

BUILDING the FUTURE

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CALIFORNIA LABOR FEDERATION * STATE BUILDING AND CONSTRUCTION TRADES COUNCIL

FACT SHEET

AB 5 (Gonzalez)

DEFEND *DYNAMEX* & REBUILD THE MIDDLE CLASS!

Purpose

On April 30, 2018, the California Supreme Court issued a unanimous ruling in *Dynamex Operations West v. Superior Court* that made it harder for companies to misclassify workers as independent contractors. The court looked at the harm to workers, law-abiding businesses, and the state from worker misclassification and determined that all parties benefit from a clear and protective test of employment status, known as the "ABC Test." This ruling represents one of the most important advances in workers' rights in decades.

AB 5 will codify this decision and clarify where it applies. It will also exempt from the decision specified professionals where such protection is not warranted.

Background

Since the 1970s, many companies have shifted from an employment model to a contractor model. In many cases, workers were employees one day and were flipped into contractors the next day. Industries like trucking, delivery, janitorial, and construction have all seen the impact of worker misclassification and the result has been lower wages, declining union density, and unfair competition for responsible contractors.

Unfairly labeling certain workers "independent contractors" not only means those workers get no minimum wage or overtime, but it also means all the risk is shifted from a company to an individual. He or she must purchase and maintain a vehicle, pay for transportation expenses, and provide their own tools and supplies. They are not entitled to a safe workplace or protected from discrimination. That worker has no access to unemployment when the job ends, no workers' compensation if injured

on the job, and no right to organize to improve conditions.

Now we see the use of smartphone technology to accelerate this business model throughout what is known as the "gig economy." Workers are hired and dispatched through apps to do everything from provide home care, deliver packages, and do electrical work. In many cases, they are doing the same work as traditional employees but without any of the rights or protections afforded to other workers.

Dynamex makes it harder for companies to misclassify because it uses a simple and objective test for whether a worker is an employee or a contractor. Under the "ABC Test," if a company wants to classify a worker as a contractor, the company must prove all three of the following: (1) the worker is free from company control and direction, (2) the worker performs work outside the usual course of the hiring entity's business, and (3) the worker is customarily engaged in an independently established trade of the same nature as the work performed.

This test prevents the common practice in many industries of a company forcing an individual to act as an independent business while the company maintains the right to set rates, direct work, and impose discipline. It distinguishes carefully between a trucking company that has no employee drivers (misclassification) and a trucking company that contracts with a mechanic (legitimate contractor).

Bringing misclassified workers into employee status will mean more workers have a safety net when they are sick, laid off, or hurt at work. It will also significantly benefit the State. In California, misclassification audits conducted by California's

EDD from 2005-2007 recovered \$111,956,556 in payroll taxes, \$18,537,894 in labor citations, and \$40,348,667 in employment tax fraud. **In the *Dynamex* case, the DLSE estimated that misclassification costs the state \$7 billion annually.**

The rationale for the ruling in *Dynamex* is best set forth by Chief Justice Tani Cantil-Sakauye who authored the opinion:

“Wage and hour statutes and wage orders were adopted in recognition of the fact that individual workers generally possess less bargaining power than a hiring business and that workers’ fundamental need to earn income for their families’ survival may lead them to accept work for substandard wages or working conditions. The basic objective of wage and hour legislation and wage orders is to ensure that such workers are provided at least the minimal wages and working conditions that are necessary to enable them to obtain a subsistence standard of living and to protect the workers’ health and welfare...”

“California’s industry-wide wage orders are also clearly intended for the benefit of those law-abiding businesses that comply with the obligations imposed by the wage orders, ensuring that such responsible companies are not hurt by unfair competition from competitor businesses that utilize substandard employment practices.

“Finally, the minimum employment standards imposed by wage orders are also for the benefit of the public at large, because if the wage orders’ obligations are not fulfilled the public will often be left to assume responsibility for the ill effects to workers and their families.”

Many companies opposing the *Dynamex* ruling have knowingly used a business model that has been extensively criticized and litigated for decades simply because it allowed them to cut costs on the back of workers. Most of the benefit they derived will never go to the workers who earned it. *Dynamex* will just give those workers a small part of the wages they were owed and clarify the rules going forward.

What This Bill Will Do

The Court in *Dynamex* applied the “ABC Test” to the industry-specific wage orders. By codifying the decision, we can create one clear definition of employment for wage claims across the Labor Code.

In addition, this bill will clarify what employment relationships are not covered by the decision, providing certainty to industries that are unsure of the case’s implications.

The reality is that most businesses do not misclassify workers and have been forced to compete with this illegal model. With the *Dynamex* decision and the clarity from AB 5, we can level the playing field for companies that follow the law and raise standards for millions of California workers.

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