

## California's Independent Contractor Bill Signed Into Law— What's Next for Employers?

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Today, California Governor Gavin Newsom signed into law a controversial bill that will expand last year's landmark California Supreme Court decision regarding independent contractor status in California. In that decision—*Dynamex v. Superior Court*—the state's high court made it much more difficult for employers to legally classify their workers as independent contractors. Assembly Bill 5, which will take effect on January 1, 2020, codifies the rigorous "ABC" test announced in *Dynamex* and extends its application to numerous additional California employment laws.

### The "ABC" Test

Prior to *Dynamex*, California courts used a multi-factor test primarily focused on the level of control exercised over a worker to determine whether an independent contractor classification was proper. *Dynamex* replaced this test with the so called "ABC" Test, which places the burden on companies to establish that their workers are appropriately classified as independent contractors. Under the ABC Test, a worker is presumptively an employee unless the hiring entity establishes *each* of the following:

- A: That the worker is free from the direction and control of the company;
- B: That the worker performs work that is outside the company's main business; and
- C: That the worker is normally performing work in an independent business or trade that is in the same vein as the work he or she is performing for the company.

Through Assembly Bill 5, the ABC Test will become part of the California statutory law, and will expand the reach of the decision beyond California's "wage orders"—industry-specific rules regulating wages, hours, and working conditions—to other benefits afforded to employees, including workers' compensation, paid sick leave, unemployment, and other protections under the California Labor Code.

### Which Companies Are at Risk?

The ABC Test will not apply to all workers. Significant and continuing lobbying efforts have resulted in about 50 industry-wide exemptions from coverage thus far. Doctors, private investigators, and hairdressers are examples of workers who are explicitly carved out. But, most attempts to secure exemptions were unsuccessful. Failed lobbying efforts to exempt gig economy workers and the impact of the Bill on companies operating in the application-based technology sector have been the subject of widespread public attention. While the expected impact of Assembly Bill 5 on the gig economy has been especially well-covered in the media, the Bill will affect almost all companies who rely on independent contractors in California.

And California is likely just the tip of the iceberg. Other traditionally “blue” states such as Oregon, Washington, and New York are expected to follow California’s lead soon and consider codifying the ABC Test as well.

## What Should Employers Do Now?

Assembly Bill 5 does not mean that all companies with independent contractors should immediately reclassify their workers—contrary to some reports, the Bill does not *automatically* convert all independent contractors into employees. But, companies with independent contractors in California should carefully assess whether their workers are properly classified under the ABC Test and consider the repercussions if they are not properly classified. Once the Bill takes effect, the consequences of misclassification will be even greater than current consequences. Companies that have potentially misclassified workers should seek outside counsel to assess whether reclassification is necessary and, if so, to determine the best way to reclassify their workers.

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