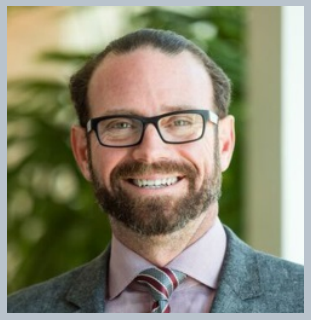
McDermott Will & Emery

Dynamex: Stricter Definition of Independent Contractors Brings New Challenges for California Employers

May 30, 2018

McDermott Will & Emery

Today's Panel



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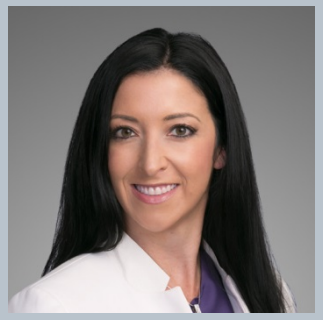

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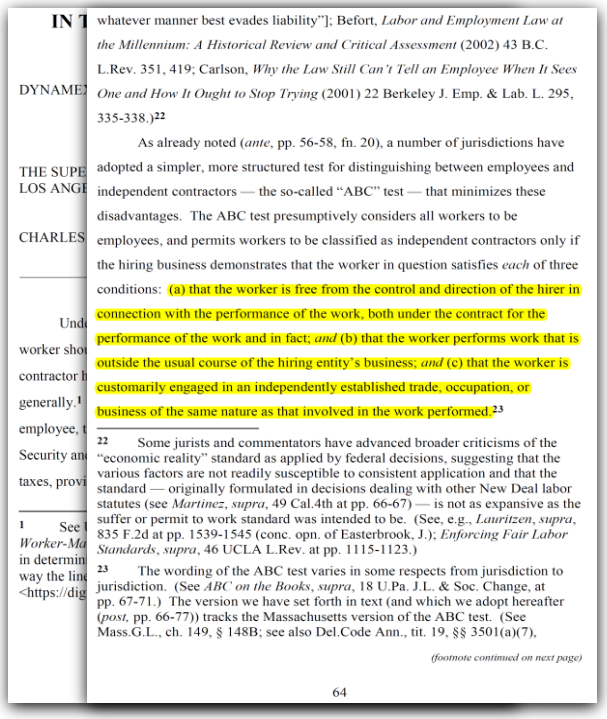
The *Dynamex* Presumption



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As already noted (*ante*, pp. 56-58, fn. 20), a number of jurisdictions have adopted a simpler, more structured test for distinguishing between employees and independent contractors — the so-called "ABC" test — that minimizes these disadvantages. The ABC test presumptively considers all workers to be employees, and permits workers to be classified as independent contractors only if the hiring business demonstrates that the worker in question satisfies *each* of three conditions: (a) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and* (b) that the worker performs work that is outside the usual course of the hiring entity's business; *and* (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.[23]

[22] Some jurists and commentators have advanced broader criticisms of the "economic reality" standard as applied by federal decisions, suggesting that the various factors are not readily susceptible to consistent application and that the standard — originally formulated in decisions dealing with other New Deal labor statutes (see *Martinez*, *supra*, 49 Cal.4th at pp. 66-67) — is not as expansive as the suffer or permit to work standard was intended to be. (See, e.g., *Lauritzen*, *supra*, 835 F.2d at pp. 1539-1545 (conc. opn. of Easterbrook, J.); *Enforcing Fair Labor Standards*, *supra*, 46 UCLA L.Rev. at pp. 1115-1123.)

[23] The wording of the ABC test varies in some respects from jurisdiction to jurisdiction. (See *ABC on the Books*, *supra*, 18 U.Pa. J.L. & Soc. Change, at pp. 67-71.) The version we have set forth in text (and which we adopt hereafter (*post*, pp. 66-77)) tracks the Massachusetts version of the ABC test. (See Mass.G.L., ch. 149, § 148B; see also Del.Code Ann., tit. 19, §§ 3501(a)(7),

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"The ABC test presumptively considers all workers to be employees, and permits workers to be classified as independent contractors only if the hiring business demonstrates that the worker in question satisfies *each* of three conditions:…"

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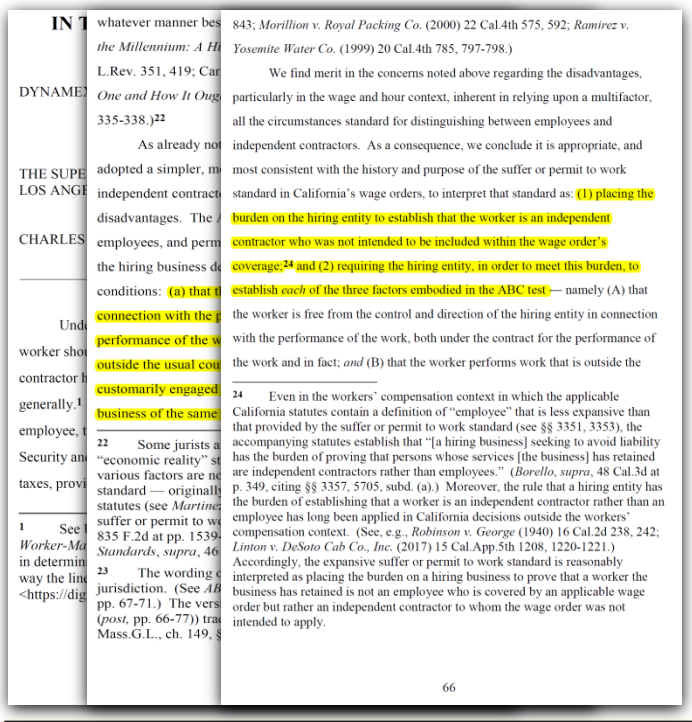

843; *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 592; *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 797-798.)

We find merit in the concerns noted above regarding the disadvantages, particularly in the wage and hour context, inherent in relying upon a multifactor, all the circumstances standard for distinguishing between employees and independent contractors. As a consequence, we conclude it is appropriate, and most consistent with the history and purpose of the suffer or permit to work standard in California's wage orders, to interpret that standard as: (1) placing the burden on the hiring entity to establish that the worker is an independent contractor who was not intended to be included within the wage order's coverage;[24] and (2) requiring the hiring entity, in order to meet this burden, to establish *each* of the three factors embodied in the ABC test — namely (A) that 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; *and* (B) that the worker performs work that is outside the

[24] Even in the workers' compensation context in which the applicable California statutes contain a definition of "employee" that is less expansive than that provided by the suffer or permit to work standard (see §§ 3351, 3353), the accompanying statutes establish that "[a hiring business] seeking to avoid liability has the burden of proving that persons whose services [the business] has retained are independent contractors rather than employees." (*Borello*, *supra*, 48 Cal.3d at p. 349, citing §§ 3357, 5705, subd. (a).) Moreover, the rule that a hiring entity has the burden of establishing that a worker is an independent contractor rather than an employee has long been applied in California decisions outside the workers' compensation context. (See, e.g., *Robinson v. George* (1940) 16 Cal.2d 238, 242; *Linton v. DeSoto Cab Co., Inc.* (2017) 15 Cal.App.5th 1208, 1220-1221.) Accordingly, the expansive suffer or permit to work standard is reasonably interpreted as placing the burden on a hiring business to prove that a worker the business has retained is not an employee who is covered by an applicable wage order but rather an independent contractor to whom the wage order was not intended to apply.

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This presumption means:"(1) placing the burden on the hiring entity to establish that the worker is an independent contractor who was not intended to be included within the wage order's coverage;

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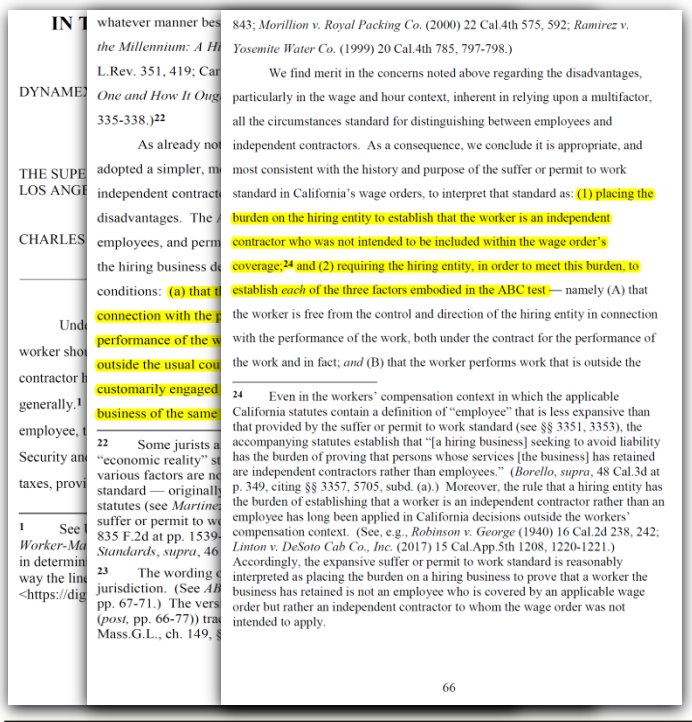

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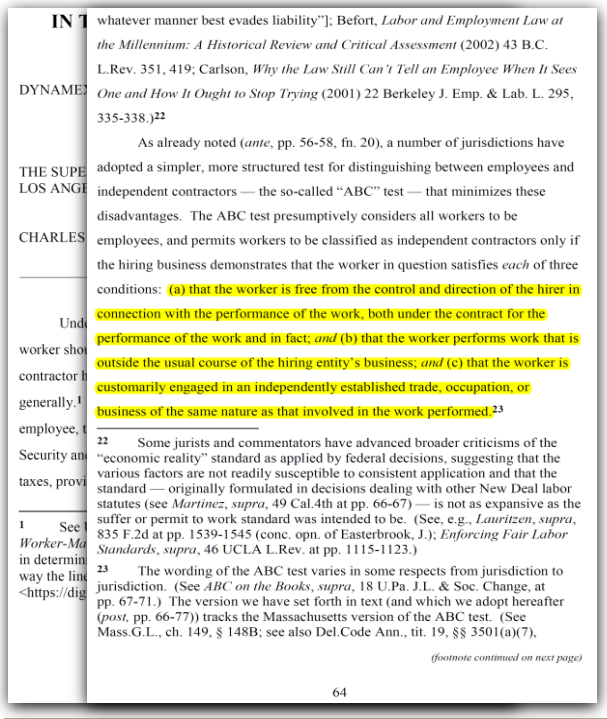
The *Dynamex* Test



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As already noted (*ante*, pp. 56-58, fn. 20), a number of jurisdictions have adopted a simpler, more structured test for distinguishing between employees and independent contractors — the so-called "ABC" test — that minimizes these disadvantages. The ABC test presumptively considers all workers to be employees, and permits workers to be classified as independent contractors only if the hiring business demonstrates that the worker in question satisfies *each* of three conditions: (a) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and* (b) that the worker performs work that is outside the usual course of the hiring entity's business; *and* (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.[23]

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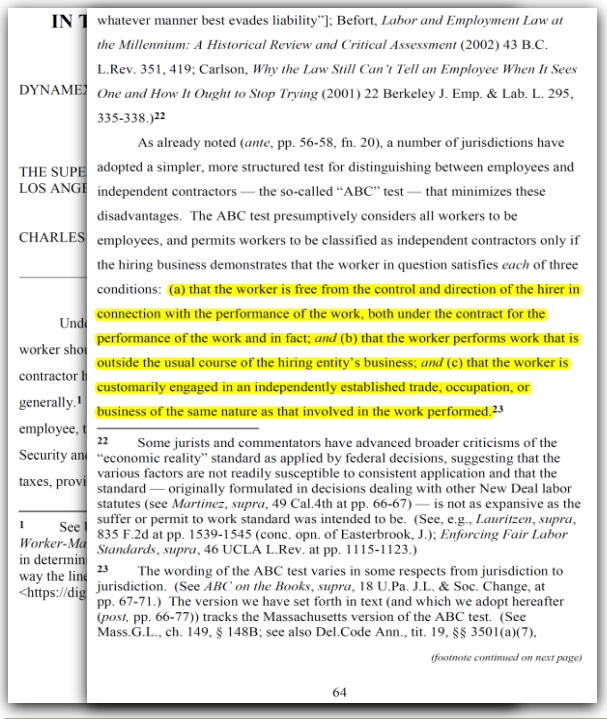

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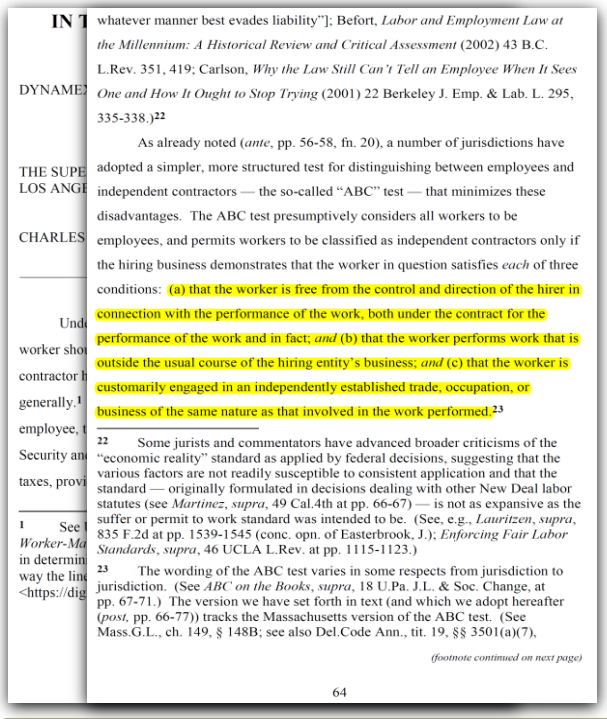

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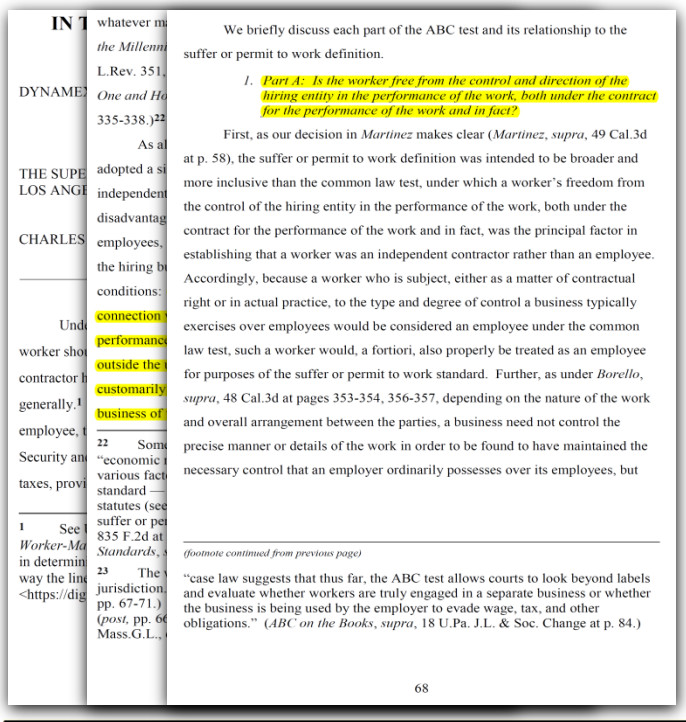
The *Dynamex* Test: Part A



We briefly discuss each part of the ABC test and its relationship to the suffer or permit to work definition.

1. *Part A: Is the worker free from the control and direction of the hiring entity in the performance of the work, both under the contract for the performance of the work and in fact?*

First, as our decision in *Martinez* makes clear (*Martinez*, *supra*, 49 Cal.3d at p. 58), the suffer or permit to work definition was intended to be broader and more inclusive than the common law test, under which a worker's freedom from the control of the hiring entity in the performance of the work, both under the contract for the performance of the work and in fact, was the principal factor in establishing that a worker was an independent contractor rather than an employee. Accordingly, because a worker who is subject, either as a matter of contractual right or in actual practice, to the type and degree of control a business typically exercises over employees would be considered an employee under the common law test, such a worker would, a fortiori, also properly be treated as an employee for purposes of the suffer or permit to work standard. Further, as under *Borello*, *supra*, 48 Cal.3d at pages 353-354, 356-357, depending on the nature of the work and overall arrangement between the parties, a business need not control the precise manner or details of the work in order to be found to have maintained the necessary control that an employer ordinarily possesses over its employees, but

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"case law suggests that thus far, the ABC test allows courts to look beyond labels and evaluate whether workers are truly engaged in a separate business or whether the business is being used by the employer to evade wage, tax, and other obligations." (*ABC on the Books*, *supra*, 18 U.Pa. J.L. & Soc. Change at p. 84.)

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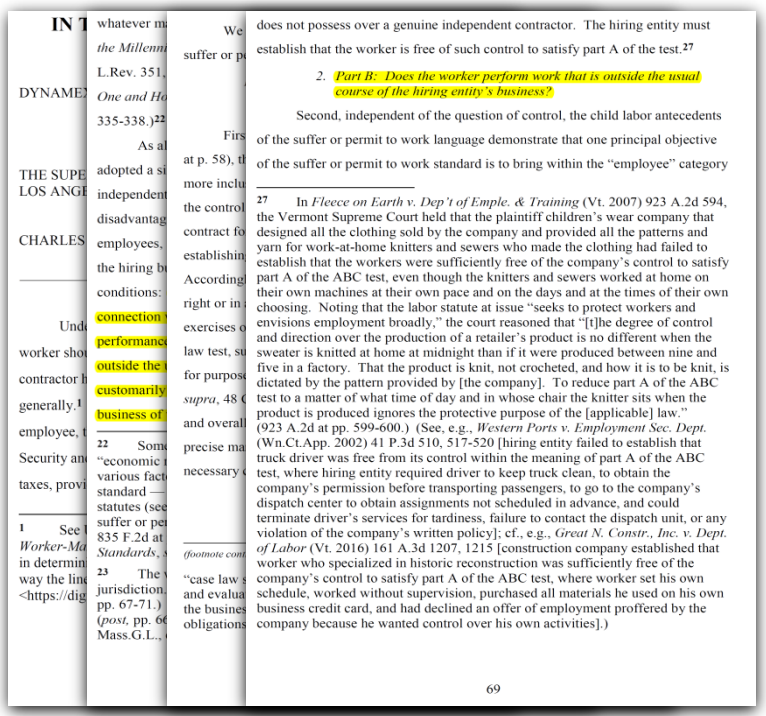
- **intended to be broader and more inclusive than the common law test**
- **a business need not control the precise manner or details of the work in order to be found to have maintained the necessary control that an employer ordinarily possesses over its employees**

Part A: Is the worker free from the control and direction of the hiring entity in the performance of the work, both under the contract for the performance of the work and in fact?

The *Dynamex* Test: Part B



does not possess over a genuine independent contractor. The hiring entity must establish that the worker is free of such control to satisfy part A of the test.[27]

2. *Part B: Does the worker perform work that is outside the usual course of the hiring entity's business?*

Second, independent of the question of control, the child labor antecedents of the suffer or permit to work language demonstrate that one principal objective of the suffer or permit to work standard is to bring within the "employee" category

[27] In *Fleece on Earth v. Dep't of Emple. & Training* (Vt. 2007) 923 A.2d 594, the Vermont Supreme Court held that the plaintiff children's wear company that designed all the clothing sold by the company and provided all the patterns and yarn for work-at-home knitters and sewers who made the clothing had failed to establish that the workers were sufficiently free of the company's control to satisfy part A of the ABC test, even though the knitters and sewers worked at home on their own machines at their own pace and on the days and at the times of their own choosing. Noting that the labor statute at issue "seeks to protect workers and envisions employment broadly," the court reasoned that "[t]he degree of control and direction over the production of a retailer's product is no different when the sweater is knitted at home at midnight than if it were produced between nine and five in a factory. That the product is knit, not crocheted, and how it is to be knit, is dictated by the pattern provided by [the company]. To reduce part A of the ABC test to a matter of what time of day and in whose chair the knitter sits when the product is produced ignores the protective purpose of the [applicable] law." (923 A.2d at pp. 599-600.) (See, e.g., *Western Ports v. Employment Sec. Dept.* (Wn.Ct.App. 2002) 41 P.3d 510, 517-520 [hiring entity failed to establish that truck driver was free from its control within the meaning of part A of the ABC test, where hiring entity required driver to keep truck clean, to obtain the company's permission before transporting passengers, to go to the company's dispatch center to obtain assignments not scheduled in advance, and could terminate driver's services for tardiness, failure to contact the dispatch unit, or any violation of the company's written policy]; cf., e.g., *Great N. Constr., Inc. v. Dept. of Labor* (Vt. 2016) 161 A.3d 1207, 1215 [construction company established that worker who specialized in historic reconstruction was sufficiently free of the company's control to satisfy part A of the ABC test, where worker set his own schedule, worked without supervision, purchased all materials he used on his own business credit card, and had declined an offer of employment proffered by the company because he wanted control over his own activities].)

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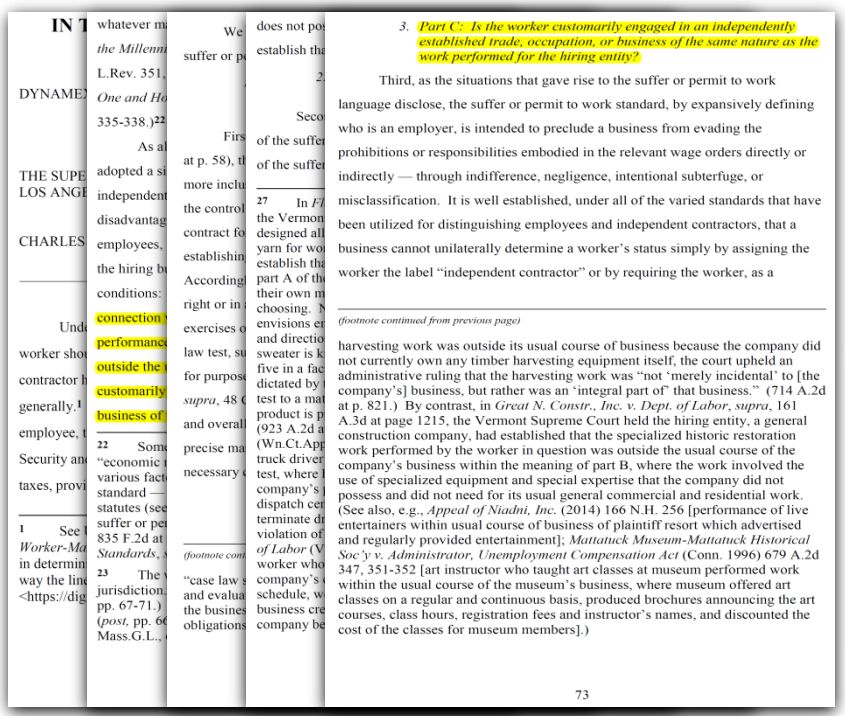
- **Employees = those "who would ordinarily be viewed by others as working in the hiring entity's business"**
- **Workers' willingness to be contractors is now a nonfactor: "If the wage order's obligations could be avoided for workers who provide services in a role comparable to employees but who are willing to forgo the wage order's protections, other workers who provide similar services and are intended to be protected under the suffer or permit to work standard would frequently find themselves displaced by those willing to decline such coverage."**

Part B: Does the worker perform work that is outside the usual course of the hiring entity's business?

The *Dynamex* Test: Part C



3. *Part C: Is the worker customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity?*

Third, as the situations that gave rise to the suffer or permit to work language disclose, the suffer or permit to work standard, by expansively defining who is an employer, is intended to preclude a business from evading the prohibitions or responsibilities embodied in the relevant wage orders directly or indirectly — through indifference, negligence, intentional subterfuge, or misclassification. It is well established, under all of the varied standards that have been utilized for distinguishing employees and independent contractors, that a business cannot unilaterally determine a worker's status simply by assigning the worker the label "independent contractor" or by requiring the worker, as a

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harvesting work was outside its usual course of business because the company did not currently own any timber harvesting equipment itself, the court upheld an administrative ruling that the harvesting work was "not 'merely incidental' to [the company's] business, but rather was an 'integral part of' that business." (714 A.2d at p. 821.) By contrast, in *Great N. Constr., Inc. v. Dept. of Labor*, *supra*, 161 A.3d at page 1215, the Vermont Supreme Court held the hiring entity, a general construction company, had established that the specialized historic restoration work performed by the worker in question was outside the usual course of the company's business within the meaning of part B, where the work involved the use of specialized equipment and special expertise that the company did not possess and did not need for its usual general commercial and residential work. (See also, e.g., *Appeal of Niadni, Inc.* (2014) 166 N.H. 256 [performance of live entertainers within usual course of business of plaintiff resort which advertised and regularly provided entertainment]; *Mattatuck Museum-Mattatuck Historical Soc'y v. Administrator, Unemployment Compensation Act* (Conn. 1996) 679 A.2d 347, 351-352 [art instructor who taught art classes at museum performed work within the usual course of the museum's business, where museum offered art classes on a regular and continuous basis, produced brochures announcing the art courses, class hours, registration fees and instructor's names, and discounted the cost of the classes for museum members].)

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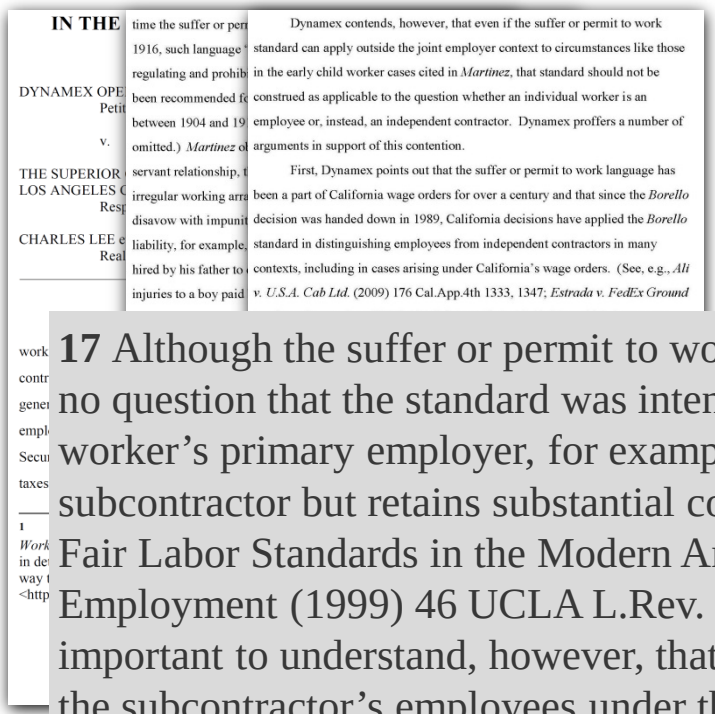
- As a matter of common usage, the term "independent contractor," when applied to an individual worker, ordinarily has been understood to refer to an individual who independently has made the decision to go into business for himself or herself."
- "The fact that a company has not prohibited or prevented a worker from engaging in such a business is not sufficient to establish that the worker has independently made the decision to go into business for himself or herself."

Part C: Is the worker customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity?

Is there safe harbor in contracting with a business?

Safe Harbor: A Collateral Consideration?



Dynamex contends, however, that even if the suffer or permit to work standard can apply outside the joint employer context to circumstances like those in the early child worker cases cited in *Martinez*, that standard should not be construed as applicable to the question whether an individual worker is an employee or, instead, an independent contractor. Dynamex proffers a number of arguments in support of this contention.

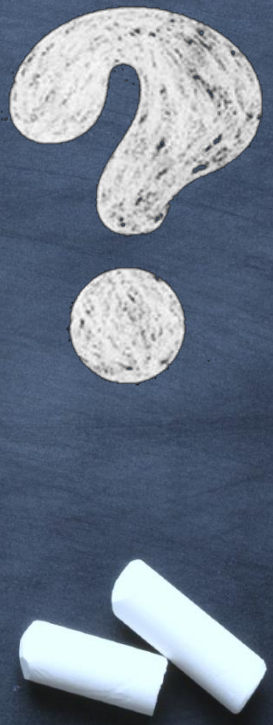
First, Dynamex points out that the suffer or permit to work language has been a part of California wage orders for over a century and that since the *Borello* decision was handed down in 1989, California decisions have applied the *Borello* standard in distinguishing employees from independent contractors in many contexts, including in cases arising under California's wage orders. (See, e.g., *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1347; *Estrada v. FedEx Ground*

17 Although the suffer or permit to work standard is not limited to the joint employer context, there is no question that the standard was intended to cover a variety of entities that have a relationship with a worker's primary employer, for example, a larger business that contracts out some of its operations to a subcontractor but retains substantial control over the work. (See generally Goldstein et al., Enforcing Fair Labor Standards in the Modern American Sweatshop: Rediscovering the Statutory Definition of Employment (1999) 46 UCLA L.Rev. 983, 1055-1066 (Enforcing Fair Labor Standards).) It is important to understand, however, that even when a larger business is found to be a joint employer of the subcontractor's employees under the suffer or permit to work standard, this result does not mean that the larger business is prohibited from entering into a relationship with the subcontractor or from obtaining benefits that may result from utilizing the services of a separate business entity. Even when the subcontractor's employees can hold the larger business responsible for violations of the wage order under the suffer or permit to work standard, the larger business, so long as authorized by contract, can seek reimbursement for any such liability from the subcontractor. (See id. at pp. 1144-1145.)

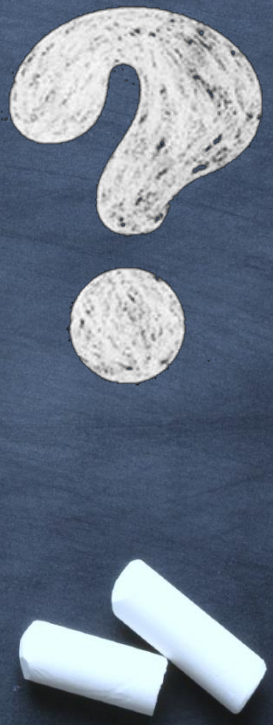
We'd like to hire a bookkeeper for a period of time as an independent contractor: is that okay?

We are going to bring on an interim CFO/consultant as an IC, and if it works out, we will hire her: is that okay?

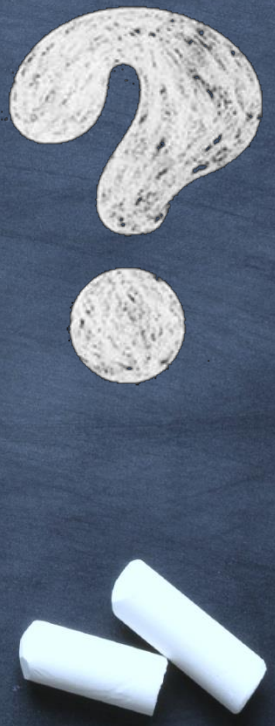
Dynamex references examples like the plumber hired by a retail store who may be needed once a year: what about a window washer needed 4 times per year? Is there a quantitative limit?



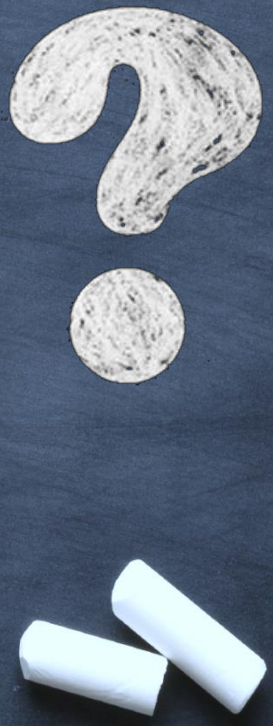
Plumbers and electricians are so 20th century: in 1955, businesses put a plumber on retainer but now I need an IT wizard on retainer: is that OK under *Dynamex?*



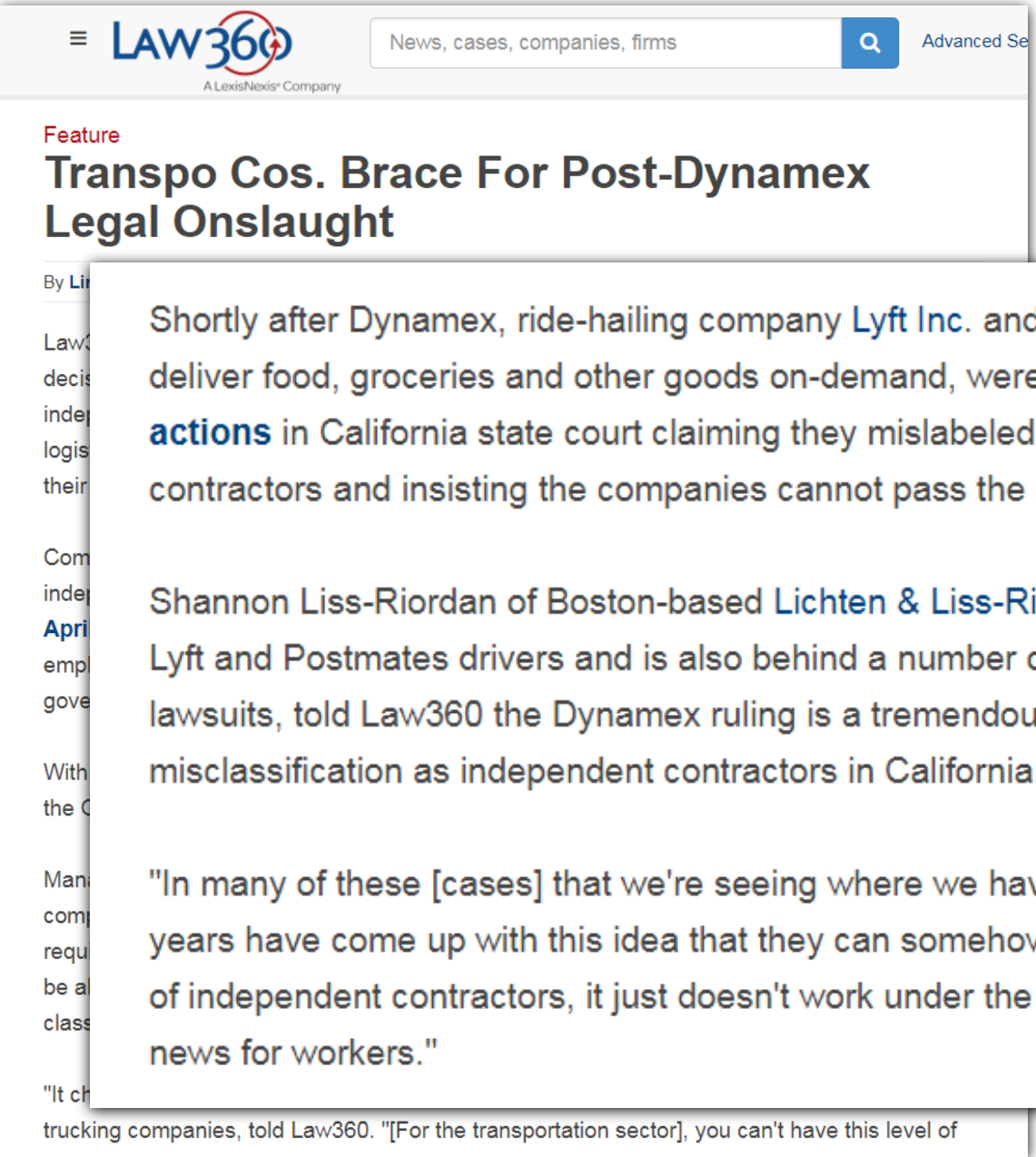
I'm trying to think of an instance where a person is a true IC these days (and not a vendor or employee)…



Is *Dynamex* the death knell for the IC Gig Economy platform?



Employers Will Either Embrace Employment Or Face Litigation



Shortly after Dynamex, ride-hailing company Lyft Inc. and Postmates Inc., whose couriers deliver food, groceries and other goods on-demand, were hit with a **pair of putative class actions** in California state court claiming they mislabeled drivers and couriers as independent contractors and insisting the companies cannot pass the new standard.

Shannon Liss-Riordan of Boston-based Lichten & Liss-Riordan PC, who is representing the Lyft and Postmates drivers and is also behind a number of high-profile misclassification lawsuits, told Law360 the Dynamex ruling is a tremendous help to plaintiffs challenging their misclassification as independent contractors in California.

"In many of these [cases] that we're seeing where we have all these companies who in recent years have come up with this idea that they can somehow build a business around a workforce of independent contractors, it just doesn't work under the test," she said. "I think this is great news for workers."

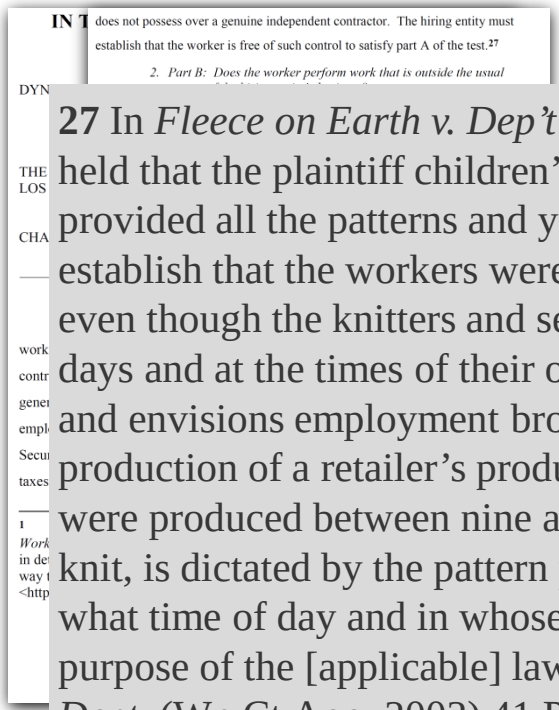
Facing Litigation in The Gig Economy

Arbitration will be essential to avoid class actions

What can be done to avoid being nibbled to death by ducks?

- **Berman Hearings**
- **Individual Arbitrations**
- **Union Activities**

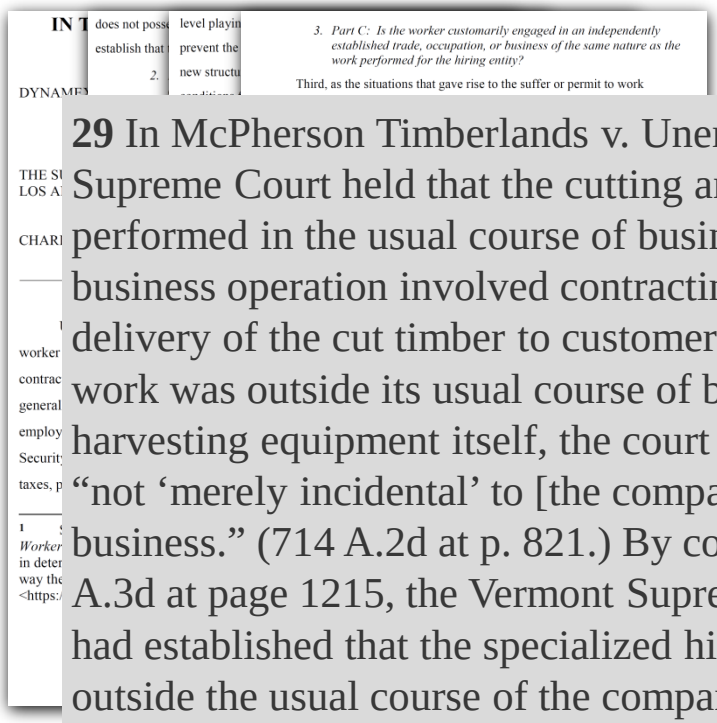
Facing Litigation in The Gig Economy: *Dynamex's* Mini-Restatement


does not possess over a genuine independent contractor. The hiring entity must establish that the worker is free of such control to satisfy part A of the test.[27]

2. *Part B: Does the worker perform work that is outside the usual*

27 In *Fleece on Earth v. Dep't of Emple. & Training* (Vt. 2007) 923 A.2d 594, the Vermont Supreme Court held that the plaintiff children's wear company that designed all the clothing sold by the company and provided all the patterns and yarn for work-at-home knitters and sewers who made the clothing had failed to establish that the workers were sufficiently free of the company's control to satisfy part A of the ABC test, even though the knitters and sewers worked at home on their own machines at their own pace and on the days and at the times of their own choosing. Noting that the labor statute at issue "seeks to protect workers and envisions employment broadly," the court reasoned that "[t]he degree of control and direction over the production of a retailer's product is no different when the sweater is knitted at home at midnight than if it were produced between nine and five in a factory. That the product is knit, not crocheted, and how it is to be knit, is dictated by the pattern provided by [the company]. To reduce part A of the ABC test to a matter of what time of day and in whose chair the knitter sits when the product is produced ignores the protective purpose of the [applicable] law." (923 A.2d at pp. 599-600.) (See, e.g., *Western Ports v. Employment Sec. Dept.* (Wn.Ct.App. 2002) 41 P.3d 510, 517-520 [hiring entity failed to establish that truck driver was free from its control within the meaning of part A of the ABC test, where hiring entity required driver to keep truck clean, to obtain the company's permission before transporting passengers, to go to the company's dispatch center to obtain assignments not scheduled in advance, and could terminate driver's services for tardiness, failure to contact the dispatch unit, or any violation of the company's written policy]; cf., e.g., *Great N. Constr., Inc. v. Dept. of Labor* (Vt. 2016) 161 A.3d 1207, 1215 [construction company established that worker who specialized in historic reconstruction was sufficiently free of the company's control to satisfy part A of the ABC test, where worker set his own schedule, worked without supervision, purchased all materials he used on his own business credit card, and had declined an offer of employment proffered by the company because he wanted control over his own activities].)

Facing Litigation in The Gig Economy: *Dynamex's* Mini-Restatement

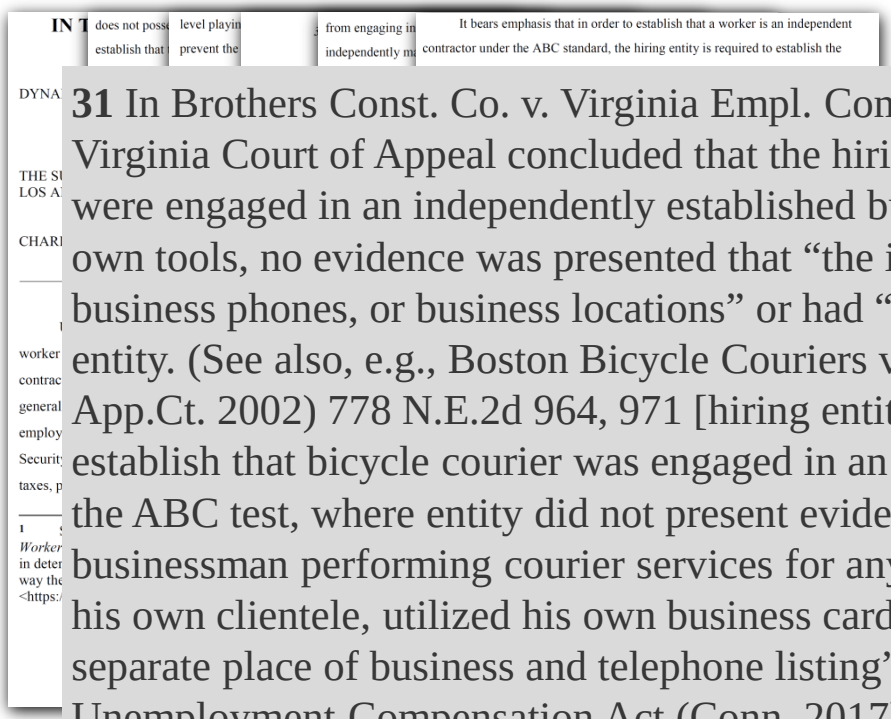


3. *Part C: Is the worker customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity?*

Third, as the situations that gave rise to the suffer or permit to work

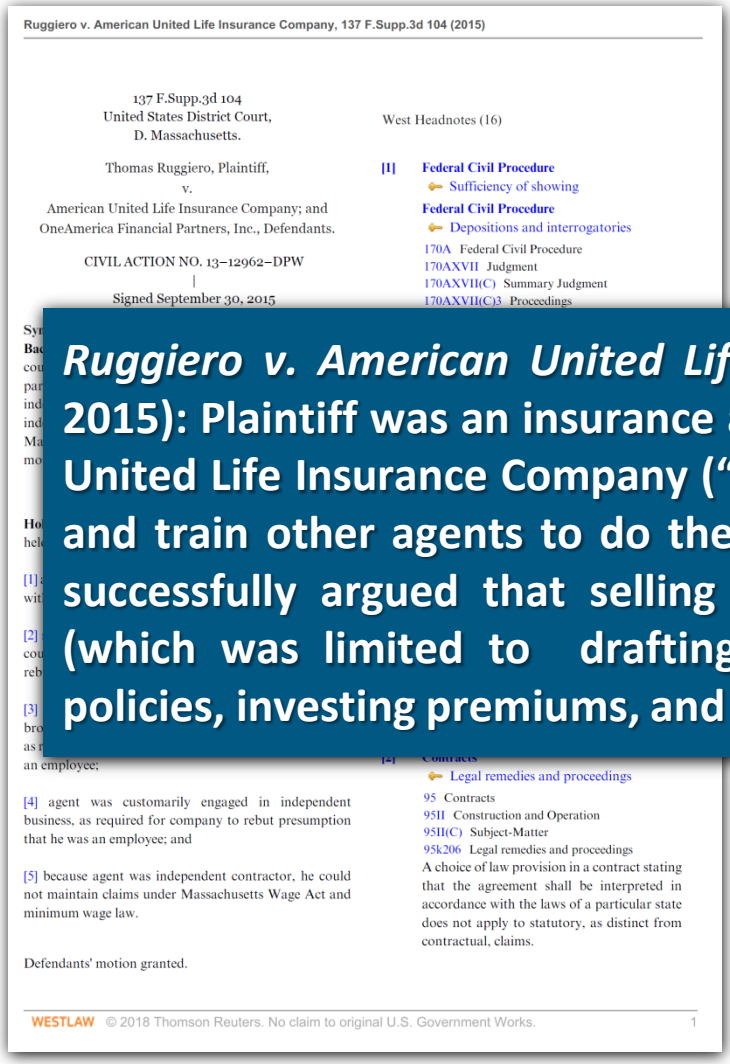
29 In McPherson Timberlands v. Unemployment Ins. Comm'n (Me. 1998) 714 A.2d 818, the Maine Supreme Court held that the cutting and harvesting of timber by an individual worker was work performed in the usual course of business of the plaintiff timber management company whose business operation involved contracting for the purchase and harvesting of trees and the sale and delivery of the cut timber to customers. Rejecting the company's contention that the timber harvesting work was outside its usual course of business because the company did not currently own any timber harvesting equipment itself, the court upheld an administrative ruling that the harvesting work was "not 'merely incidental' to [the company's] business, but rather was an 'integral part of' that business." (714 A.2d at p. 821.) By contrast, in Great N. Constr., Inc. v. Dept. of Labor, supra, 161 A.3d at page 1215, the Vermont Supreme Court held the hiring entity, a general construction company, had established that the specialized historic restoration work performed by the worker in question was outside the usual course of the company's business within the meaning of part B, where the work involved the use of specialized equipment and special expertise that the company did not possess and did not need for its usual general commercial and residential work. (See also, e.g., Appeal of Niadni, Inc. (2014) 166 N.H. 256 [performance of live entertainers within usual course of business of plaintiff resort which advertised and regularly provided entertainment]; Mattatuck Museum-Mattatuck Historical Soc'y v. Administrator, Unemployment Compensation Act (Conn. 1996) 679 A.2d 347, 351-352 [art instructor who taught art classes at museum performed work within the usual course of the museum's business, where museum offered art classes on a regular and continuous basis, produced brochures announcing the art courses, class hours, registration fees and instructor's names, and discounted the cost of the classes for museum members].)

Facing Litigation in The Gig Economy: *Dynamex's* Mini-Restatement



31 In Brothers Const. Co. v. Virginia Empl. Comm'n (Va.Ct.App. 1998) 494 S.E.2d 478, 484, the Virginia Court of Appeal concluded that the hiring entity had failed to prove that its siding installers were engaged in an independently established business where, although the installers provided their own tools, no evidence was presented that "the installers had business cards, business licenses, business phones, or business locations" or had "received income from any party other than" the hiring entity. (See also, e.g., Boston Bicycle Couriers v. Deputy Dir. Of the Div. of Empl. & Training (Mass. App.Ct. 2002) 778 N.E.2d 964, 971 [hiring entity, a same-day pickup and delivery service, failed to establish that bicycle courier was engaged in an independently established business under part C of the ABC test, where entity did not present evidence that courier "held himself out as an independent businessman performing courier services for any community of potential customers" or that he "had his own clientele, utilized his own business cards or invoices, advertised his services or maintained a separate place of business and telephone listing"]; cf., e.g., Southwest Appraisal Grp., LLC v. Adm'r, Unemployment Compensation Act (Conn. 2017) 155 A.3d 738, 741-752 [administrative agency erred in determining that hiring entity failed to establish that auto repair appraisers were customarily engaged in an independently established business based solely on the lack of evidence that appraisers had actually worked for other businesses, where appraisers had obtained their own independent licenses, possessed their own home offices, provided their own equipment, printed their own business cards, and sought work from other companies].)

Facing Litigation in The Gig Economy: Using MA Law: A Judo Countermove?



Ruggiero v. American United Life Insurance Company, 137 F.Supp.3d 104 (2015)

137 F.Supp.3d 104
United States District Court,
D. Massachusetts.

Thomas Ruggiero, Plaintiff,
v.
American United Life Insurance Company; and OneAmerica Financial Partners, Inc., Defendants.

CIVIL ACTION NO. 13–12962–DPW
|
Signed September 30, 2015

West Headnotes (16)

[1] **Federal Civil Procedure**
Sufficiency of showing
Federal Civil Procedure
Depositions and interrogatories
170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)3 Proceedings

an employee;

[4] agent was customarily engaged in independent business, as required for company to rebut presumption that he was an employee; and

[5] because agent was independent contractor, he could not maintain claims under Massachusetts Wage Act and minimum wage law.

Defendants' motion granted.

[2] **Contracts**
Legal remedies and proceedings
95 Contracts
95II Construction and Operation
95II(C) Subject-Matter
95k206 Legal remedies and proceedings
A choice of law provision in a contract stating that the agreement shall be interpreted in accordance with the laws of a particular state does not apply to statutory, as distinct from contractual, claims.

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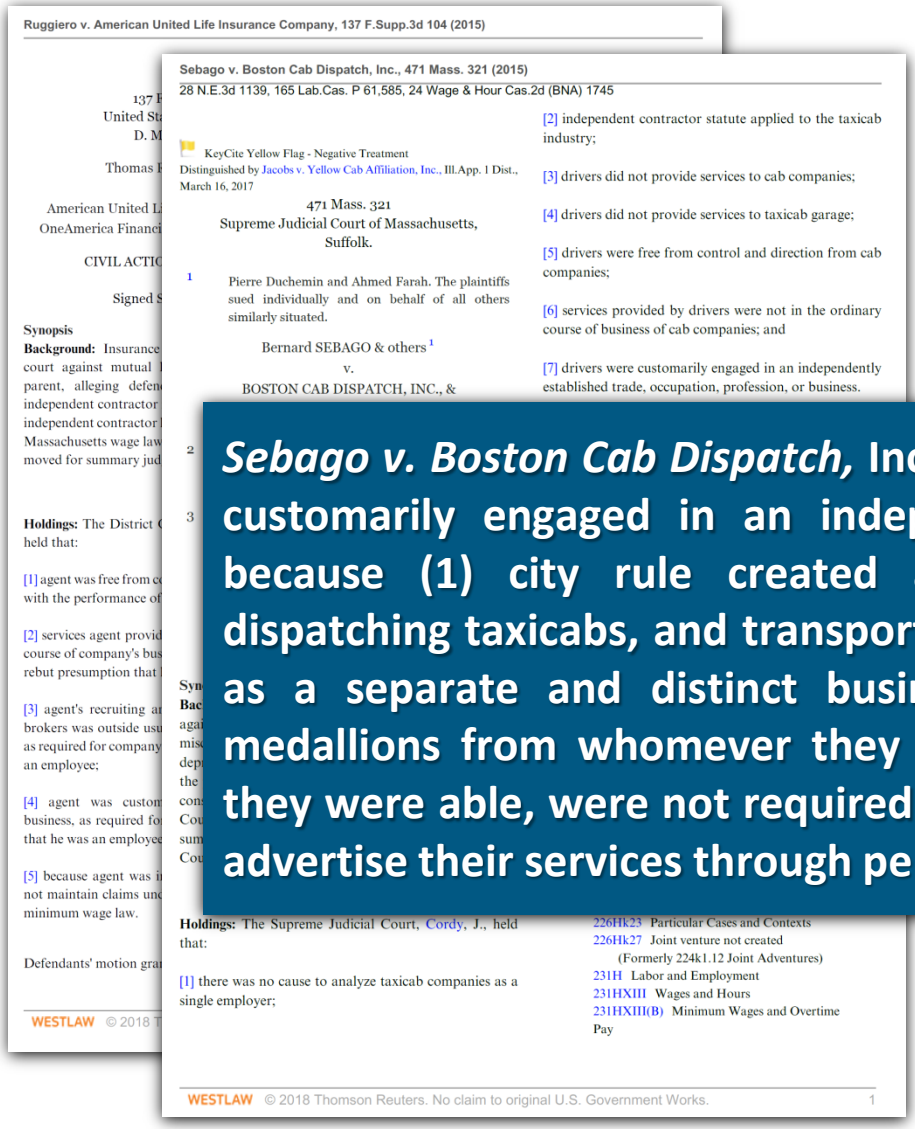
***Ruggiero v. American United Life Insurance Company*, 137 F.Supp.3d 104 (D. Mass. 2015): Plaintiff was an insurance agent who had entered into a contract with American United Life Insurance Company ("AULIC") to sell its insurance products and also recruit and train other agents to do the same; on the pivotal question (the B prong), AULIC successfully argued that selling insurance fell outside its usual course of business (which was limited to drafting policy language, obtaining regulatory approval of policies, investing premiums, and paying claims but not selling policies).**

Facing Litigation in The Gig Economy: Using MA Law: A Judo Countermove?



Ruggiero v. American United Life Insurance Company, 137 F.Supp.3d 104 (2015)

Synopsis
Background: Insurance
court against mutual
parent, alleging defen
independent contractor
independent contractor
Massachusetts wage law
moved for summary jud

Holdings: The District
held that:

[1] agent was free from c
with the performance of

[2] services agent provid
course of company's bus
rebut presumption that

[3] agent's recruiting a
brokers was outside usu
as required for company
an employee;

[4] agent was custom
business, as required fo
that he was an employee

[5] because agent was i
not maintain claims und
minimum wage law.

Defendants' motion gra

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Sebago v. Boston Cab Dispatch, Inc., 471 Mass. 321 (2015)
28 N.E.3d 1139, 165 Lab.Cas. P 61,585, 24 Wage & Hour Cas.2d (BNA) 1745

KeyCite Yellow Flag - Negative Treatment
Distinguished by Jacobs v. Yellow Cab Affiliation, Inc., Ill.App. 1 Dist., March 16, 2017

471 Mass. 321
Supreme Judicial Court of Massachusetts, Suffolk.

1 Pierre Duchemin and Ahmed Farah. The plaintiffs sued individually and on behalf of all others similarly situated.

Bernard SEBAGO & others [1]
v.
BOSTON CAB DISPATCH, INC., &

2

3

Holdings: The Supreme Judicial Court, Cordy, J., held that:

[1] there was no cause to analyze taxicab companies as a single employer;

[2] independent contractor statute applied to the taxicab industry;

[3] drivers did not provide services to cab companies;

[4] drivers did not provide services to taxicab garage;

[5] drivers were free from control and direction from cab companies;

[6] services provided by drivers were not in the ordinary course of business of cab companies; and

[7] drivers were customarily engaged in an independently established trade, occupation, profession, or business.

226Hk23 Particular Cases and Contexts
226Hk27 Joint venture not created (Formerly 224k1.12 Joint Adventures)
231H Labor and Employment
231HXIII Wages and Hours
231HXIII(B) Minimum Wages and Overtime Pay

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***Sebago v. Boston Cab Dispatch,* Inc. 471 Mass. 321 (2015): Taxicab drivers were customarily engaged in an independently established trade (the C prong) because (1) city rule created a framework such that leasing taxicabs, dispatching taxicabs, and transporting passengers for fares each could function as a separate and distinct business; (2) drivers could lease taxicabs and medallions from whomever they wished; and (3) drivers earned as much as they were able, were not required to accept a single dispatch, and were free to advertise their services through personalized business cards.**

It ain't over till it's over...