

California Law Impacts Independent Contractors

Overview

On September 18, 2019, the California governor signed into law a bill that will expand last year's California Supreme Court decision regarding independent contractor status in California (*Dynamex v. Superior Court*). The court made it much more difficult for employers to legally classify their workers as independent contractors. Assembly Bill 5, which will take effect on January 1, 2020, codifies the *ABC test* and extends its application to numerous additional California employment laws.

ABC TEST

Under the ABC test, a worker is deemed an employee unless the hiring entity establishes *each* of the following:

- A** — the worker is free from the direction and control of the company; and
- B** — the worker performs work that is outside the company's main business; and
- C** — the worker normally performs work in an independent business or trade that is in the same vein as the work he or she is performing for the company.

The reach of the decision will extend beyond California's wage laws. Benefits will be impacted including workers' compensation, paid sick leave, unemployment, and other protections under the California Labor Code.

The ABC test on the gig economy (e.g. UBER and Lyft drivers) has been a hot topic in the media. However, the Bill will affect almost all companies who rely on independent contractors in California.

It is expected that other states such as Oregon, Washington, and New York will soon follow California's lead and adopt similar ABC tests.

What should employers do?

The California law does not mean that all companies with independent contractors should immediately reclassify their workers and the law does not automatically convert all independent contractors into employees. First, companies with independent contractors in California should carefully assess whether their workers are properly classified under the ABC test and consider remedies or other corrective actions. Non-compliance will bring significant exposure.

Employers in other states who use independent contractors should become familiar with the California law and determine, if a similar bill was passed, how it would influence their operations.



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