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Independent Contractor or Employee? Properly Classifying Your Workforce under California Law

The decision to classify workers as employees or independent contractors has traditionally involved the weighing of many factors, some of which are industry specific, before a judgment would be rendered. The California Supreme Court ruling *Dynamex Operations West, Inc. v. Superior Court*, handed down April 30th 2018, changes the classification process in ways which may have far reaching consequences for those who employ, or are considering employing, workers as Independent Contractors.

The ruling introduces a new series of tests that effectively imposes an affirmative burden on employers to prove such workers are not employees and can be classified as Independent Contractors. All employers should be aware of and discuss these changes with legal counsel as you make hiring and contracting decisions going forward. Below is a brief outline of the court decision and the questions that must be answered to clear a worker as an Independent Contractor.

The Court affirmed the use of a three part "ABC" test which includes the following:

- A) "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) "the worker performs work that is outside the usual course of the hiring entity's business"
- C) "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."

The cumulative effect of this ruling clearly creates greater exposure for employers. The impact could result in penalties

(as high as \$25,000 per violation) and the imposition of worker's compensation premiums, payroll taxes, overtime and unemployment benefits if they are found to be Employees, not Independent Contractors. What should a construction firm do given the new legal environment? Companies can take several steps to ensure that workers are classified properly - and that they can prove it:

- Know the rules and document the firm's relationship with an independent contractor.
- Keep all documentation and review it annually to ensure that it is up-to-date.
- Conduct an internal audit of all employees and independent contractors with the help of qualified accounting and/or law firms.
- Make sure independent contractors have their own insurance, business location and a customer list that indicates you are not the only entity with whom they do business, as well as a business license registered with the state and/or local government.

While much remains to be learned about how these new rules will be interpreted and enforced it is important to be proactive in protecting your business. The above steps taken in conjunction with discussions with your attorney will put you in a better position going forward. As always, Woodruff Sawyer stands ready to assist in this increasingly complicated regulatory environment.

Special thanks to Roger Mason of Sweeney Mason Wilson Bosomworth, PLC.