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### ***California Supreme Court Adopts "ABC Test"—Sets Stricter Standards for Classifying Independent Contractors***

Determining whether a worker is properly classified as an employee or independent contractor can be difficult. California recently made this determination less challenging by providing a more rigid test.

On Monday, April 30, 2018, the California Supreme Court handed down a groundbreaking decision in *Dynamex Operations West, Inc. v. Superior Court*, further clarifying the standard for determining when workers should be classified as independent contractors or employees.

#### ***The Dynamex Case***

Charles Lee and Pedro Chevez were hired by Dynamex as delivery drivers to transport letters, parcels and packages. In 2004, after having classified its drivers as employees in previous years, Dynamex re-classified all of its drivers as independent contractors. The following year, several Dynamex drivers—including Charles Lee and Pedro Chevez—sued the company, claiming it misclassified them as independent contractors, in violation of California law. Specifically, they alleged that because the tasks they performed as independent contractors were the same as the tasks they had performed when they were classified as employees, the drivers had been improperly classified.

Questions? Contact Stokes Wagner.

After nearly two decades of litigation and several appeals to the California Court of Appeal, the *Dynamex* case—and the issue of how to classify workers—came before the California Supreme Court. Ultimately, the Court found that the "ABC" test is most appropriate test for determining whether a worker is an independent contractor or an employee.

### ***The "ABC" Test***

Under the newly-adopted ABC test, a worker is presumed to be an employee under the California Wage Orders unless the hiring entity satisfies its burden by proving a worker is, in fact, an independent contractor. A hiring entity may satisfy its burden by proving each of the following three factors:

- (A) that the worker 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; 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 the work performed.

**What does this mean for employers?** The *Dynamex* decision not only broadens the definition of "employee" under the California Wage Orders, it provides a framework for compliance with the ABC test. Additionally, it places an affirmative burden on employers to defend their classification of workers as independent contractors. While the newly adopted "ABC" test further restricts employers' proper classification of independent contractors, it should provide greater certainty in determining whether workers are properly classified.

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Misclassification of can result in considerable liability exposure in the context of wage and hour compliance. As a result, California employers should confer with legal counsel to thoroughly re-evaluate worker classifications under the "ABC" test to ensure full compliance with California law.

**Questions?** Contact Stokes Wagner.