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CALIFORNIA SUPREME COURT DELIVERS A BLOW TO EMPLOYER OF INDEPENDENT CONTRACTORS

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On April 30, 2018, the California Supreme Court issued its decision in *Dynamex Operations West Inc. v. Superior Court of Los Angeles County*, making it harder for employers to classify workers as independent contractors in California's growing gig economy. The Court seemed to scrap a more flexible classification test that had been used for decades in California (a multifactor test known as the *Borello* test) and adopted the so-called ABC test. The ABC test requires an employer to meet each of three criteria to prove their workers are independent contractors. First, that the contractor provides the service free from the company's control; second, that the service provided is outside the company's core business, such as a plumber hired to fix a leak at a bakery; and third, that the contractor is an independent professional that customarily engages in an independently established trade, occupation or business.

The ABC test is a clear departure from the Court's previous multifactor standard set forth under *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal.3d 341 (1989)("Borello"). In *Borello*, the Supreme Court held that the "right to control" the means and manner in which work is performed by a worker is the most important of several factors to be considered when evaluating a classification analysis, including but not limited to secondary factors such as ownership of equipment, degree of skill, occupation, method of payment, whether work is a regular part of business, and the belief of the parties.

The Court seemed to be distancing itself further from *Borello* stating that the simplified ABC test would provide greater clarity and consistency, and less opportunity for manipulation, than a test or standard that invariably requires the consideration and weighing of a significant number of disparate factors on a case-by-case basis.

In this case, a courier service named Dynamex, converted all its delivery drivers to independent contractors from employees in 2004. Some of its workers then sued, saying they should still be classified as employees in part because they worked solely for Dynamex, which exerted significant control over the assignments they took, their pay rates, their uniforms and other aspects of the job.

The Court held that with respect to part B of the ABC test, there was a sufficient commonality of interest. The Court reasoned that the driver's work was not outside the usual course of Dynamex's business. The court reasoned that Dynamex's entire business is that of a delivery service. Second, with respect to part C of the ABC test the Court reasoned that the drivers were engaged in an independently established trade, occupation, or business.

While the Court's ruling in *Dynamex* is expected to have significant impact on companies of California's freelance industry and gig economy, it remains less clear how, if at all, this decision will affect California's workers compensation system. *Borello* specifically dealt with a situation arising out of the workers compensation setting, while *Dynamex* deals with a specific wage violation issue. Regardless, a hailstorm of litigation is likely to come and only time will tell how impactful this decision will be. Stay tuned!

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