



Employer Advisory Council of Orange County, Inc.

Box 9575, Brea, CA 92822 info@eac-oc.com Ph: 714 794-4253

www.eac-oc.com

New Developments in Employment Law

Update

19-15

September 23, 2019

EAC Update

Governor Signs “Landmark Legislation” Redefining Independent Contractors

By Scott & Whitehead

Described by Governor Newsom as “landmark legislation,” hotly contested Assembly Bill 5 was signed into law on September 18. Effective January 1, 2020, AB5 codifies the California Supreme Court decision in *Dynamex Operations West, Inc. v. Superior Court*, which narrowed the definition of independent contractor to three essential criteria. This “ABC test” places the burden on employers to establish that the worker is properly classified as an independent contractor by establishing all of the following:

- (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of such work and in fact; and**
- (B) The person performs work that is 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 this law will require a number of independent contractors to be reclassified as employees and receive the statutory benefits associated with employment status, due to the lobbying efforts of many interest groups, the onerous bill also provides for a number of exceptions. Professions including doctors, dentists, psychologists, attorneys, real estate agents, investment advisors, accountants, along with other professions, are now exempt from the ABC standard. Other enumerated professions may avoid this standard if certain additional conditions are met. For example, barbers and manicurists may be considered independent contractors only if they (1) set their own rates, process their own payments and receive payment directly from their clients, (2) set their own hours of work and determine their own volume of work, (3) maintain their own book of business and schedule their own appointments, and (4) maintain a business license for the services they offer.

Continued on next page



Employer Advisory Council of
Orange County, Inc.

New Developments in Employment Law

Update 19-15 Page 2 of 2
September 23, 2019

The new legal standard would appear to require gig industry workers such as Uber and Lyft drivers to be converted to employees, although aggressive lobbying and negotiation efforts are continuing.

Prudent employers who utilize independent contractors will assess whether the worker falls under any exemption before making the ABC test analysis. Employers should also keep in mind that in most cases, workers who are not covered by AB5 must still meet the common multi-factor independent contractor test that had been used for decades and was in effect before the *Dynamex* case was decided.

If you have questions about this new decision, or its implications in your workplace, please contact Scott & Whitehead at (949) 222-0166, or your legal council.

Reprinted with permission from Scott & Whitehead