



California Supreme Court Rules *Dynamex*'s ABC Test Is Retroactive

Insights

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The California Supreme Court held yesterday that the ABC test announced in its landmark *Dynamex* decision – which makes it infinitely harder for businesses to classify workers as independent contractors – applies on a retroactive basis. This decision ended more than a year-and-a-half of waiting after the 9th Circuit Court of Appeals first held in May 2019 that the *Dynamex* test applied retroactively and then, a little less than three months later, withdrew its opinion and asked the California Supreme Court to decide the matter.

In finding *Dynamex* retroactive, the California Supreme Court firmly rejected that an exception should apply because businesses could not have anticipated that the ABC test would govern. Rather, the California Supreme Court explained that the ABC test “was within the scope of what employers reasonably could have foreseen” and that prior Court decisions had put employers on notice of the potential expansiveness of the employment definition within California. In fact, the California Supreme Court was explicit that “fairness and policy considerations . . . *favor* retroactive application.”

So what does this mean for the gig economy? As the California Supreme Court noted, the retroactive application of *Dynamex* will affect relatively few cases. California has a three-year statute of limitations on Labor Code violations (or four years when coupled with an Unfair Competition Law claim). Because *Dynamex* was decided in April 2018, the statute of limitations is being chipped away day by day. For businesses that promptly changed their independent contractors to employees in response to *Dynamex*, the clock is ticking on potential liability.

Nevertheless, this is a large blow to the gig economy. Businesses with outstanding lawsuits now will have found their position change for the worse. Companies with app-based rideshare and delivery drivers which hoped that Proposition 22 may wipe out liability for gig workers will likely face an uphill battle on such arguments. Moreover, with a firm decision from the California Supreme Court, we may see a flurry of new lawsuits as plaintiffs’ attorneys try to leverage this decision and get in ahead of the statute of limitations.

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