



**D. H. SCOTT & COMPANY**  
CERTIFIED PUBLIC ACCOUNTANTS  
— A LIMITED LIABILITY PARTNERSHIP —

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To our valued clients:

For California payroll tax purposes, the recent California Supreme Court decision in *Dynamex Operations West, Inc. v. Superior Court* brings major changes to worker classification as independent contractor or employee in the state. Misclassification may result in serious consequences for employers including payment of back employment taxes and workers' compensation insurance, fines, penalties and interest.

The intent of the hiring entity and worker is no longer a controlling factor in making the determination. Now, the "ABC Test" must be applied. Each of the following three factors need to be satisfied:

- A. The worker is free from the control and direction of the hiring entity in connection with the performance of the work. If the independent contractor is the same individual doing the work and was treated as an employee previously, control is implicit. Contractor status is not allowed in this situation.
- B. The worker must perform work that is outside the usual course of the hiring entity's business. If the service would ordinarily be viewed by others as falling within the business rather than a worker's own independent business, that worker is an employee not a contractor. To satisfy this factor the separation must be fairly clear cut. For example, a retail store hires a plumber or electrician to perform maintenance services at their facility. This individual can safely be considered a contractor.
- C. The worker is customarily engaged in an independently established trade, occupation or business of the same nature of the work performed for the hiring entity. Contractor should be hired for a limited function or project that is not viewed as an integrated part of the hiring entity's business.

The ABC Test applies broadly for inquiries under the California Wage Orders which control minimum wage and hour, meal time and break time requirements. It is unclear as to whether the ABC Test should be applied to Labor Claims not arising under a Wage Order. New law allows the Labor Commissioner's office to independently, and without a complaint being filed, conduct investigations into businesses' compliance with wage and hour requirements and related issues.

If your business uses independent contractors in any context, it is important that you review your labor practices and apply the ABC test to each worker. Just because a worker has been an independent contractor in the past does not mean they will continue to be classified as such. It should also be noted that the IRS has not adopted the ABC test and the classification for California may not necessarily be the same as Federal. If you have questions regarding compliance, please do not hesitate to contact us.

Respectfully,

*D. H. Scott & Company LLP*