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## California Likely to Codify *Dynamex* in New Bill Ab-5

On April 30, 2018, the California courts rocked the State's labor and employment landscape with the decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* ["*Dynamex*"]. The court's decision changed the way employers classified independent contractors from the longstanding *Borello* test (an eleven-factor test with no single factor being determinative of a workers' classification) to the much stricter "ABC" test. Under this test, California will consider a person providing labor to be an employee of a hiring entity unless:

- A. The person is free from the control and direction of the hiring entity both under the contract and in fact;
- B. The person performs work outside the usual course of the hiring entity's business; and
- C. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

On May 29, 2019, just over a year after this historic decision, the State Assembly voted 59-19 to pass Assembly Bill 5 [AB-5] which seeks to codify *Dynamex*. The bill will not only write the ABC test into law but will expand the reach of the ABC test beyond California's wage and hour laws, which were the subject of *Dynamex*, to make it the test for all provisions of the California Labor Code and the Unemployment Insurance code.

Specific industries and professions have already been exempted from this new legislation, including doctors, dentists, lawyers, architects, accountants, engineers, insurance agents, investment advisers, persons engaged in direct sales, real estate agents, financial advisers, hairstylists who rent booths at barbershops and salons, and persons with working with advanced degrees in marketing or human resources administration. Industries are currently lobbying for a longer list of exemptions now that the bill is subject to revision in the Senate. Those exempted from the final draft of this bill will be subject to classification under the former *Borello* factors.

If you are concerned about how this might affect your business, contact an attorney immediately. AB-5 has not passed the Senate yet and remains subject to revision, but you should be prepared in advance. Applications of the three prongs of the ABC test are still subject to challenge in the court and may be expanded upon or limited at any time. Misclassification claims can be costly, so regular guidance is essential.

Questions? Contact Stokes Wagner.