

## **Do You Have An Independent Contractor Or An Employee?** New State Laws Take Effect - Worker Classification

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In September, California Gov. Gavin Newsom signed Assembly Bill 5 that changes independent contractor and employee classification rules. Taking effect in January 2020, the new law adopted a three-factor test from a 2018 California Supreme Court decision (*Dynmex Operations West Inc. v. Superior Court of Los Angeles*) making it more difficult for businesses to classify their workers as independent contractors.

Other than those who fall into the exempt category, such as lawyers, doctors, engineers, accountants, architects, photographers, private school tutors, tow truck drivers, and other professional field workers, independent contractors must meet a three-factor test, known as the **ABC Test**.

**ALL** of the following criteria must be met in order to characterize a worker as an independent contractor:

- A. The worker 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,
- B. The worker performs work that is outside the usual course of the hiring entity'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.

By classifying workers as independent contractors, businesses have refrained from paying payroll taxes, unemployment insurance, overtime pay, minimum wage, and certain other employee benefits. As these new rules takes effect, businesses with potential classification issues, such as hospitals and trucking companies, may face severe civil and/or criminal penalties if found to have misclassified their workers. In addition, they will have to pay extra costs in the future to comply with the employment laws.

As one of the most severely affected businesses, Uber has maintained its drivers are independent contractors because its drivers use their own cars during the working hours they choose. Earlier this year, thousands of Uber and Lyft drivers went on strike to demand better

benefits and more pay. Uber could face millions of dollar in liabilities and penalties to settle these misclassification claims.

Similar laws have already been passed in twelve additional states including Connecticut, Delaware, Illinois, Indiana, Massachusetts, Nebraska, Nevada, New Hampshire, New Jersey, Vermont, Washington and West Virginia. It is anticipated that many more states will consider making similar changes to worker classification laws in the near future. Businesses should be aware of these issues and mitigate the possibility of paying huge liabilities by reviewing how they classify their workers.

Dopkins can assist you in determining your worker classification. For more information, please contact your Client Service Coordinator or Dawn Chen at [dchen@dopkins.com](mailto:dchen@dopkins.com).



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Dawn provides tax compliance services for both businesses and individuals. She is a Microsoft Certified Professional (MCP) for Microsoft PowerPoint and Excel.