

Dynamex

Issue Page

On April 30, 2018, the California Supreme Court ruled on *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* that an independent contractor must pass all three elements of a so-called ABC test in order not to be considered an employee of the hiring entity.

Such a momentous policy change should have been made legislatively, not by judicial fiat.

- The State Supreme Court's decision puts the livelihood of nearly **2,000,000 Californians** who chose to work as independent contractors at risk.
- From the NFIB Legal Center, "... the [Supreme Court's] opinion gave precious little guidance as to what constitutes the 'usual course of business.' Does this preclude a photographer from working with a makeup artist in a photoshoot? Does it preclude a magazine from treating a freelance photographer as a contractor? And is there liability for a retail shop renting out space to a florist? While much of the *Dynamex* commentary has focused on the impact for the so called 'gig economy,' the reality is that *Dynamex* affects businesses of all shapes and sizes across industry lines. It's bad enough that the California Supreme Court radically changed the playing field for the small business community. But, to make matters worse, at least one California court has ruled that the *Dynamex* rules should apply *retroactively*."
- Senate Bill 238, which NFIB supports, would model California's independent contractor test for wage-and-hour issues on the multi-factor economic realities test that is already used by the United State Department of Labor. It would benefit both employers and workers across a broad range of industries by asking whether the worker is economically dependent on the hiring entity.
- Assembly Bill 5, which NFIB wants improved before supporting it, would, after exempting a small handful of industries, codify into law much of the court's decision—meaning, as much as 95 percent of small businesses would not be exempt. Those exempted include certain insurance occupations, physicians, securities broker-dealers, and direct salespeople.