# Supreme Court Steps on the Brakes: How Its Recent AB 5 Decision Will Throw California's Trucking Industry into Disarray

Insights
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While the U.S. Supreme Court has made a number of headlines this term, flying under the radar was its refusal to consider whether California's controversial worker classification law should be blocked by a federal law that regulates the trucking industry. SCOTUS's action on June 30 to deny review of the California Trucking Association's challenge of Assembly Bill (AB 5) as it applies to motor carriers in California will have significant reverberations throughout the state's trucking industry. In the very near future, you will be forced to comply with AB 5 and its impact not only on independent owner-operators who own their own trucks but also on your own staffing practices. What do you need to know about this polarizing decision and what should you do about it?

**Brief Refresher on AB 5**

The California legislature enacted AB 5 in September 2019, codifying the state Supreme Court's landmark *Dynamex* decision. This law established the "ABC" Test used to determine worker classification. Under this strict test, workers in California are presumed to be employees. Businesses have a high burden to overcome this presumption and demonstrate that a worker is an independent contractor by proving all three prongs of the test:

1. the worker is free from control and direction in the performance of services;
2. the worker is performing work outside the usual course of the business of the hiring company; **and**
3. the worker is customarily engaged in an independently established trade, occupation, or business.

Although AB 5 has an extremely broad reach, certain occupations such as licensed physicians, surgeons, dentists, psychologists, veterinarians, accountants, securities broker-dealers, and real estate licensees are specifically exempted. However, truck drivers were not included in the list, which has caused havoc in the industry for the better part of the past three years.

**How Did We Get Here?**

Not long after the *Dynamex* decision, the California Trucking Association (CTA) and two individual owner-operator drivers filed a lawsuit in federal court to challenge the law as it applied to the

trucking industry. CTA argued that the Federal Aviation Administration Authorization Act (F4A) preempts the state law and moved to block its enforcement against trucking operations.

The lower court handed the CTA a major victory in 2020 by issuing a preliminary injunction blocking the law as it applied to trucking. It found that AB 5 has "more than a tenuous, remote, or peripheral impact on motor carriers' prices, routes, or services" and thus was preempted by F4A.

On appeal, however, the Ninth Circuit Appeals Court reversed the ruling, holding that the F4A does not preempt AB 5. In a disappointing 2021 ruling, it held that the state misclassification law "is a generally applicable labor law that impacts the relationship between a motor carrier and its workforce, and does not bind, compel, or otherwise freeze into place a particular price, route, or service of a motor carrier at the level of its customers."

**SCOTUS Sidesteps Controversy**

Not long thereafter, CTA filed a Petition for Writ of Certiorari to the U.S. Supreme Court (SCOTUS) to review the Ninth Circuit's decision. Such challenges are usually considered a longshot because SCOTUS only accepts review of about 1% of the requests that land on its docket. With SCOTUS taking a more business-friendly approach in many recent cases, however, there was optimism within the trucking industry that it would accept review of the Ninth Circuit's decision and reverse course.

However, in a brief one-sentence order on June 30, the Supreme Court declined to review the decision. This leaves in place the Ninth Circuit's decision that AB 5 is not preempted by federal law and thus considered the law of the state – a ruling that sent shockwaves through the trucking industry. We now await the administrative steps that must wind their way through the court system that will formally remove the lower court's injunction blocking AB 5 and permit the state to apply the law as it intended.

Not surprisingly, the Supreme Court's decision drew polarizing reactions. On one hand, the CTA and trucking companies warn this will lead to increased costs on goods at a time when inflation is high. They also believe this will have a devastating impact on the already-fragile supply chain as it will push independent owner-operator drivers out of business.

On the other hand, organized labor and the state see the decision as a significant victory in their decades-long battle against misclassification in the trucking industry. In the middle are the thousands of drivers who prefer the independence of owning and operating their own trucks and the freedom to create their own working arrangements with different companies.

**What Happens Now?**

SCOTUS's denial has left thousands of owner-operators and motor carriers in California and across the nation in confusion. Motor carriers may be wondering whether their drivers are now classified as employees, whether they need to hire or rehire drivers as employees, whether they can still

operate under this new model, or whether there is any way to continue to conduct business with owner-operators without bringing them on as employees.

Further, it remains unclear when exactly the injunction will be lifted and when California may begin enforcing AB 5 against the trucking industry. Sending alarm through the industry, the California Labor Commissioner Lilia Garcia-Brower just tweeted last week that her agency is prepared to enforce the law. On July 13, she invited drivers to contact the agency if they believe they have been misclassified as independent contractors.

**What Should You Do?**

Given this turn of events, it is imperative that trucking companies begin taking immediate steps to deal with the ramifications of AB 5 if you use independent contractors. This means potentially complying with the panoply of California laws that govern the employment relationship, including the following:

- Hiring drivers in compliance with Labor Code § 2810.2;
- Reimbursing drivers for any costs incurred in operating and their maintaining vehicles;
- Recording drivers' working hours;
- Providing and managing meal and rest periods;
- Furnishing itemized wage statements;
- Instituting and supervising worker safety programs; and
- Paying workers' compensation and unemployment insurance.

Alternatively, several in the trucking industry have looked at the business-to-business exemption under AB 5. This allows business service providers who are established as "a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation," to enter a contractual arrangement with a business. You will need to meet 12 specified criteria for the exemption to apply, however. You should carefully review your options with legal counsel before setting the course on any strategy.

**Conclusion**

The Supreme Court's recent decision solidifies the far-reaching and long-lasting impact of AB 5 on the trucking industry. To discuss how to comply with AB 5 and other California employment – or whether an exemption applies to your business – contact your Fisher Phillips, the authors of this Insight, or any attorney in our California offices. We'll continue to monitor developments and provide updates where warranted, so make sure you are signed up to receive updates direct to your inbox through Fisher Phillips' Insight system.

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**Nathan V. Okelberry**
Partner
213.330.4449
Email

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