Bad News For California Employers: Dynamex Applies Retroactively

As a follow-up to last year's landmark California Supreme Court decision, *Dynamex Operations West Inc. v. The Superior Court of Los Angeles County*, where the court reinterpreted 30 plus years of legal precedent relating to classification of independent contractors, the 9th Circuit Court of Appeals has put the final nail in the coffin: Dynamex will be applied retroactively against California employers and out-of-state employers with employees in the state.

As a reminder of where the law in California stands regarding classification of workers as independent contractors, under the ABC Test established in *Dynamex*, a worker is *presumed* to be an employee unless the alleged employer proves all of the following:

A. The worker is free from the control and direction of the employer in connection with the performance of the work;
B. The worker performs work that is outside the usual course of the employer'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 employer.

Now, it's been confirmed that this test will be applied retroactively against employers.

For those less familiar with the legal vernacular, retroactive application of a law is just like it sounds – the law is applied forwards and *backwards* – meaning employers with a history of hiring independent contractors are now at greater risk of wage and hour claims relating to their hiring and worker classification practices dating back 3-4 years, in addition to potential claims relating to their current and future practices.

Employers who hire and/or use independent contractors as a regular part of their operations should strongly consider having an employment attorney review their worker classifications to ensure they are not a lawsuit waiting to happen.

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