

ALERT

CalChamber Offers Help on Independent Contractors Law

Podcast, Webinar, White Paper Cover What to Expect



Throughout the year, the California Chamber of Commerce has been covering the developments surrounding the *Dynamex* Supreme Court

decision on independent contractor classification and AB 5 (Gonzalez; D-San Diego; Chapter 296), the bill that codified the *Dynamex* decision.

Now that AB 5 has been signed into

law and is set to take effect on January 1, 2020, employers may be wondering how they will be affected.

In Episode 38 of *The Workplace* podcast, CalChamber President and CEO Allan Zaremborg, and CalChamber Executive Vice Presidents Erika Frank and Jennifer Barrera give an overview of what employers should know about the new independent contractor classification law.

To help employers prepare for AB 5's requirements, the CalChamber has an [on-demand webinar available](#), and is

See The Workplace: Page 3

CalChamber Adds New Health Care and Taxation Policy Advocate



Preston R. Young

Preston R. Young joined the California Chamber of Commerce in October as a policy advocate, specializing in health care policy and taxation issues.

Young came to the

CalChamber from the Sacramento law firm of Schuering Zimmerman & Doyle, LLP, where he had been a partner since May 2012. He specialized in medical malpractice, health care, the Health Insurance Portability and Accountability Act (HIPAA), product liability and elder abuse litigation.

He previously was an attorney with Powers & Miller Attorneys at Law in Sacramento, specializing in general and product liability litigation. He also worked as a graduate legal intern and an attorney for Philip M. Andersen and Associates of San Francisco.

Young holds a B.A. in communications from Saint Mary's College of California, and earned a J.D. from Golden Gate University School of Law, where he was associate editor of the *Environmental Law Journal*.

Trade Group Recognizes CalChamber VP as Outstanding Woman in International Trade



Susanne T. Stirling (center), CalChamber vice president of international affairs, receives the "Outstanding Woman of the Year in International Trade" award from the Women in International Trade Los Angeles (WIT-LA). At left is Richard Swanson, U.S. Department of Commerce; at right is Lilia Navarrette, president, WIT-LA. See story on Page 6.

Photo by Norman Harris

Inside

[HR Professionals, Experts Gather at CalChamber Symposium: Pages 4–5](#)

Cal/OSHA Corner

Redo of Rules for Fire Fighter Protective Clothing Inching Ahead



Mel Davis
Cal/OSHA Adviser

What is the status of the Division of Occupational Safety and Health (Cal/OSHA) Standards Board review and revision of the regulations for fire fighters' personal protective clothing and equipment?

Revisions have been underway for several years, but are not yet approved for public hearing and comments.

The regulations appear as Article 10.1, Personal Protective Clothing and

Equipment for Fire Fighters, Sections 3401–3411 of the General Industry Safety Orders.

The last revisions to Article 10.1 occurred between 1985 and 1997, with the majority occurring in 1985.

Legislative Direction

On September 29, 2014, Governor Edmund G. Brown Jr. approved AB 2146 (Skinner; D-Berkeley; Chapter 811), directing the Cal/OSHA Standards Board to convene an advisory committee by January 1, 2016 to evaluate whether changes are needed to align the state regulations relating to personal protective clothing and equipment for fire fighters with standards promulgated by the National Fire Protection Association (NFPA).

The advisory committee's findings and recommendations were to be presented to the Board by July 1, 2016. The Board was to decide by July 1, 2017 whether to adopt changes to Title 8 of the California Code of Regulations, or other applicable standards and regulations in order to maintain alignment with the NFPA standards.

The Board conducted three advisory committees, beginning in October 2015 and ending in the second quarter of 2016.

NFPA revisits and reviews the affected regulations every five years. AB 2146 requires the Board to review revisions to the NFPA standards and consider modifying the state safety standards where necessary.

Hearing Notice Pending

According to a conversation with a member of the Board staff, the protective clothing/equipment regulations have been reviewed, revised, presented to the advisory committee and discussed; revisions have been made where concerns were raised, and the rulemaking package has been developed.

The package has been submitted to the staff at the Labor and Workforce Development Agency for a review of the financial impact statement. Upon approval of that statement, a notice will be issued that the rulemaking is open for comment and public hearing.

Proposed Revisions

A review of the proposal sent to the Labor and Workforce Development Agency shows that several definitions are being repealed. This is because

See Redo of Rules: Page 6

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Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$50 paid through membership dues. Periodicals Postage Paid at Sacramento, CA.

POSTMASTER: Send address changes to Alert, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Publisher: Allan Zaremborg. Executive Editor: Ann Amioika. Associate Editor: Taryn DeOilers. Art Director: Neil Ishikawa. Capitol Correspondent: Sara Profit.

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More at www.calchamber.com/events.

Labor Law

HR Boot Camp. CalChamber. December 12, Oakland. (800) 331-8877.

2020 Employment Law Updates.

CalChamber. January 7, 2020, San Diego; January 8, 2020, Costa Mesa; January 9, 2020, Glendale; January 10, 2020, Sacramento; January 15, 2020, San Jose; January 16, 2020, Oakland; January 23, 2020, Los Angeles; January 24, 2020, Sacramento; January 28, 2020, San Francisco; January 30, 2020, Webinar. (800) 331-8877.

International Trade

Brazil Smart Grid Technical Visit. U.S. Trade and Development Agency. December 5, San Francisco. (757) 342-2149.

Exporting Mechanics Webinar Series II: ECCN Classification Numbers. National Customs Brokers & Forwarders Association of America, Inc.

and U.S. Department of Commerce. December 10, Webinar. (202) 466-0222.

WIT-mas Around the World. Women in International Trade Los Angeles. December 11, Hawthorne. (213) 545-6479.

Exporting Mechanics Webinar Series II: Commodity Jurisdiction. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. January 14, 2020, Webinar. (202) 466-0222.

Trade Mission to India. Rauch Export-Import, India Electrical & Electronics

See CalChamber-Sponsored: Page 7

Next Alert: December 6



The Workplace

Podcast, Webinar, White Paper Explain New Worker Classification Law

From Page 1

offering a free white paper, *A Roadmap for AB 5: California's New Law on Worker Classification*.

Background

Frank kicks off the podcast by reviewing the California Supreme Court decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, 4 Cal. 5th 903 (2018) (*Dynamex*).

Before the ruling, Frank explains, employers used a common law classification test known as the *Borello* test to determine whether a worker was an “employee” or an “independent contractor.” In *Dynamex*, the court ruled that instead of the *Borello* test, employers should use the ABC test first to determine proper classification.

Under the ABC test, a worker is classified as an employee unless the employer can establish all three of the following:

1. The worker is free from the hiring entity’s control and direction in connection with performance of the work, both under the contract for the performance of the work and in actually performing the work;

2. The worker performs work that is outside the usual course of the hiring entity’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

Earlier this year, AB 5 was introduced to codify the court’s decision in *Dynamex*, but it also expanded the decision to apply to more workers, while providing exemptions for a number of industries, Barrera explains.

Nevertheless, even if an employer is excluded from AB 5, the employer still must abide by the *Borello* test, Frank stresses.

“Just because your industry is exempt from the ABC test doesn’t mean the analysis is over,” she says. “What that means is the ABC test doesn’t apply; instead this *Borello* multifactor test applies.”

While the press primarily focused on

the impact AB 5 will have on rideshare companies, Zaremborg points out, the reality is that a wide range of industries will be impacted by the new classification test.

AB 5 provided exemptions for highly trained licensed professions (such as lawyers and accountants) and for industries with historically independent contractors (such as insurance agents, doctors, and hair stylists), but many other industries with independent contractors were left out of the bill, Barrera says.

In 2020, Barrera expects the Legislature to discuss further exclusions for industries not exempted under AB 5.

that hired that worker is going to be liable for those missed meal and rest breaks, for any overtime that that worker may have worked, could be penalized for not carrying workers’ comp insurance, because you don’t carry workers’ comp insurance for your independent contractors. So all the demerits add up...and it ends up being very costly,” Frank cautions.

Webinar, Free White Paper Available

In “Independent Contractors—*Dynamex*, AB 5 and Beyond,” Frank and Barrera provide in-depth insights on preventing costly misclassification mistakes that lead to fines and severe penalties. The webinar covers:

- How AB 5 became law following 2018’s *Dynamex* decision;
- The new, stricter ABC test for classifying workers;
- The multifactor *Borello* test for businesses excluded from ABC;
- Misclassification violations;
- Future changes in the law; and
- Best practices.

The webinar is approved for 1.5 HRCI recertification, SHRM professional development and

MCLE credits and may be purchased at store.calchamber.com.

Also available is a free white paper, *A Roadmap for AB 5: California's New Law on Worker Classification*, which includes the many exceptions to the ABC test carved out for various occupations and professional services, as well as information on the ABC test versus the common law *Borello* test, the way AB 5 has expanded the ABC test, the new law’s effective dates, and some final thoughts for California employers.

To download the white paper, visit www.calchamber.com/ab5roadmap.

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Law Impacts

Now that the law is going to take effect, Zaremborg asks, who determines whether a worker is an independent contractor?

Frank answers that the burden falls on businesses to ensure that their workers meet the ABC or *Borello* classification test. Even if an industry is exempted from the ABC test, each exclusion in AB 5 is very specific and Frank advises that employers consult their legal counsel before determining whether a worker is an independent contractor or employee.

Misclassifying employees can lead to a variety of penalties and fines, and exposes businesses to litigation, Frank explains. Under AB 5, businesses are subject to litigation under the Private Attorneys General Act (PAGA), and city attorneys may bring action on behalf of the public as well, she says.

“If a worker is misclassified and now is found to be an employee, the business

CalChamber HR Symposium Attracts 200+ Prof



CalChamber Executive Vice President and General Counsel Erika Frank opens the day-long CalChamber HR Symposium on November 8 in Huntington Beach.

Hot compliance topics were the focus of attention when more than 200 human resources professionals attended the annual California Chamber of Commerce HR Symposium in Huntington Beach on November 8.

The day-long event featured top experts and key insiders covering topics ranging

from hiring in a competitive market to emerging workplace issues and investigations related to the #MeToo movement.

Morning Sessions

CalChamber Executive Vice President and General Counsel Erika Frank kicked off the symposium with opening remarks, and Jennifer Shaw, founder of the Shaw Law Group, ran the first session of the day, “Emerging Workplace Issues in the Wake of #MeToo.”

The session covered workplace issues emerging out of the #MeToo movement and reviewed the steps employers can take to prevent those issues from happening.

The following session examined workplace attire. In “Who, What and Wear of Dress Codes in the Workplace,” Frank and Lisa V. Ryan, partner at Cook Brown LLP, discussed trends, court decisions and new laws affecting workplace dress and appearance.

CalChamber Executive Vice President

Jennifer Barrera kicked off lunch with a legislative recap followed by Undersecretary of the California Labor and Workforce Development Agency Stewart Knox, who took the stage to discuss programs and initiatives at the agency.

Afternoon Sessions

After lunch, Patricia A. Matias, shareholder with Ogletree Deakins, led a session on “Drugs in the Workplace—It’s Not Just About Marijuana Anymore.”

In the session, Matias discussed the impact on job safety and performance from misuse of opioids and prescription medications. Attendees also learned helpful steps to maintain a drug-free workplace without encroaching on the rights of employees.

The last session of the symposium was “Effective Hiring Strategies in a Competitive Market.” Scott Dicke, director of permanent services—VP, Robert Half Finance & Accounting, and Vinny Catalano, area senior vice president of employee benefits with Gallagher, talked about the current job seekers’ market and the mystifying trend of “ghosting.”

They also shared strategies with attendees for attracting top candidates in a competitive market.

Staff Contact: Erika Frank



Jennifer Shaw, founder of the Shaw Law Group, presents the first session on workplace issues emerging from the #MeToo movement.

Professionals to Learn About Top Workplace Issues



Stewart Knox, undersecretary of the California Labor and Workforce Development Agency, discusses programs at the agency.



CalChamber Executive Vice President Jennifer Barrera gives a legislative recap.



Lisa V. Ryan, partner at Cook Brown LLP, discusses workplace attire trends.



Patricia A. Matias, shareholder with Ogletree Deakins, talks about the impact of drugs in the workplace.



Examining effective hiring strategies in a competitive market are **Vinny Catalano** (left), area senior vice president of employee benefits with Gallagher; and **Scott Dicke**, director of permanent services—VP, Robert Half Finance & Accounting.



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Trade Group Recognizes CalChamber's Susanne Stirling as 'Outstanding Woman of the Year in International Trade'



California
Chamber of
Commerce Vice
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International

Affairs Susanne T. Stirling has been named the "Outstanding Woman of the Year in International Trade" by the **Women in International Trade Los Angeles (WIT-LA)**.

Stirling received the award on November 7 during WIT-LA's Global Trade Awards Gala in Manhattan Beach, which brought together 150 individuals from the international trade world to recognize and celebrate women who serve as role models and who have paved the way for others in expanding their own business.

The Gala also promoted international trade by recognizing the impact it has on the growing economy and its importance to the Los Angeles area.

Award

The WIT-LA Outstanding Woman in International Trade Award is given annually to a woman who has furthered international trade through excellence and innovation.

The award recipient is a role model to other women in the field and highly respected for her significant achievements and responsibilities in international trade.

Susanne T. Stirling

As vice president of international affairs, Susanne Thorsen Stirling has

headed CalChamber international activities for nearly four decades.

She is an appointee of the U.S. Secretary of Commerce to the National Export Council, and serves on the U.S. Chamber of Commerce International Policy Committee, the California International Relations Foundation, and the Chile-California Council.

In previous years, Stirling served on the Governor's California International Trade and Investment Advisory Council, board of directors of the International Diplomacy Council, the World Affairs Council of Northern California, and the Danish-American Chamber of Commerce.

Staff Contact: Susanne T. Stirling

Redo of Rules for Fire Fighter Protective Clothing Inching Ahead

From Page 2

two lengthy NFPA standards are being adopted by reference and these definitions could result in conflicting or inconsistent definitions as contained in the referenced documents.

Those documents are **NFPA 1971: Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting**, and **NFPA 1851: Standard on Selection, Care and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting**.

- New Section 3402.1 contains personal protective equipment (PPE) purchase quality standards. It states that purchases must be in compliance with NFPA 1971 (2013). If the PPE purchase meets a newer edition standard, however, then the PPE would be deemed in compliance.

- New Section 3402.3, addressing the selection, care and maintenance of PPE, will reference NFPA 1851 (2014).

- New Section 3408 relocates Personal Alert Safety System from Section 3401 and incorporates NFPA 1982 (2007) by reference to reflect apparent design problems in the earlier referenced 1982.

Adopt as Reference Documents

The following lists NFPA standards proposed for adoption as reference docu-

ments. In some cases, there is more than one NFPA standard of the same number but with a different effective date. The earlier date is addressing equipment that is presently in service and will eventually be phased out.

- Helmet, eye or face protection, hoods, protective clothing, hand protection or footwear. NFPA 1971 (2013) Protective Ensembles for Structural Fire Fighting or Proximity Fire Fighting. Also referenced: NFPA 1971 (2007).

- NFPA 1977 (2016) Protective Clothing and Equipment for Wildland Fire Fighting. NFPA 1977 (2011) Selection, Inspection, and Maintenance of Protective Ensembles for Wildland Fire Fighting.

- NFPA 1851 (2014) Selection, Inspection, and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting.

- NFPA 1852 (2013) Standard on Selection, Care, and Maintenance on Open-Circuit Self-Contained Breathing Apparatus (SCBA).

- NFPA 1981 Standard on Open-Circuit Self-Contained Breathing Apparatus for Emergency Services.

- American National Standard Z 87.1 (2010).

- 5100-606C (August 22, 2011) U.S.

Department of Agriculture, Forest Service Specifications for Forest Fire Shelter.

The complete advisory committee history and proposal can be found in the Board's 2016 advisory committee archives at www.dir.ca.gov/oshsb/advisorycommittees2016.html.

Column based on questions asked by callers on the Labor Law Helpline, a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

CalChamber Calendar

Water Committee:

December 5, San Francisco

Board of Directors:

December 5–6, San Francisco

International Trade Breakfast:

December 6, San Francisco

Annual Meeting:

December 6, San Francisco

27 CalChamber Member Companies Rank Among Best Places to Work in Los Angeles



Twenty-seven California Chamber of Commerce member companies were recently highlighted by the *Los Angeles Business Journal* as some of the best companies to work for in Los Angeles.

The list, published annually for the past 13 years, commends businesses that conduct exceptional business and provide a workplace that prioritizes their employees' well-being.

The list was broken into three categories according to the size of the company: small companies with 25–49 employees, medium-sized companies with 50–249 employees and large companies with at least 250 employees.

The 27 CalChamber member companies that made the list are:

Small Companies

- **Adams Stirling Professional Law Corporation**, a statewide law firm specializing in common interest developments, ranked No. 20.

Medium-Sized Companies

- **Hughes Marino**, a commercial real estate firm that represents buyers and tenants rather than landlords, ranked No. 1.
- **Bolton & Company**, an insurance brokerage for thousands of clients around

the globe, ranked No. 4.

- **tk1sc**, which ensures that its clients' buildings are safe, innovative and environmentally friendly, placed at No. 7.
- **CNM LLP**, a technical advisory firm, ranked No. 8.
- **P2S Inc.**, an engineering and construction management firm, came in at No. 9.
- **Raines Feldman LLP**, a labor law firm, ranked No. 11.
- **Paramount Global**, a packaging company and provider of logistical solutions, placed at No. 20.
- **Evite, Inc.**, an online and social event planning service, nabbed the No. 27 spot.
- **Los Angeles Federal Credit Union**, a credit union offering everything between credit cards and low-rate loans, placed at No. 29.
- **Prodege, LLC**, a media company consisting of loyalty programs like SwagBucks and MyPoints, came in at No. 30.
- **Windes**, an accounting firm specializing in the areas of audit, tax preparation and bookkeeping services, ranked No. 31.
- **CoverHound**, an online policy comparison provider, placed at No. 35.

Large Companies

- **Constangy, Brooks, Smith & Prophete, LLP**, a national labor and employment law firm, placed at No. 5.
- **W.E. O'Neil Construction Co.**, a construction company, ranked No. 8.

- **Onica Group LLC**, a consulting service that assists companies in operating on the cloud, ranked No. 10.

- **Insperty**, a human resources and administrative services provider, ranked No. 16.

- **Amobee**, the world's leading independent platform that unites advertising channels across all devices, clocked in at No. 17.

- **Webcor Builders**, a construction company, placed at No. 19.

- **PCL Construction**, a group of independent construction companies, ranked No. 20.

- **Alston & Bird**, an international law firm that specializes in intellectual property, complex litigation and tax, came in at No. 21.

- **Aya Healthcare**, an organization that helps travel nurses find jobs, placed at No. 22.

- **Pardee Homes**, a home-building company, ranked No. 25.

- **Swinerton**, a construction company, placed at No. 27.

- **Buchalter, A Professional Corporation**, a law firm specializing in banking and finance, placed at No. 28.

- **Charles Pankow Builders, Ltd.**, a construction company, came in at No. 32.

- **Brookfield Properties**, a real estate manager, ranked No. 36.

To view the full list of the *Los Angeles Business Journal's* "Best Places to Work in Los Angeles in 2019," visit www.bestplacestoworkla.com/winners.

CalChamber-Sponsored Seminars/Trade Shows

From Page 2

Manufacturers Association and U.S. Department of Commerce Commercial Service. January 16–24, 2020. Greater Noida, India. (702) 818-1765.

Exporting Mechanics Webinar Series II: Drop Shipments and Routed Transactions. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. February 18, 2020, Webinar. (202) 466-0222.

Exporting Mechanics Webinar Series II: Cultural Sensitivity Program. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. March 10, 2020, Webinar. (202) 466-0222.

2nd Medical Device Research & Development Summit. March 23–24, 2020. Tel Aviv, Israel. +972-3-5626090, ext. 3.

Exporting Mechanics Webinar Series II: ACE Export Reports for Compliance. National Customs Brokers & Forward-

ers Association of America, Inc. and U.S. Department of Commerce. April 14, 2020, Webinar. (202) 466-0222.

2020 SelectUSA Investment Summit. International Trade Administration. June 1–3, 2020. Washington, D.C. (800) 424-5249.

Construction Indonesia 2020. PT Pamerindo Indonesia and Informa Markets. September 16–18, 2020. Jakarta, Indonesia. +49-3999905-0.

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