

RetailLawBCLP

THE ABCS OF AB-5: HOW CALIFORNIA'S NEW EMPLOYEE CLASSIFICATION LAW MAY IMPACT RETAILERS

Oct 17, 2019

Following passage and signature into law of California Assembly Bill 5 ("AB-5"), retailers should be aware of how the new law affects whether they can classify workers as independent contractors.

AB-5 codifies a decision last year by the California Supreme Court in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* establishing the "ABC test" for determining whether workers can be classified as independent contractors for purposes of wage order claims, and extends the test beyond wage order claims to the California Labor Code, generally. The new law takes effect January 1, 2020.

Although AB-5 is making headlines for its potential impact on the gig economy, the law may impact any business that uses independent contractors. For retailers, this may include workers ranging from freelance artists to models.

Under AB-5 and the "ABC test," a worker is considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

1. The person is free from the 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.
2. The person performs work that is outside the usual course of the hiring entity's business.
3. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Under AB-5, the "ABC test" now applies to a variety of claims, including claims for overtime, workers' compensation, unemployment insurance, paid sick leave, paid family leave, and payment of wages upon discharge from employment. AB-5 provides exemptions for certain professions, including physicians, lawyers, architects, engineers, dentists, psychologists, accountants, travel agents, commercial fishermen, cosmetologists, and other "professional services."

Bryan Cave Leighton Paisner is hosting a CLE and Cocktails event entitled "The ABCs of AB-5: How California's New Employee Classification Law May Impact Your Business." The presentation will

feature the authors listed here, and cover the following:

- Background of AB-5
- How the law is applied
- How is covered, and who is exempt
- Potential unintended consequences
- What is a company to do?

The presentation will take place on November 7, 2019 at 5:30 p.m. at the Hotel Erwin, 1697 Pacific Avenue, Venice Beach, California 90291. Our presentation will be followed by a reception on the rooftop of the Hotel Erwin. [Click here to RSVP.](#)

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