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California Supreme Court Holds Dynamex ABC Test Applies Retroactively

On Thursday, the California Supreme Court ruled that California’s “ABC” test for determining independent contractor status applies retroactively. As a result, employers may be held to a standard not even in effect at the time they made worker classification decisions. The Supreme Court in *Vazquez v. Jan-Pro Franchising International, Inc.* delivered a long-awaited opinion finding that the “ABC test” for independent contractor classification, adopted in its 2018 *Dynamex* decision, applies retroactively to all pending cases that arose before April 30, 2018. This new ruling will weigh heavily in currently pending misclassification lawsuits where the employer applied pre-*Dynamex* classification standards.

In April 2018, the Supreme Court adopted a three-part ABC test for applying an employee-status standard in the landmark case *Dynamex Operations West v. Superior Court*. *Dynamex* established a three-part “ABC Test” for determining whether a worker can properly be classified as an independent contractor. Under the ABC test, a worker is properly an independent contractor **only if** the employing entity establishes:

- [A] that the worker is free from the control and direction of the hirer in connection with the performance of the work;
- [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 for the hiring entity.

The ABC test will now be applied to any pending lawsuits covering a time period prior to April 30, 2018. However, the decision does not toll any statute of limitations relating to the misclassification lawsuits that would allow purported misclassified employees to bring forth new lawsuits under the retroactive ruling. As such, the Supreme Court noted that in light of the fact that the *Dynamex* decision is nearly three years old, the retroactive application of the ABC test in practice will affect only a limited number of cases that are already pending.

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The ABC test has been hotly contested since the *Dynamex* decision. In 2019, California lawmakers codified the ABC test into law in AB 5, which took effect at the start of 2020. The ABC test drastically narrows the circumstances in which employers may properly classify workers as independent contractors. Retroactive application of the ABC test also opens the door to misclassification lawsuits for past classification decisions made under the legal tests that existed before *Dynamex* so long as the statute of limitations has not yet expired. Misclassification lawsuits can also lead to steep penalties and damages, including under the Private Attorneys General Act and other provisions of the California Labor Code. Employers should take care to review their worker classifications to ensure compliance with the Court's tougher standard under *Dynamex*.

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