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ALERTS

California Supreme Court Ruling To Give More Workers Employee Status

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On April 30, the California Supreme Court issued an opinion effectively expanding the number of workers that will be deemed as employees for purposes of California wage orders, ultimately granting such workers benefits, minimum wage, and overtime compensation, as well as rest and meal breaks.

The court issued a unanimous decision in *Dynamex Operations West Inc. v. The Superior Court of Los Angeles County*, Case No. S222732, a lawsuit in which two delivery drivers, on behalf of themselves and other drivers similarly situated, sued Dynamex Operations West, Inc., a nationwide packaging and document delivery company, alleging that Dynamax had misclassified its delivery drivers as independent contractors. Dynamex originally classified its drivers as employees, but reclassified them as independent contractors in 2004, and was subsequently sued in 2005. Since then, the case has been working its way through the California lower courts.

The court's opinion turned away from the *Borello* multifactor test, which, in determining a worker's status, looked at an employer's control over its workers and has been the standard over the last three decades based on the 1989 California Supreme Court ruling in *S.G. Borello & Sons Inc. v. Department of Industrial Relations*.

The court's ruling in *Dynamex* adopted California Industrial Welfare Commission's definition of employment, which makes an employee anyone whom a business "engage[s], suffer[s] or permit[s]" to work. The opinion held that under this "suffer or permit to work" standard, a court

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"presumptively considers all workers to be employees, and permits workers to be classified as independent contractors only if the hiring business demonstrates that the worker in question satisfies each of three conditions: (a) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact; and (b) that the worker performs work that is outside the usual course of the hiring entity's business; and (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed." The California Supreme Court further said, "[t]he hiring entity's failure to prove any one of these three prerequisites will be sufficient in itself to establish that the worker is an included employee, rather than an excluded independent contractor, for purposes of the wage order."

This decision is likely to create challenges for California employers as it will undoubtedly increase the number of individuals who should be considered employees, particularly those who work in the "gig economy."

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