

## Recent Developments in the Law 2018 Employment Law Supplement

### Section III.B.3. *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*

After these CLE materials were submitted, the California Supreme Court adopted a new test for determining whether a worker is an employee or an independent contractor under California state wage and hour statutes. *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, No. S222732, 2018 WL 1999120 (April 30, 2018).

The case concerned proper classification of delivery drivers under California wage and hour law. Dynamex is a same-day courier service. Drivers perform all the services it offers customers. Before 2004, it classified drivers as employees. In 2004, to save money, it reclassified drivers as independent contractors, entering new contracts with them. *Id.* at \*2.

The key terms of work under the new arrangement were:

- Drivers provided their own vehicles and paid for all transportation expenses and insurance
- Dynamex got the customers and set the rates
- Drivers set their own schedules and notified Dynamex of the days they were available
- Dynamex required drivers to pay for a Nextel cell phone for communications and dispatch
- Dynamex required drivers to wear company shirts and badges, which they had to buy
- Drivers sometimes drivers had to attach customer decals to their vehicles, depending on Dynamex's deal with the customer
- Drivers were allowed to hire other drivers to make deliveries on their behalf
- Drivers could deliver for any other companies when they weren't engaged with Dynamex

*Id.* at \*\*4-5.

The California Supreme Court adopted the "ABC test:" A worker is an independent contractor only if the hiring entity can show that (A) the worker is free from the control and direction of the hirer in connection with performance of the work; (B) the worker performs work that is outside the usual course of the hiring entity's business; and (C) the worker is customarily engaged in an independently established trade,

occupation, or business of the same nature as the work performed for the hiring entity. *Id.* at \*\*29-30.

Based on this test, the delivery drivers were employees, not independent contractors. *Id.* at \*\*35-36. The drivers' work was central to Dynamex's business, since Dynamex's only service was courier pick-up and deliveries. Thus, Dynamex could not satisfy part (B) of the ABC test. *Id.* at \*35.