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Assembly

California Legislature



LORENA GONZALEZ
ASSEMBLYWOMAN, EIGHTIETH DISTRICT

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September 13, 2019

E. Dotson Wilson
Chief Clerk of the Assembly
State Capitol, Room 3196
Sacramento, California

AB 5
Gonzalez

Dear Mr. Wilson,

I am writing to clarify the intent of AB 5. The fundamental purpose of AB 5 is to codify the California Supreme Court's unanimous decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*) and clarify the decision's application in state law. Additionally, AB 5 provides that, for specified occupations and situations, the applicable test for determining if an individual is an employee or an independent contractor is the test set forth in the California Supreme Court decision in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (*Borello*) or relevant statute.

It is not the intent of AB 5 to distinguish between "platform" and "brick and mortar" businesses. Both types of businesses rely on individuals to perform work as part of the usual course of their businesses.

One of the provisions of AB 5 addresses business-to-business contracting. Specifically, Subdivision (e) of Section 2750.3 provides that the holding in *Dynamex* and subdivision (a) of Section 2750.3 do not apply to a bona fide business-to-business contracting relationship if certain criteria are satisfied and, instead, the determination of employee or independent contractor status of the business services provider is governed by *Borello*. Importantly, while this provision exempts certain bona fide business-to-business contracting relationships from the holding in *Dynamex* if the criteria are satisfied, subdivision (e) is not intended to suggest, by negative implication, that the business services provider is necessarily an employee if those criteria are not satisfied.



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AB 5 Gonzalez

Additionally, AB 5 is not intended to replace, alter, or change joint employer liability between two businesses. AB 5 is focused upon the determination whether an individual is an employee or an independent contractor.

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It is the intent of AB 5 that subdivision (a) of the bill and the holding in *Dynamex* do not apply to a physician and surgeon, dentist, podiatrist, psychologist or veterinarian (Licensees), but that the holding in *Borello* applies to the Licensees. The September 6, 2019 amendments to AB 5 include language in Section 2750.3(b)(2) stating that *Dynamex* shall apply to the Licensees in some limited instances. The intent of AB 5 is to apply *Dynamex* to current or potential collective bargaining agreements in settings that allow for the employment of these licensees. The version of AB 5 amended September 6, 2019 has language in Section 2750.3(b)(2) that fails to capture the intent of the author due to a drafting error and erroneously applies *Dynamex* to employment settings and not collective bargaining agreements. The language as of September 6, 2019 is not accurate. It is my intent to fix this drafting error by introducing a bill to amend Labor Code Section 2750.3 (b)(2).

In an effort to provide as much certainty as possible moving forward, I am committed to working collaboratively with the labor and business communities to develop additional language regarding the applicability of *Dynamex* in 2020 and to pursue legislation that further clarifies the law.

Thank you for this opportunity to clarify the intent of AB 5.

Sincerely,



LORENA GONZALEZ

Assemblywoman, 80th District