



Shadow of Dynamex Creeps Over Uber's Proposed \$20M Million Settlement

Insights

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Last week, we shared with you the news of Uber's proposed \$20 million settlement to resolve a long-running misclassification claim – the parties agreed to the deal, and they just needed the approval of a federal court judge ([read the entire post here](#)). Of course, nothing is finalized until it's signed, and the parties to this particular claim know that all too well; after all, they thought they had a \$100 million settlement in place in April 2016 before the same judge nixed the proposed deal as not being “fair, adequate, and reasonable” to the class of drivers. This week, that judge signaled there could be another fly in the ointment, and its name is *Dynamex*.

Readers of this blog are all too familiar with [the *Dynamex* decision](#) from the California Supreme Court and [the introduction of the notorious ABC test](#) to the misclassification debate. For those unfamiliar, all you need to know is that the 2018 decision makes it significantly harder for the average gig economy business to classify their workers as independent contractors. The impact of the decision continues to seep into gig economy litigation, and now the Uber case has seemingly been caught in its web.

In a [March 18 order](#), Judge Edward Chen of the Northern District of California responded to the proposed \$20 million settlement pact by asking the parties to provide him with additional briefing about a variety of matters, but most importantly, he has asked for a summary of how the *Dynamex* case influenced the proposed valuation of the settlement. “What are the litigation risks associated with the above claims (particularly those arising under Industrial Welfare Commission wage orders to which *Dynamex Operations W. v. Superior Court*, 4 Cal. 5th 903 (2018), clearly applies, assuming the decision is retroactive)?” is the key question posed by the judge. Following up, he also wants an answer to the question: “What discovery have Plaintiffs taken, and what data do they have in that regard?”

Reading between the lines, one can assume that Judge Chen wants to closely scrutinize whether the parties have adequately considered the valuation of their case in light of *Dynamex*, especially the relative odds of success with respect to liability. In a worst-case scenario, he could once again reject the parties' proposed deal for not being fair, adequate, or reasonable.

He also asked the parties to provide detail regarding a number of other factors, including Uber's current tipping policy, but the *Dynamex* impact is clearly the cornerstone issue that may or may not

break the deal apart. The parties need to provide a supplemental brief to answer the questions by today at noon PT. Once the judge makes his final ruling, we'll post an update.

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