



Councilmember Ben Bartlett

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CONSENT CALENDAR
February 26th, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Ben Bartlett, Kate Harrison, Cheryl Davila and Sophie Hahn
Subject: Support AB 5 and Write Letter of Support to CA Assemblymember Lorena Gonzalez

RECOMMENDATION

That the Mayor of Berkeley and Members of the City Council support CA State Assembly Bill 5 (AB 5) by sending a letter of support to Author Assemblymember Lorena Gonzalez. Assembly Bill 5 codifies and clarifies the application of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903*, which established the 3-part “ABC” test to defend the labor rights of misclassified workers and ensure they receive the compensation they deserve.

CURRENT SITUATION

When companies misclassify workers to circumvent payroll taxes, Social Security, and disability insurance the marketplace becomes unfair, misclassified workers lose workplace protections, and the state loses needed revenue. The California Supreme Court decision in *Dynamex* established the “ABC” test to clearly define an independent contractor, preventing misclassification. Assembly Bill 5 incorporates the California Supreme Court decision into state law and clarifies its application.

BACKGROUND

The losses suffered by misclassified workers results in a myriad of problems that are avoidable by clearly outlining the requisites for classifying workers as independent contractors. This is accomplished by the Court’s ruling which establishes that it is the employer’s duty to classify their workers as independent contractors or employees according to the 3-part “ABC” test. This requires employers to establish each of the following three factors:

- 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 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 the work performed.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903

ACTIONS/ALTERNATIVES CONSIDERED

Writing additional language to City of Berkeley Ordinance to ensure the Minimum Wage and Paid Sick Leave policies are inline with Dynamex's Court Case

CONSULTATION/OUTREACH OVERVIEW AND RESULTS

Many labor Unions have signed on, see attachment

RATIONALE FOR RECOMMENDATION

To support legislatures who introduced legislations that ensure that workers, regardless employment and contracting status, are protected

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

N/A; State Enforcement

FISCAL IMPACTS OF RECOMMENDATION

Staff time to review/ edit letter and postage.

ENVIRONMENTAL SUSTAINABILITY

No negative impact.

RATIONALE FOR RECOMMENDATION

To show support for the contracting workers of Berkeley and California

OUTCOMES AND EVALUATION

CONTACT PERSON

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ATTACHMENTS

1. Letter to Assemblymember Lorena Gonzalez
2. List of Labor Unions Supporting the Decision.

Attachment 1:
February XX, 2019

The Honorable Lorena Gonzalez
Member of the California State Assembly
[insert address]

Re: AB 5 (Gonzalez)

Dear Assemblymember Gonzalez:

The Honorable Mayor and Members of the Berkeley City Council are pleased to support AB 5. AB 5 codifies and clarifies the application of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903*, which established the 3-part “ABC” test to defend the labor rights of misclassified workers.

Prior to the *Dynamex* ruling, misclassified workers were unfairly denied wages and benefits by companies which sought to avoid paying payroll taxes, payment of premiums for workers compensation, Social Security, unemployment, and disability insurance. The Court decision and resulting 3-part “ABC” test reduce ambiguity, preventing worker misclassification and ensure that workers are fairly compensated.

AB 5 expresses the Legislature’s intent to codify the Court decision and clarify its future applications in state law.

It is crucial that the California Legislature defends workers’ rights and hold employers accountable. For these reasons, we strongly support AB 5.

Respectfully,
the Honorable Mayor and Members of the Berkeley City Council

Jesse Arreguin
Mayor, City of Berkeley

Members of the Berkeley City Council

Attachment 2:

