labor Code and Unfair Competition Law where they were paid on a commission basis only, signed an Independent Contractor Agreement, were responsible for their own expenses, reported their earnings on an IRS Form 1099, chose their own work locations, and were not significantly controlled by the company).

However, in the recently-decided *Dynamex*, the California Supreme Court moved away from the long-standing "control" test and adopted a new standard that presumes workers subject to a California Wage Order (rules relating to working conditions and wage and hour requirements) are employees instead of independent contractors. Dynamex is a package and document delivery company that classified delivery drivers as independent contractors. In holding the drivers were "employees" for the Wage Order, the court adopted the "ABC" test under which individuals are presumed to be employees unless the business can establish **all** of the following conditions:

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 the performance of the work and in fact; and

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 that involved in the work performed.

The "ABC" test may be used by other courts and administrative agencies in the future when analyzing employee/independent contractor classification matters in other industries and as related to other employment-related matters (unemployment, workers' compensation, payroll taxes, health and

welfare benefits, etc.). It would not be surprising for New York State to adopt the "ABC" test (or something like it) in the near future. Our team will continue to review this decision and the commentary stemming from it.

If you have any questions regarding this LEGALcurrents®, please do not hesitate to contact any member of our firm's Labor and Employment Practice Group at (585) 232-6500 or visit www.hselaw.com.