

AMENDED IN ASSEMBLY MARCH 26, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 5

Introduced by Assembly Member Gonzalez

December 3, 2018

An act to add Section 2750.3 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 5, as amended, Gonzalez. Worker status: independent contractors.

Existing law, as established in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), creates a presumption that a worker who performs services for a hirer is an ~~employee~~. *employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission*. Existing law requires a 3-part test, commonly known as the “ABC” test, to establish that a worker is ~~independent contractor~~. *an independent contractor for those purposes*.

This bill would state the intent of the Legislature to ~~include provisions within this bill would~~ codify the decision in the *Dynamex* case and clarify its application. *The bill would provide that the factors of the “ABC” test be applied in order to determine the status of a worker as an employee or independent contractor for all provisions of the Labor Code, unless another definition or specification of “employee” is provided. The bill would codify existing exemptions for specified professions that are not subject to wage orders of the Industrial Welfare Commission or the ruling in the Dynamex case. The bill would state that its provisions do not constitute a change in, but are declaratory of, existing law.*

The Labor Code makes it a crime for an employer to violate specified provisions of law with regard to an employee. By expanding the definition of an employee for purposes of these provisions, the bill would expand the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
 State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
 2 following:

3 (a) On April 30, 2018, the California Supreme Court issued a
 4 unanimous decision in *Dynamex Operations West, Inc. v. Superior*
 5 *Court of Los Angeles*, (2018) 4 Cal.5th 903.

6 (b) In its decision, the Court cited the harm to misclassified
 7 workers who lose significant workplace protections, the unfairness
 8 to employers who must compete with companies that misclassify,
 9 and the loss to the state of needed revenue from companies that
 10 use misclassification to avoid obligations such as payment of
 11 payroll taxes, payment of premiums for workers compensation,
 12 Social Security, unemployment, and disability insurance.

13 (c) The misclassification of workers as independent contractors
 14 has been a significant factor in the erosion of the middle class and
 15 the rise in income inequality.

16 (d) *It is the intent of the Legislature in enacting this act to*
 17 *include provisions that would codify the decision of the California*
 18 *Supreme Court in *Dynamex Operations West, Inc. v. Superior**
 19 *Court of Los Angeles (2018) 4 Cal.5th 903, and would clarify the*
 20 *decision’s application in state law.*

21 SEC. 2. Section 2750.3 is added to the Labor Code, to read:

22 ~~2750.3.—(a) It is the intent of the Legislature in enacting this~~
 23 ~~section to include provisions that would codify the decision of the~~
 24 ~~California Supreme Court in *Dynamex Operations West, Inc. v.*~~

1 ~~Superior Court of Los Angeles (2018) 4 Cal.5th 903, and would~~
2 ~~clarify the decision’s application in state law.~~

3 2750.3. (a) *For purposes of the provisions of this code, where*
4 *another definition or specification for the term “employee” is not*
5 *otherwise provided, and for the wage orders of the Industrial*
6 *Welfare Commission, a person providing labor or services for*
7 *remuneration shall be considered an employee unless the hiring*
8 *entity demonstrates that all of the following conditions are*
9 *satisfied:*

10 (1) *The person is free from the control and direction of the*
11 *hiring entity in connection with the performance of the work, both*
12 *under the contract for the performance of the work and in fact.*

13 (2) *The person performs work that is outside the usual course*
14 *of the hiring entity’s business.*

15 (3) *The person is customarily engaged in an independently*
16 *established trade, occupation, or business of the same nature as*
17 *that involved in the work performed.*

18 (b) *This section and the holding in Dynamex Operations West,*
19 *Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903, do not*
20 *apply to the following occupations as defined below, and instead,*
21 *for these occupations only, the employment relationship shall be*
22 *governed by the test adopted by the California Supreme Court in*
23 *the case of S. G. Borello & Sons, Inc. v Department of Industrial*
24 *Relations (1989) 48 Cal.3d 341.:*

25 (1) *A person or organization who is licensed by the Department*
26 *of Insurance pursuant to Chapter 5 (commencing with Section*
27 *1621), Chapter 6 (commencing with Section 1760), and Chapter*
28 *8 (commencing with Section 1831) of Part 2 of Division 1 of the*
29 *Insurance Code.*

30 (2) *A physician and surgeon licensed by the State of California*
31 *pursuant to Division 2 (commencing with Section 500) of the*
32 *Business and Professions Code, performing professional or medical*
33 *services provided to or by a health care entity, including an entity*
34 *organized as a sole proprietorship, partnership, or professional*
35 *corporation as defined in Section 13401 of the Corporations Code.*

36 (3) *A securities broker-dealer or investment adviser or their*
37 *agents and representatives that are registered with the Securities*
38 *and Exchange Commission or the Financial Industry Regulatory*
39 *Authority or licensed by the State of California under Chapter 2*
40 *(commencing with Section 25210) or Chapter 3 (commencing with*

1 Section 25230) of Division 1 of Part 3 of Title 4 of the Corporations
2 Code.

3 (4) A direct sales salesperson as described in Section 650 of
4 the Unemployment Insurance Code, so long as the conditions for
5 exclusion from employment under that section are met.

6 (c) The addition of Section 2750.3 to the Labor Code made by
7 this act does not constitute a change in, but is declaratory of,
8 existing law.

9 SEC. 3. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.