



STOKES WAGNER

ATTORNEYS AT LAW

ATLANTA • ITHACA • LOS ANGELES • PITTSBURGH • SAN DIEGO • SAN FRANCISCO

California Passes Landmark Legislation That Will Affect Most Independent Contractors

Today, on September 18, 2019, California Governor Newsom signed Assembly Bill 5 (AB-5), a landmark piece of legislation that codifies the ABC test and will significantly limit most employers' use of independent contractors.

Last year, in April 2018, the California Supreme Court 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 a much stricter "ABC" test.

Starting on January 1, 2020, the ABC test becomes state law. 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.

While *Dynamex* applied only to misclassification claims brought under California's IWC wage orders, AB-5 will apply the same test to claims brought under all provisions of California's Labor Code and Unemployment Insurance Code.

Specific industries and professions are exempted from this new legislation, including doctors, dentists, lawyers, architects, accountants, engineers, insurance agents, graphic designers, investment advisers, persons engaged in direct sales, travel agents, real estate agents, financial advisers, fine artists, hairstylists who rent booths at barbershops and salons, and persons with working with advanced degrees in marketing or human resources administration. Those exempted will be subject to classification under the former *Borello* factors.

If you are concerned about how this might affect your business, contact Stokes Wanger or other counsel immediately. Application 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 will be essential in any dealings with contract workers.

Questions? Contact Stokes Wanger.