

PERSONNEL & ANIMAL WELFARE

MOTION

In *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, the California Supreme Court adopted the "ABC test" to determine whether workers are independent contractors or employees under California wage order laws. In September 2019, Governor Newsom signed AB 5 (Gonzalez), which codified *Dynamex* and clarified its application.

Specifically, with certain occupations exempted, the new law provides that for purposes of the California Labor Code, the Unemployment Insurance Code, and the wage orders, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business.

One purpose of AB 5 is to address problems in the "gig" economy, where large companies have been able to avoid providing fair compensation to the hard-working people upon whose labor the companies rely. In some cases, this has forced people to work multiple jobs or resort to dangerous gimmicks in an effort to supplement their meager incomes.

The City Attorney has authority to enforce AB5. In relevant part, AB5 provides that "In addition to any other remedies available, an action for injunctive relief to prevent the continued misclassification of employees as independent contractors may be prosecuted against the putative employer in a court of competent jurisdiction by . . . a city attorney of a city having a population in excess of 750,000."

In addition to this new authority, authorized prosecutors including the Los Angeles City Attorney may file an action under the Unfair Competition Act (Business and Profession Code § 17200) to address systemic misclassification of workers. Indeed, the City Attorney can, and is already enforcing misclassification violations. For example, the City Attorney currently is prosecuting three related cases regarding the alleged misclassification of truck drivers at the Port of Los Angeles.

The misclassification of workers results in a significant financial impact to the worker and the public services these workers rely on for financial support. Thus, the City of Los Angeles has a strong interest in enforcement of AB5 to protect its residents and the public fisc.

I THEREFORE MOVE that the City Attorney be REQUESTED and the Chief Legislative Analyst be INSTRUCTED to report on options for the City of Los Angeles to enforce Assembly Bill 5, and related legal/ programmatic factors to take into account, when it becomes operative January 1, 2020.

Presented by:


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