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Healthcare Industry Companies Must Be Wary of Classifying Any Workers As Independent Contractors, In Light of the California Supreme Court's Dynamex Ruling

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As you may have seen in our recent article, the California Supreme Court recently issued a landmark decision in the case of *Dynamex Operations West, Inc. v. Superior Court*. (The full text of the *Dynamex* decision can be found here.) In its ruling, the Court establishes a standard that makes it extremely difficult for companies (or individuals) in California to properly classify their workers as independent contractors.

Now that this lengthy opinion has been digested, the questions for companies across the state become:

1. How does the employee/independent contractor classification decision impact my business?

2. As a result of the *Dynamex* decision, do I now need to reclassify my workers as employees instead of as independent contractors?

Here, we analyze the *Dynamex* opinion from the perspective of providers in the healthcare field.

Many healthcare companies classify various types of providers as independent contractors and, sometimes even, individuals who are working side-by-side with others who are being treated as employees. Notably, many medical group practices (whether organized as professional medical corporations, partnerships, or otherwise) initially hire physicians as independent contractors, with the expectation that the physician later will become a shareholder or partner of the practice. While this approach was risky under the previous analysis standards, the new test adopted by the Court makes it virtually a guarantee that this process will be found unlawful hereafter.

In *Dynamex*, the Court developed an employee-friendly test for determining whether a worker is an employee or independent contractor. Instead of using a broad multi-factor balancing test (as

California courts previously have used), the Supreme Court adopted the “ABC test,” which presumes that all workers are employees unless the business can prove ***all*** of the following:

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 performance 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.

The biggest challenge for companies in the healthcare industry (and likely those in many other industries as well) to satisfy the “ABC test” is complying with the requirement in part B – that the worker performs work that is outside the usual course of the hiring entity’s business. In the example above, the medical group practice clearly is in the business of providing healthcare services to its patients. So, any individual who works for the practice *and provides healthcare services*, such as a physician, very likely would be considered an employee under the ABC test. As a result, the only individuals who definitively would be deemed to be properly classified as independent contractors would be individuals who perform services unrelated to healthcare, such as a plumber performing plumbing services at the healthcare business’ facilities. Consequently, *locum tenens* likely will need to be classified as part-time employees and not independent contractors. But, open questions remain about the proper classification of providers in the healthcare industry; for example, it is unclear how courts will review the circumstance where a medical group that performs one specialty brings in a provider to perform services in a different specialty on a limited basis.

This Court-authorized approach may seem to contain a difficult (and unreasonable) test to overcome, but it now is the “law of the land” in California. As a result, all healthcare companies should take a step back and review how they are classifying their workers and seriously consider that all workers be treated as employees going forward. If the individuals are determined to be employees who are misclassified as independent contractors, the company runs the risk that significant damages may be imposed on it. Such damages potentially would include unpaid wages and overtime, liquidated damages, interest, plaintiffs’ attorneys’ fees and costs, penalties for violations of applicable federal and state labor laws (including missed meal periods and rest breaks and wage statement violations), and penalties for failure to pay applicable federal, state, and local taxes, as well as the likely cost of extensive litigation too.

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