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California Governor Approves Bill that Could Upend the Gig-Economy, *SHRM, ft. Katherine Catlos*

Katherine S. Catlos, partner at Kaufman Dolowich & Voluck LLP in San Francisco, and Chief Diversity & Inclusion Officer at KD, was quoted in an article written by Lisa Nagele-Piazza, J.D. published by SHRM on September 19, 2019.

Gov. Gavin Newsom just signed a controversial bill that will make it difficult for California businesses—particularly those in the gig economy—to classify workers as independent contractors.

Labor unions and worker advocates applauded California lawmakers' decision to pass the measure. AB 5 "will expand employment protections to thousands of workers who are currently misclassified by their employers as independent contractors," according to the International Brotherhood of Teamsters.

Katherine Catlos, an attorney with Kaufman Dolowich & Voluck in San Francisco, said the legislation is "a band-aid over an already complex legal analysis."

Misclassification claims are a frequent source of litigation because employees are entitled to minimum wage, overtime pay and other benefits that are not afforded to independent contractors.

Codifying the 'ABC' Test

The bill codifies the "ABC" test, which the California Supreme Court adopted in *Dynamex Operations v. Superior Court to determine whether a worker should be designated as an employee or independent contractor.*

Under the three-prong test, a worker is presumed to be an employee unless the employer can show all of the following:

- *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.*
- *The worker performs tasks that are outside of the usual course of the hiring entity's business.*
- *The worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the hiring entity.*

While the ABC test may appear simple, it's not, Catlos said, and for each factor there's a wealth of seemingly conflicting case law and differing public policies depending on the industry and worker at stake.

What Now?

The ABC test attempts to simplify the misclassification question but opens the door to many other questions and nuances, Catlos said. She recommended that employers in all industries audit their contractors to determine if their workers are properly characterized as independent contractors. Franchisees, delivery drivers, housekeepers, exotic dancers, janitors and security guards have been caught up in misclassification litigation, she noted.

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