

CLIENT ALERT

California Supreme Court Decision Adopts New Independent Contractor Test

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The California Supreme Court's decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, issued on April 30, 2018, has changed California's test for classifying workers as employees or independent contractors. It adopts a standard which presumes that all workers are employees, and announces a new "ABC test" which a business must pass to classify a worker as an independent contractor. The burden is now squarely on businesses to establish that classification as an independent contractor is proper and justified.

Under the ABC test, a worker is considered an employee unless the putative employer proves that the worker:

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

Prong B will prove particularly challenging for any company that engages independent contractors to provide goods or services in line with its "usual course" of business. Furthermore, this prong may require courts to grapple with determining what a company's "usual course" of business is as a threshold question.

It remains unclear whether this new test applies only for the purposes of the wage orders adopted by California's Industrial Welfare Commission, or to all wage claims, even those not arising under a wage order – *e.g.*, claims for reimbursement for business expenses.

The *Dynamex* decision will have far-reaching effects on businesses across California, especially in those "gig economy" industries which rely on part-time, off-site workers to support a business's core mission. Two exemplar lawsuits, against [Lyft](#) and [Postmates](#), are already on file; more will almost certainly follow.

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