As the nation battles the COVID-19 pandemic, California has been simultaneously grappling with one of the hottest employment law issue: the classification of workers as employees or independent contractors. On September 4, 2020, California Governor Newsom signed into law AB 2257, a bill designed to clarify issues that arose from AB 5, which became effective January 1, 2020. In light of the changes outlined below, companies should review their policies and agreements with independent contractors to ensure proper classification.

AB 5 codified the California Supreme Court holding in *Dynamex Operations West, Inc. v. Superior Court* and adopted the “ABC” test to determine whether independent contractors should be treated as employees with various exceptions. Under the “ABC” test, workers are *presumed* to be employees unless they satisfy three conditions:

1. The worker is free from the employer’s control and direction in connection with the work performed, both under the contract and in fact;
2. The work performed is outside the usual course of the employer’s business; and

3. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

AB 5 included an extensive list of exemptions for specific occupations and business relationships, resulting in confusion for many employers. While AB 5 initially seemed to target the gig economy, its broad language has affected industries statewide. In the nine months since AB 5 became effective, the bill has generated significant controversy as California businesses were forced to quickly develop strategies whilst combatting the litany of misclassification civil actions that emerged from AB 5. Simultaneously, the Legislature immediately introduced dozens of stand-alone bills to amend the new law. AB 2257 is the first of these post-AB 5 bills to become effective.

AB 2257: The Latest Changes

- **Occupation Exemptions:** Under AB 5, certain occupations were excluded from the ABC test, including doctors, lawyers, dentists, licensed insurance agents, accountants, architects and engineers, private investigators, real estate agents, and hairstylists. AB 2257 expands this list to include translators, appraisers, home inspectors and registered foresters. AB 2257 also strikes the 35-assignments per year cap from AB 5, allowing freelance writers, translators, photographers, videographers and illustrators to work as independent contractors without regard to the number of assignments taken from one client.

- **Entertainment Industry:** AB 2257 also creates additional exemptions for the entertainment industry, with a particular focus on musicians and performers. Recording artists, songwriters, lyricists, composers, proofers, managers of recording artists, record producers and directors, musical engineers, musicians, vocalists, music album photographers, independent radio promoters, and certain publicists are included in the exemptions. Musicians who engage in a single-engagement live performance event are also exempt from the ABC test. However, musicians who perform as a symphony orchestra, in a musical theater production, or at a theme or amusement park are not exempt from the ABC test. Musicians who headline at a venue with more than 1,500 attendees or those who perform at a festival that sells more than 18,000 tickets per day are also not exempt from the ABC test. For comedians, improvisers, magicians, and storytellers, AB 2257 does provide an exemption, but imposes the following conditions: (i) the individual performer performs original work they created and retains the intellectual property rights for such work; (ii) he or she is free from the hirer’s control; and (iii) the individual performer sets their own terms of work and negotiates rates.

- **Referral Agencies:** AB 2257 also makes significant expansions to the types of services that can qualify for the referral agency exemption. AB 2257 adds to the list: consulting, youth sports coaching, caddying, wedding and event planning, and interpreting services. AB 2257 clarifies that this exemption is not limited to those identified, leaving room for additional types of services to be added to this already expansive list. AB 2257 does, however, make certain
that the following services are not included: high-hazard industry services, janitorial, delivery, courier, transportation, trucking, agricultural labor, retail, logging, in-home care, or construction services other than minor home repair. As a result, ride-share services, such as Uber or Lyft continue to be expressly excluded from the laundry list of exemptions.

- **Business-to-Business Contracting Relationships:** Importantly, AB 2257 expands the “business-to-business exemption” to apply to sole proprietors. Previously, under AB 5, this exemption was only applicable to business entities that were incorporated. AB 2257 provides a further exemption for sole proprietors under the “single-engagement exemption,” which provides the ABC Test will not apply for a single-engagement event, provided certain conditions are met. AB 2257 also broadens the business-to-business exemption to include situations where a public agency or quasi-public corporation retains a contractor. Another important amendment in AB 2257 is it no longer requires that a business service provider “actually contracts” with other businesses “without restriction form the hiring entity.” Instead, AB 2257 merely requires that the business service provider can contract with other entities and maintain a clientele. This amendment allows greater flexibility for entities which, for example, not have actually contracted with other businesses, so long as they have the opportunity to do so. On that same front, AB 2257 also relaxes restrictions to allow business service providers to provide services directly to the customers of a contracting business.

AB 2257 contains several additional significant amendments and nuances that California employers must carefully examine when navigating the ever-changing landscape of independent contractor law. While further legislation and additional litigation is on the horizon, AB 2257 was made effective when signed and remains the current law in California.

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