



California Supreme Court Weighing Crucial Gig Economy Misclassification Standard

Insights

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Early last month, [we told you](#) that a critical trial ruling in a gig economy misclassification case could be put on hold because a separate court was mulling whether to loosen the test to make it easier for workers to succeed in independent contractor misclassification cases. That other court—the California Supreme Court—heard oral arguments yesterday on that very topic, and every gig economy company should be on notice.

The case is *Dynamex Operations West, Inc. v. Superior Court of Los Angeles County*, and it's a fairly standard misclassification case. It revolves around a question of whether Dynamex workers were misclassified when it comes to the state's Industrial Welfare Commission definition of an employee. Where things get hairy is that the court recently asked the parties to prepare to answer the question of whether the state should abandon its current test and instead adopt a worker-friendly standard. That question took center stage yesterday during oral arguments, according to [Melissa Daniels at Law360](#). And each side seemed to understand that a decision in this case could completely change the way that gig economy companies do business. Here's a quick recap of what each side argued:

Dynamex arguments: The company argued that the standard that has been in play in the state since 1989—the *Borello* standard—is “perfect” to address the misclassification issues that arise in today's modern business environment. According to Daniels, the attorney arguing for the defense described the standard like this: “*Borello* is flexible, *Borello* is adaptable. ... *Borello* has basically all of the elements that are necessary to fully evaluate” a working relationship in 2018 and beyond.

Worker arguments: Shockingly, the workers disagreed. They instead want the court to adopt the “ABC test” that is currently used in New Jersey (see [here](#) for a quick recap of the ABC test). Their attorneys said the ABC test offers clear bounds on the definition of whether a worker is an employee or contractor, providing a “definitive” standard. Of course, that test makes it very difficult, if not impossible, for your average gig company to label its workers as contractors.

This case could have major implications on the gig world, especially because so many gig economy companies are headquartered in Northern California. We'll continue to monitor developments and provide an update when the court renders its decision.

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