



State Court Concludes ABC Test Should Be Applied Retroactively

Insights

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You remember the game-changing, earth-shattering, monumental [decision from the California Supreme Court](#) a few months ago that fundamentally changes the test to determine whether your workers are independent contractors or employees, don't you? For those who had put it out of their minds hoping it was all just a nightmare, here's the quick summary: rather than applying a balancing test that took a number of factors into account, the California Supreme Court said that hiring entities need to prove that all of their workers satisfy the "ABC test" in order to properly classify them as contractors. The test appears notoriously difficult to overcome, especially because Prong B of the test requires you to prove that the worker is performing work outside the usual course of your business. We've written about this test extensively; [you can read more about it here](#).

One of the biggest questions remaining about the test was whether it should be applied retroactively. In other words, should businesses be protected for having relied upon the current law for years, or should they be held liable for years of possible wage and hour violations under a brand test just adopted out of the blue? (You can probably tell how the author feels about this issue from the phrasing of the question.) Several litigants have already asked courts in California to step in and resolve this question, including the parties [from the Grubhub trial](#).

A few days ago, an Orange County state court [issued a ruling](#) in a separate case involving exotic dancers and concluded that the ABC test should be applied retroactively. The case involves a class action lawsuit filed by Anaheim-based dancers, slated to head to trial later this year. After the *Dynamex* case adopted the ABC test, the parties asked the court to weigh in to determine whether that test would be applied to prior actions that pre-dated the decision. In [an eight-page order](#) dated July 18, the court said yes. The court noted that the California Supreme Court's *Dynamex* decision made no statement in its decision that the decision should only apply prospectively. "The lack of such a pronouncement suggests that the decision should apply retroactively," it said. The court also pointed to prior precedent holding that "the general rule is that judicial decisions are given retroactive effect" unless the Supreme Court declares an exception to the rule.

We'll see if other courts follow this same line of thinking, but for now, businesses appear to have a hurdle to overcome if they hope to limit the impact of the *Dynamex* case and shrink the application of the ABC test.

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