CLIENT NEWS BRIEF

California Supreme Court Limits Employers' Ability to Classify Workers as Independent Contractors

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In *Dynamex Operations West, Inc. v. Superior Court of Los Angeles County* (Apr. 30, 2018, No. S222732) ___ Cal.5th ___, the California Supreme Court adopted a new test for determining whether a worker should be considered an employee or an independent contractor for the purposes of wage orders adopted by California's Industrial Welfare Commission (IWC). Under this new test—called the "ABC test"—a worker is presumed to be an employee unless the employer can prove otherwise by showing that the worker:

(A) Is free from the control and direction of the hiring entity (employer) 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; and

(C) Is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

Background

This case involved a wage-and-hour class action lawsuit filed against a nationwide courier and delivery service, Dynamex, which converted all of its drivers from employees to independent contractors as a cost-saving measure. The plaintiffs alleged that this reclassification to independent contractor status violated, among other things, the provisions of an IWC wage order. Dynamex argued that the long-standing multifactor test set forth in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 applied to the question of whether a worker is an employee or independent contractor for the purposes of requirements imposed by an IWC wage order.

The Court rejected Dynamex's argument, noting that a worker is an employee if he or she is "employed" by an "employer." In defining "employed," the Court relied on its previously established definitions: (1) to exercise control over the wages, hours, or working conditions; (2) to suffer or permit to work; or (3) to engage, thereby creating a common law employment relationship. The Court acknowledged that its definition could destroy any distinction between employees and independent contractors, so it adopted the ABC test, noting that each requirement needed to be met in order to overcome the presumption that a worker is an employee. The Court further noted that where an employer is not able to prove each of the above outlined factors, the worker is entitled to be treated as a covered employee for the purposes of wage orders. The Court ultimately sided with the plaintiff employees and, in coming to its conclusion, the Court reasoned that wage and hour statutes, including wage orders, were adopted in "recognition of the fact that individual workers generally possess less bargaining power than a hiring business."

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Takeaways

This new test places heightened financial and legal responsibility on employers, whose independent contractors may now be considered employees. Such reclassification implicates payment of certain taxes, overtime, penalties, and provision of rest periods, among other requirements under IWC wage orders. While it is unclear whether this test will apply to employee claims not arising from a wage order, employers should nevertheless reevaluate their worker classifications under this new ABC test to prevent employee misclassification.

For more information about the *Dynamex* case or about worker classification in general, please contact the authors of this Client News Brief or an attorney at one of our eight offices located statewide. You can also visit our website, follow us on Facebook or Twitter or download our Client News Brief App.