



california supreme court adopts "abc" test as standard to determine independent contractor status under the wage orders

MSK Client Alert

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In *Dynamex Operations West, Inc. v. Superior Court*, the California Supreme Court issued a unanimous decision adopting a new standard for determining whether a California worker is an employee or independent contractor under the wage orders adopted by California's Industrial Welfare Commission. In adopting the new standard, the Court noted that, under the wage orders, "employ" has three alternative definitions: "(a) to exercise control over the wages, hours or working conditions, **or** (b) to suffer or permit to work, **or** (c) to engage, thereby creating a common law employment relationship." Of these, the broadest definition is "to suffer or permit" to work. As the Court stated:

"We conclude that in determining whether, under the suffer or permit to work definition, a worker is properly considered the type of independent contractor to whom the wage order does not apply, it is appropriate to look to a standard, commonly referred to as the 'ABC' test, that is utilized in other jurisdictions in a variety of contexts to distinguish employees from independent contractors. Under this test, a worker is properly considered an independent contractor to whom a wage order does not apply only if the hiring entity establishes: **(A) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact; (B) that the worker performs work that is outside the usual course of the hiring entity's business; and (C) that 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.**"

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