

BACKGROUND

Dynamex and the Future of Work

The evolving workplace and implications for the new economy

Our workforce and work itself is changing. Employment trends are facilitating the growth of new industries while leading to the decline of others. The rise of the on-demand economy, part-time work, contracting out practices, and the automation of tasks has raised important questions about the nature of the employee-employer relationship. The way we approach defining that relationship has significant implications for the provision of state labor protections.

State policymakers are in a unique position to examine how our worker classification system fits into the larger issue of the future of work.

Background on how California law defines an employee

In California, a number of state agencies are charged with interpreting and enforcing laws that distinguish an employee from an independent contractor. This distinction is important because an employee is generally entitled to certain work-related benefits that an independent contractor is not entitled to, such as a minimum wage, the payment of overtime, meal and rest periods, and workers' compensation insurance. In addition, the standard used for determining employee status can vary depending on the state law or regulation.

The *Dynamex* Case

In April 2018, in *Dynamex Operations West, Inc. v. The Superior Court of Los Angeles County*, the State Supreme Court ruled that certain package delivery drivers were misclassified as independent contractors rather than employees under a California wage order specific to the

transportation industry. In explaining the basis for its decision, the court focused on the relationship between Dynamex, a same-day courier and delivery service company, and its drivers who worked “on-demand.”

Some key facts as determined by the court

The on-demand drivers were free to set their own schedule but had to tell Dynamex which days they intended to work. They were required to obtain and pay for a cell phone so as to maintain contact with Dynamex. The on-demand drivers generally made deliveries using their own vehicles but were also expected to wear Dynamex shirts and badges, and in some cases, attach a Dynamex decal to their vehicles. Drivers were generally free to choose the sequence of their deliveries but were required to complete all assigned deliveries on the day of assignment.

The Dynamex drivers are ruled employees under the Industrial Welfare Commission’s (IWC) Wage Order No. 9

In California, the Industrial Welfare Commission has issued 17 wage orders over the years covering various industries in order to establish minimum wage and maximum hour protections for employees. These wage orders are enforced by the Department of Labor Standards Enforcement (also known as the state Labor Commissioner). In *Dynamex*, the drivers argued that they were employees covered by Wage Order No. 9 (pertaining to the transportation industry) and as such, were eligible to make a claim for overtime and lost wages. The court agreed.

The court adopts the ABC test for determining employee status

The *Dynamex* court used the “ABC” test to determine the employment status of the drivers. This legal test is named for its three alphabetical requirements. The ABC test was adopted by the New Jersey State Supreme Court in 2015 in a case involving the determination of employment status for disputes under two wage and hour laws and is also utilized in more than 30 states for purposes of determining unemployment insurance.

According to *Dynamex*, the ABC test presumes that the worker is an employee unless the hiring business proves three things. These three requirements are summarized as the following:

- (A) The worker is free from the control and direction of the hirer in the performance of his or her work;
- (B) The worker is performing work that is outside the hiring entity's usual course or type of business; and
- (C) The worker is engaged in an independently established business or trade and not simply "labeled" an independent contractor by the business.

Implications of the *Dynamex* Decision

The impact of the decision is unknown. It is not clear if the decision will be applied to state laws addressing other employee benefits or employment protections. In October 2018, a state appellate court reaffirmed that the test established in *Dynamex* applies to wage-related claims. (*Garcia v. Border Transportation Group, LLC*, 28 Cal. App. 5th 558, 2018).