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AB5: New Requirements for Independent Contractor Classification, and Its Potential Impacts on the Construction Industry

January 1, 2020 welcomes a new decade and ushers Assembly Bill No. 5 (“AB5”) into law in California, potentially impacting general construction contractors and subcontractors’ use of independent owner-operator truckers.

Background

On September 18, 2019, Governor Gavin Newsom approved and signed into law AB5, which will take effect on January 1, 2020. The California Legislature passed AB5 with the intent of codifying the California Supreme Court decision in *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018) (“*Dynamex*”). In *Dynamex*, the Court utilized what is referred to as the “ABC” test to determine whether a worker should be treated as an employee or independent contractor.

Under the “ABC” test, an individual is “...considered an independent contractor only if: (A) the worker is free from the control and direction of the hirer in connection with the performance of the work...; (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...” See *Dynamex*.

Potential Impacts on the Construction Industry

One effect of AB5 is that it will add Section 2750.3 to the California Labor Code which, in part, will exempt application of the “ABC” test to individuals performing work under a subcontract so long as the contractor can demonstrate that certain factors are present. However, AB5 specifically excludes from the subcontractor exemption those providing construction trucking services for which a contractor’s license is not required unless all of the following criteria are satisfied:

1. The subcontractor is a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation;
2. The subcontractor is registered with the Department of Industrial Relations as public works contractor, whether or not the subcontract at issue involves public work;
3. The subcontractor utilizes its own employees to perform the construction trucking services, unless the subcontractor is sole proprietor who operates their own truck to perform the entire subcontract and holds a valid motor carrier permit issued by the Department of Motor Vehicles;
4. The subcontractor negotiates and contracts with, and is compensated directly by, the licensed contractor.



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It is a common practice in California for general contractors and trade contractors to hire independent owner-operators, such as dump truck drivers, through brokers. Under AB5, as detailed above, after January 1, 2020 those same independent owner-operators hired by a general contractor through a broker could be determined to be employees of the general contractor, unless the general contractor enters into a direct subcontract with the truck driver(s).

The resulting impacts on the construction industry, and more specifically, independent owner-operators and general contractors, could be significant. As such, this past November, the California Trucking Association filed suit in United States District Court, Southern District of California ([see here](#)), challenging the constitutionality of AB5 as it applies to the trucking industry. P&A will continue to keep our clients and friends of the firm informed regarding the status of the aforementioned litigation, and any amendments to AB5 which may come as a result.

If you have questions, please contact [Alex R. Baghdassarian](#) or [Nathan A. Cohen](#) at 310-228-1075.

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