May 26, 2018

CALIFORNIA-NEW (TOUGHER) RULES FOR DETERMINING INDEPENDENT CONTRACTOR STATUS

On April 30, 2018, the California Supreme Court issued its decision in the matter of Dynamex Operations West, Inc. (Petitioner) v. The Superior Court of Los Angeles County, (Respondent) No.S222732; and Charles Lee etal, (Real Parties in Interest) which affirmed an earlier Court of Appeals decision in a case that asserted that delivery drivers had been improperly classified as independent contractors rather than employees and were unlawfully denied overtime among other wage and hour violations.

The Court ruled in favor of the drivers and through its ruling has adopted a new test as to what constitutes an independent contractor.

The Court concluded that individuals hired to work are presumed to be employees. Any company that classifies an individual as an independent contractor has the burden of proof that the individual meets the **"ABC test"** and thereby qualifies as an independent contractor.

The ABC Test is much more restrictive than prior case law and is comprised of three (3) tests which **ALL** must be proven for the individual to be properly classified as an independent contractor

1. That the individual is free from control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact AND

2. That the worker performs work that is outside the usual course of the hiring entity's business, AND

3. That the workers is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the hiring entity.

If any of the tests above are failed, the individual is an employee not an independent contractor.

For business owners, this ruling should cause you to promptly review any independent contractor arrangements that exist, modify any independent contractor agreements which may be affected for those individuals who can meet the ABC Test, and hire those individuals who routinely do work for your business as employees rather than take the risk of audit and litigation (tax agency or employee initiated)

It is highly likely that EDD tax audits will be on the increase as will increased workers compensation premiums as the result of re-classification of independent contractors to employees at audit. There has already been an increase in wage-hour litigation initiated by employees and encouraged by several law firms specializing in these types of cases. This will open the door for these lawsuits even wider.

Protect yourself, make the hard choices, adjust your prices or fees as necessary to absorb any increased employment costs. It will be cheaper for you in the long run.

Full Court Decision is available here: http://www.courts.ca.gov/opinions/documents/S222732.PDF