



# THE *DYNAMEX* DECISION

WHAT DOES THE “ABC” TEST *REALLY* MEAN FOR THE GIG ECONOMY?

## *Fast Facts About California Supreme Court Case Issued April 30, 2018:*

- IC drivers for package and document delivery company filed lawsuit alleging they were employees and denied wages and other protections under (1) CA Wage Order No. 9 (covering transportation industry) and (2) CA Labor Code.
- California has historically used the “*Borello*” test to decide whether a worker is properly classified as an IC or Employee.
- Court decided certain types of wage claims will be decided by applying a different test, the “ABC” Test.

NOTABLY, THE “ABC” TEST WILL ONLY APPLY TO CERTAIN TYPES OF CLAIMS.

### “ABC” TEST:

1. Worker is an IC if he/she is free from control and direction of hirer in connection with performance of work, both under contract and in fact  
AND
2. Worker must perform work outside usual course of hirer’s business  
AND
3. Worker customarily engaged in independently established trade, occupation, or business of same nature as work performed for hirer

### “BORELLO” TEST:

1. Whether worker is engaged in an occupation or business distinct from the hirer
2. Whether work is part of the “regular business” of the hirer
3. Who provides instrumentalities, tools, workplace—worker or hirer?
4. Worker’s investment in equipment or materials, or use of helpers
5. Whether service requires special skill
6. Kind of occupation: in that location, is the work usually done under the direction of the hirer or by a specialist without supervision?
7. Worker’s opportunity for profit or loss
8. Length of time for services to be performed
9. Degree of permanence of relationship
10. Method of payment: by time or by job?
11. Whether parties believe they are creating an employer–employee or IC relationship

+ Other Considerations

NEW FOCUS OF THE “ABC” TEST: *WHAT TYPE OF COMPANY ARE YOU?*

LET US HELP YOU DEFINE THE ANSWER.

**MARRON LAWYERS**

A PROFESSIONAL CORPORATION

3711 Long Beach Blvd. Suite 601  
Long Beach, CA 90807  
(562) 432-7422  
[www.marronlaw.com](http://www.marronlaw.com)