

News

Some Independent Contractors Must be Treated as Employees – AB 5

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On September 18, 2019, Governor Gavin Newsom signed Assembly Bill 5 (AB 5), which will take effect January 1, 2020. AB 5 requires all California employers, including public agencies, to treat certain independent contractors as employees for purposes of many employment benefits and protections.

Public agencies currently treat workers as independent contractors based generally on the type of work that they perform. Under AB 5, agencies will be required to use specific criteria, known as the “ABC Test,” to determine whether their workers qualify as employees. This test already applies to private employers following a 2018 ruling by the California Supreme Court, *Dynamex v. Superior Court*. Under the ABC Test, to remain classified as an independent contractor and not be converted to employee status, a worker must:

- (A) Be free from the employer’s direction and control in performance of the work;
- (B) Perform work outside the usual course of the employer’s business; and
- (C) Be customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

AB 5 incorporates several specific and complex exceptions, which include certain contracts for professional services, as well as contracts with businesses that provide services directly to an employer, rather than to the employer’s customers or clients. Workers who satisfy the ABC Test but fall within these exceptions will not qualify as employees under AB 5.



The new law could require public agencies to treat workers who provide a number of important services as employees rather than independent contractors. Such workers include:

- Mental health and behavioral specialists and other health care providers;
- Information technology, security, custodial, and transportation personnel;
- Providers of construction services;
- Interns, student teachers, tutors, and workers in after-school programs;
- Public relations and communications specialists;
- Translators, interpreters, and court reporters.

For those workers who newly qualify as employees, a variety of employee rights will apply, including workers' compensation, unemployment insurance, paid sick leave, and, potentially, public retirement benefits. Public agencies should ensure that all workers are appropriately classified under AB 5 and make adjustments as necessary.

Misapplication of AB 5 and its exceptions could result in liability for employee protections and benefits starting January 1, 2020.

There will be further developments as AB 5 is implemented and interpreted by regulatory agencies, the Public Employment Relations Board, and the courts.

Please contact one of our six offices for assistance in navigating the complexities of this new law and its application to workers in your employ.