

2020 California Employment Law Update

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California Is Different... and Always Changing

- Minimum Wages
- FEHA Administrative Exhaustion
- No Rehire Clauses
- Hairstyle Discrimination
- Lactation Accommodation

Independent Contractor vs. Employee

- Why is the distinction important?
 - Minimum wage
 - Overtime
 - Benefits
 - Unemployment
 - Worker's comp

Independent Contractor vs. Employee

- California Supreme Court's 2018 *Dynamex* Decision
 - *Dynamex Operations West, Inc. v. Superior Court*,
4 Cal. 5th 903 (2018)

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Dynamex and the ABC Test

- A worker is now *presumed to be an employee*, unless the employer can establish that the worker:
 - A. Is free from employer control and direction;
 - B. Performs work that is outside the usual course of the employer's business; and
 - C. Is independently established in that trade.

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California Assembly Bill 5

- Statutory codification of the ABC Test
 - Labor Code section 2750.3.
- Notable for its exceptions

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The Future of California AB 5

- The ABC Test is likely here to stay
- Carve outs and exceptions

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The ABC Test (Withstanding Legal Challenge)

- You probably won't
- Put yourself in the best position possible
 - Confirm worker autonomy
 - Confirm work is outside the usual course of business
 - Confirm the worker has an established business

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California Assembly Bill 51 Arbitration Prohibition

- Employment contracts cannot require employees to arbitrate employment disputes
- Agreements after January 1, 2020

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AB 51 vs. The Federal Arbitration Act

- The FAA: most arbitration agreements are enforceable
- AB 51 acknowledges that it is preempted by the FAA

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AB 51 vs. The Federal Arbitration Act

- One federal court has already enjoined the State of California from enforcing AB 51
- Private parties should be enjoined based on the same reasoning

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AB 51 vs. The Federal Arbitration Act

- AB 51 provides for civil and criminal penalties
 - Employees can sue for damages and attorney's fees
 - Violation of AB 51 is a misdemeanor

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Learn DoorDash's Lesson

- Know what is in your contract
- Be careful what you wish for

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Questions?

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