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Authors:
[Eric A. Baker](#)
[Tyler P. Biddle](#)

U.S. Supreme Court Denies Review of California Assembly Bill 5

On June 30, the United States Supreme Court denied the petition for review filed by the California Trucking Association (CTA) requesting a review of a California Federal Court ruling on California Assembly Bill 5 (AB5). AB5 was enacted in 2019 by the California legislature and codified a 2018 California state court decision in *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903 (2018), which enacted an “ABC” test for determining employment misclassification with respect to state wage and hour claims and employment benefits. The Supreme Court’s denial for review effectively lifts the injunction that has been in place since the CTA moved for certiorari, thus subjecting trucking companies that utilize independent contractor owner-operators to enforcement of AB5. The enforcement is retroactive to January 1, 2020.

Under the ABC test, workers are considered employees rather than independent contractors unless all three of the following criteria are satisfied:

- The worker is free from the control and direction of the hiring entity with regard to the performance of the work, in both contract and fact;
- The worker performs work that is outside the usual course of business of the hiring entity; and
- The worker is customarily engaged in an independently established trade, occupation or business of the same kind as the work performed.

The difficulty for trucking companies utilizing owner-operators is the “B” prong of the ABC test because the owner-operators perform the trucking company’s business – transporting freight.

Without passage of an additional exemption, AB5 essentially makes it impossible for trucking companies to utilize owner-operators and defend against any action seeking reclassification of their independent drivers as employees in California.

For more information, including how trucking companies can potentially meet the business-to-business exemption to AB5, please contact [Eric Baker](#), [Tyler Biddle](#), [Jeff Hunt](#), or any attorney with Frost Brown Todd's [Mobility](#) industry team.

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