



California Bill To Codify ABC Test Passes First Hurdle

Insights

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Earlier this week, the California Assembly overwhelmingly passed AB5 – a measure that would codify the ABC test introduced to the state in last year's *Dynamex* decision, and make life even more challenging for the average gig economy business. The best hope now is that the legislature will take business considerations into account during necessary compromise negotiations with the state Senate, and the bill will be modified from its present form to address some key issues...and perhaps exempt typical gig economy companies.

My colleague Ben Ebbink wrote about AB5 back in December on day one of the current legislative session. As he put it then, “Assemblywoman Lorena Gonzalez Fletcher (D-San Diego) announced that she would be introducing legislation sponsored by the California Labor Federation to codify the *Dynamex* decision. She wasted little time in introducing Assembly Bill 5. The bill is a placeholder (or “spot”) bill for now, but declares that it is intended to codify *Dynamex* and “clarify the decision’s application in state law.” As reported in the Sacramento Bee, Gonzalez Fletcher stated that putting the decision into law “offers a quicker resolution than fighting in court for years over its implications for issues like workers’ compensation and unemployment insurance.””

Fast forward to Wednesday, May 29, when the Assembly passed that piece of legislation by a 53-11 vote. However, as noted in the San Francisco Chronicle, “even many of its supporters said they felt it needed revisions before going through the Senate, notably exempting more professions and industries, as well as small businesses, from its provisions.” Currently, the bill would exempt doctors, dentists, lawyers, architects, accountants, engineers, insurance agents, investment advisers, direct sellers, real estate agents, hairstylists and barbers who rent booths at salons, and marketers and human-resources professionals with advanced degrees.

If you can hope for something, hope that the California Chamber of Commerce and other business coalitions can make some headway into adding further exemptions to the bill, including ones that would carve out workers performing “short-term projects” or those people who control their own schedules. That would exclude your average gig worker and relieve average gig economy businesses from facing additional responsibilities under the ABC test.

I was quoted in Caroline Spezio’s article that ran in today’s Law.com on the subject: “*Don’t expect the Senate to pass it as it currently sits ... there might be some more exemptions that are built into it,*” said Richard Meneghello, a partner at Fisher & Phillips who focuses on the gig economy. “*That’s*

where, if I'm at a company right now, where you need to be in a wait-and-see position because we don't really know what things are going to look like." ... While it's still early for any major changes to business models, [] Meneghello said in-house counsel should have some idea about what steps their company would have to take if AB5 and the ABC test forced reclassification. That could include keeping workers classified as independent contractors and bracing for litigation or taking a look at what work could be moved to employee status. "I don't think it's too soon to start sketching out some potential plans," Meneghello said.

We'll keep an eye on the bill as it works its way through the legislature and, as always, will provide updates as warranted.

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