PLANNING FOR IMPLEMENTATION IN 2019: NEW CALIFORNIA BUSINESS LICENSE LAWS IMPACTING LOCAL GOVERNMENT

Please consult your City Attorney regarding local ordinance development, implementation and deadlines.

AB 2184 (Chapter 388, Statutes of 2018)

Business Licenses: Identification Requirements for Locals: Updating Forms

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2184

AB 2184 sets forth the forms of identification that cities and counties must accept *in lieu of a social security number*, if the jurisdiction otherwise requires a social security number for the issuance of a business license. Thus, it only practically comes into play for cities and counties that require a social security number. There is no restriction on a city's or county's ability to accept other forms of identification under AB 2184.

A CDL is a commercial driver's license. These types of licenses are required to operate certain commercial vehicles.

Regulation Ordinances: Clients have inquired as to whether a CDL can still be collected for regulation type ordinances, such as for cannabis businesses. If a city requires a social security number for a cannabis-based business license, the city or county must also accept all of the forms of identification set forth in AB 2184 (driver's license, identification card, individual taxpayer ID number, etc.).

SB 244 (Chapter 885, Statutes 2018)

Consumer Privacy: Personal Information

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB244

Limits the collection and disclosure of information obtained by a local or state agency for purposes of issuing a local identification card, driver's license, or the administration of public services, as specified.

Recognizing that information about residents may need to be shared for a variety of reasons, the bill authorizes the disclosure of information in certain circumstances.

SB 946 (Chapter 459, Statutes of 2018)

Sidewalk Vendors: Licensing: Implementation Requirements

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB946

SB 946 sets forth parameters for when a municipality does and does not have to pass a sidewalk vendor ordinance or resolution. The bill is specific in that a local authority is not required to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the provisions of the bill.

Identification Requirements: The bill requires sidewalk vendors to obtain from the local authority a permit for sidewalk vending or a valid business license, provided that the local authority issuing the permit or business license accepts a CDL or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number. If the local authority otherwise requires a social security number for the issuance of a permit or business license, the number collected shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or licensure program or comply with a state law or state or federal court order.

What is a Sidewalk Vendor: Under the bill "sidewalk vendor" means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path. "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction. "Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location.

Permits and Business Licenses: The author's office clarified that under the bill a city can require permits and business licenses for revenue purposes. While there may be other state laws that regulate the issuance of general business licenses, SB 946 does not independently prohibit the application of local business license requirements to sidewalk vendors (See Section 51038 (5) (c)).

Identification Requirements and Confidentiality: The bill also states that the Legislature finds and declares that in order to protect the privacy of a sidewalk vendor with regard to his or her CDL or identification number, individual taxpayer identification number, or municipal identification number, when that number is collected in lieu of a social security number for purposes of the issuance of a permit or business license, it is necessary that the sidewalk vendor's number be confidential, as detailed.

AB 2020 (Chapter 749, Statutes of 2018)

Cannabis: Local Jurisdiction Licensees: Event Permits

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2020

The intent of the law is to give local jurisdictions the flexibility to determine when and where or if they want to hold a cannabis specific event within their borders. The new law permits local jurisdictions to apply for a state temporary cannabis event license. It also allows temporary cannabis events to be held at a venue outside of a fairground or district agricultural event that has been explicitly approved by the local jurisdiction.

Treatment of Businesses Licensed: Section 26200 (a) (1) of the Business and Professions Code of the bill specifically states: "This division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction."

AB 3002 (Chapter 680, Statutes of 2018)

Disability Access Requirements: Information: Notices to Applicants for Business Licenses

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3002

Implementation: AB 3002 goes into effect January 1, 2019. This new law requires all cities, including charter cities, issuing building permits for commercial construction or business licenses to make available a notice containing specified information regarding disability access. Local agencies will also be required to provide the informational notice to an applicant for a commercial building permit or a business license.

Language Translation: The information notice will need to be translated into specified languages and to include specified information on compliance requirements under both state and federal law

Notice Regarding Inspection: The notice must include an advisory strongly encouraging the applicant to obtain a CASp consultation and inspection.

Model Notice for Local Agencies/ Contact: AB 3002 sets forth a requirement for the State Architect (DSA) to develop a model notice for local agencies to use to comply with these provisions. At the time of this policy update, Avenu was notified that the DSA is still working on the notice and does anticipate completion of the notice before the effective date of January 1, 2019. Please contact Ms. Corrina Roy, Legislative Consultant, with DGS at corrina.roy@dgs.ca.gov with any questions.

CASp Fee: Clients are encouraged to review our previously published policy update regarding AB 1379's (Chapter 667, Statutes of 2017) implementation. AB 1379 sets forth provisions for: Business License Fee and Building Permit Fees: Certified Access Specialists. AB 1379 effective January 1, 2018 increased the fee from $1 to $4 until 2023. AB 1379 also applies to locals with and without a business license requirement. https://www.avenuinsights.com/wp-content/uploads/2017/12/MuniServices-Policy-Update-Business-License-Legislation-from-2017-Signed-by-the-Governor-Impacting-Local-Government-AB-1069-SB-182-and-AB-1379-Final102017-PDF-1.pdf

AB 939 (Chapter 939, Statutes of 2018)

Taxicab Regulation / Business License Requirements

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB939

This bill makes changes to last year's AB 1069 which allowed for taxicab operators to obtain one to two permits in each county, instead of permits in every city and county in which the taxi operated and allowed for fewer permit fees and business licenses. Under AB 939, taxicab companies would only have to furnish self-collected information upon request, which would result in local agencies having to "chase down" which companies are doing business in their jurisdiction. The new law amends Government Code Section 53075.5 (e): A city or county shall not require a taxicab company or driver to obtain a business license, service permit, car inspection certification, or driver permit, or to comply with any requirement under this section or Section 53075.52, unless the company or driver is substantially located within the jurisdiction of that city or county. Government Code Section 53075.5 (j) (2) also reads a city or county that forms a joint powers authority, or enters into an agreement with a transit agency, to regulate or administer taxicab companies pursuant to paragraph (1) shall not issue permits or require business licenses except as consistent with the terms of that agreement.

Please refer our previously published policy update regarding AB 1069's implementation. https://www.avenuinsights.com/wp-content/uploads/2017/12/MuniServices-Policy-Update-Business-License-Legislation-from-2017-Signed-by-the-Governor-Impacting-Local-Government-AB-1069-SB-182-and-AB-1379-Final102017-PDF-1.pdf

AB 2376 (Chapter 319, Statutes of 2018)

Civil Actions: Resident Action Against a Local Agency

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2376

Background: Existing law provides that a citizen resident or corporation who is assessed for and is liable to pay, or within one year before the commencement of the action, has paid, a tax in a county, town, city, or city and county may maintain an action to obtain a judgment restraining and preventing an illegal expenditure of, waste of, or injury to the estate, funds, or other property of the political subdivision, as specified. The California Supreme Court in *Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241 held that this tax was not restricted to payment of a property tax. This bill would expand the scope of an action by permitting the action to be maintained against a "local agency," defined as a city, town, county, or city and county, or a district, public authority, or any other political subdivision in the state.

What is AB 2376: Would allow any resident of the local agency to maintain an action under those above-noted circumstances. The new law clarifies that a tax that funds the defendant local agency is sufficient to confer standing as a taxpayer, including, but not limited to, an income tax, a sales and use tax or transaction and use tax initially paid by a consumer to a retailer, a property tax, or a business license tax. The bill would define "resident" to mean a person who lives, works, owns property or attends school in the jurisdiction of the defendant's local agency.

Dynamex Operations West, Inc. v. Superior Court / Impact on Business Licenses

Considering that the common law standard for defining the employment relationship is often used in the federal tax context, and business license taxes are often based on those classifications, it seems unlikely that *Dynamex* should impact current business license taxes. However, should a city's license tax reference wage orders or define the employment relationship in terms of the "suffer or permit to work" definition, then *Dynamex's* new heightened standard could certainly have an effect. See the attached for additional information. *Clients should seek the advice of their City Attorney to determine any specific impact.*

CONTACT

Business License Programs:
Carol.Thomas@avenuinsights.com/ 205.423.4145

Government Relations:
Brenda.Narayan@avenuinsights.com/ 916.261.5147;
Fran.Mancia@avenuinsights.com/ 559.288.7296

ADDITIONAL RESOURCES

https://www.avenuinsights.com/category/governments-relations/ to access our library of reports.

DATE: December 12, 2018

TO: Brenda Narayan, Director of Government Relations
MuniServices, an Avenu company

FROM: Benjamin Fay, Senior Partner
Carolyn Liu, Associate Attorney

RE: *Dynamex Operations W. v. Superior Court* – Employee/Independent Contractor Distinctions

I. Introduction.

Earlier this year, in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903, the California Supreme Court applied a new test to distinguish employees from independent contractors. This test greatly limits who can be classified as an independent contractor in certain contexts. It has therefore raised concerns with cities as to whether this would affect business license classifications – would it affect whether a business operation is classified as a single business with multiple employees, requiring just one license, or a business with several independent contractors, each requiring a separate license.

The distinction between independent contractors and employees varies depending on the context in which it is being used. *Dynamex* involved two delivery drivers who alleged that the company they were working for was violating California wage orders by misclassifying them as independent contractors. In order to adequately provide the fundamental protections of the wage order statutes, the Court adopted the "ABC" test to cover the broadest range of "employees" possible. However, the *Dynamex* decision applies only to one specific context – it determines whether workers should be classified as employees or independent contractors *for purposes of California wage orders*. (*Dynamex*, 4 Cal.5th at 913.)

The ultimate effect of *Dynamex* on a city's license tax will depend on the specific definitions in each ordinance. Given its currently limited application, *Dynamex* should only affect the employee/independent contractor distinction for purposes of a city's business license tax if the definitions of employee or independent contractor used in *Dynamex* have been adopted by the city.

II. The varying definitions of independent contractors and employees.

The distinction between employees and independent contractors is substantially different depending on whether the distinction arises from statutory or common law.

A. The common law definition of independent contractor.

The common law standard arose in the context of vicarious liability – the idea was that an employer should not be responsible for the actions of a person over whom the employer has no control. (*S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 352.) This led to the principal measure for determining whether someone is an employee or independent contractor to be the "control-of-details" test, which asks who has the right to control the manner and means of accomplishing the work. (*Dynamex*, 4 Cal.5th at 927.) Though control is weighed as the most significant factor, courts also weigh the following secondary factors to determine the employment relationship: (a) whether the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee. (*Dynamex*, 4 Cal.5th at 928; *Borello*, 48 Cal.3d at 399.)

It is when a statute or other legislation defines "employee," "independent contractor," or the employment relationship in some way, that the test to determine the employment relationship will vary from the common law standard. (See *Borello*, 48 Cal.3d at 352.) After considering the statute's plain language, the nature of the work and the overall arrangement between the parties must be examined in light of the "history and fundamental purposes" of the statute. (*Laeng v. Workmen's Comp. Appeals Bd.* (1972) 6 Cal.3d 771, 777; *Borello*, 48 Cal.3d at 353–54.) That said, statutory definitions often involve significant overlap with common law factors, and unless expressly prohibited by the legislation at issue, courts will consider the common law factors as well. (*Borello*, 48 Cal.3d at 352.) But it is very possible for the determination under common law and statutory construction to produce two different results. (*Id.*)

B. "Contractors" under California Labor Code.

A rare example of a very simple statutory definition of the employment relationship lies in the California Labor Code provisions governing contractors in a contracting business, such as those providing services on a building, engineering, or construction project. (See Lab. Code §§ 2750.5, 7055.) Contractors in the contracting business are presumed to be employees when they either perform services that require a contractors' license or perform services for another person who is required to have a contractors' license. (*Id.*) This presumption can be rebutted by proving the independent contractor factors listed, which significantly overlap with the common law factors. (See *id.*) However, the statute also mandates that any person performing "an activity *for which a license is required* pursuant to [the Contractors' State License Law] shall hold a valid contractors' license *as a condition* of having independent contractor status." (*Id.*, emphasis added; *Hunt Building Corp. v. Bernick* (2000) 79 Cal.App.4th 213, 220.) Courts have interpreted

this to mean that even if all factors point to an independent contractor determination under traditional standards, a person cannot be deemed one for the purposes of this statute without possessing a state contractors' license. (See *State Compensation Ins. Fund v. Workers' Comp. Appeals Bd*. (1985) 40 Cal.3d 5, 15; *Travelers Ins. Co. v. Workers' Comp. Appeals Bd.* (1983) 147 Cal.App.3d 1033, 1035–36 [Even though the worker hired to provide excavating services retained all control over his work, supplied his own tractor and loader, considered himself self-employed under "Terry Taylor Excavating," designated his own rates, and performed a job that required a certain level of skill, he was not statutorily an independent contractor because he did not possess a state contractors' license]; *Neighbours v. Buzz Oates Enterprises* (1990) 217 Cal.App.3d 325, 330 [where a general contractor hires an unlicensed subcontractor, all of the unlicensed contractor's employees are deemed employees of the general contractor].) More often than not, however, statutes determining the employment relationship are not as clear or easily applied as this, and still require balancing a number of factors.

C. Workers' Compensation Act.

An example of a slight deviation from the common law standard is the employment determination under the California's Workers' Compensation Act. It was enacted to provide coverage to employees for injuries, and as a result, "employment" is construed liberally to accomplish the Act's goals. (See Lab. Code § 3600; See *Lara v. Workers' Comp. Appeals Bd*. (2010) 182 Cal.App.4th 393, 403.) Given this legislative purpose, an "employment" relationship under the Act cannot be determined *only* from common law principles, which arose to *limit* an employer's vicarious liability, rather than to protect workers. (*Laeng*, 6 Cal.3d at 777; see *Borello*, 48 Cal.3d at 352.)

The tests used in compensation cases to define the employment relationship consider the same factors as those at common law. And both common law principles and compensation cases weigh "control" as the most important factor. The only difference is that the Act provides its own definition of "control" – it defines an independent contractor as any person who renders service for a specified recompense for a specified result, *under the control of his principal as to the result of his work only* and *not as to the means by which such result is accomplished*. (Lab. Code § 3353.) It emphasizes the importance of the control factor for compensation cases to effectively include more workers than under the traditional common law test of control, which mainly considers the employer's right to control *the manner and means* of accomplishing the result desired. (*Borello*, 48 Cal.3d at 350 [harvesters were employees for workers' compensation purposes because Borello retained pervasive control over the production and sale of agricultural crops *as a whole*, even though the harvesters themselves had the power over the means and details of accomplishing their work]; see *Yellow Cab Cooperative, Inc. v. Workers' Comp. Appeals Bd*. (1991) 226 Cal.App.3d 1288, 1297.) Even though the test used is basically the common law standard, considering the text of the workers' compensation statute in light of the statute's purpose prevents employers from wrongfully claiming their employees as independent contractors in cases where the employee controlled the minute details of accomplishing their task, while the employer retained all meaningful control over the entire operation.

D. The "suffer or permit to work" standard.

1. Child labor statutes.

The "suffer or permit to work" definition first arose in the context of child labor statutes in an effort to broaden the definition of "employee" to include any child labor, regardless of the hiring circumstances. (*Martinez v. Combs* (2010) 49 Cal.4th 35, 58; see *Purtell v. Philadelphia & Reading Coal & Iron Co*. (1912) 256 Ill. 110 [mining company held liable for injuries to a boy that was paid by coal miners to carry water].) If these child labor statutes only applied common law standards, then employers could easily evade responsibility by claiming that the child was not "employed" or given permission to do the work. (*Martinez*, 49 Cal.4th at 58.) So, it was necessary that the phrase go farther than merely prohibiting employment – it uses the term "suffered," which courts have widely accepted as meaning that the employer shall not *suffer by a failure to hinder*. (*Id*.) It is the child's *working* that is forbidden by the statute, not the child's hiring, and as a result, the employer has the duty to use reasonable care to see that children are not permitted or *suffered* to work there. (*Id*.)

2. Fair Labor Standards Act of 1938.

Congress then used the "suffer or permit to work" definition in the Fair Labor Standards Act of 1938 (FLSA), which was enacted to protect workers from subnormal labor conditions. (*Nationwide Mut. Ins. Co. v. Darden* (1992) 503 U.S. 318, 326.) To meet this historically broad standard, courts began applying the "economic reality" test to achieve the Act's goals. (See *Rutherfod Food Corp. v. McComb* (1947) 331 U.S. 722, 729.) The test determines employment based on the "economic reality" of the situation and whether the worker is economically dependent on the employer – an "employee" is one who follows the usual path of an employee and is dependent on the employer's business, as opposed to an independent contractor who is engaged in a business of his own. (See *id*.)

In an effort to achieve this economic reality, the most commonly considered factors are: (1) the employer's degree of control; (2) the workers' opportunity for profit or loss and their investment in the business; (3) the degree of skill and independent initiative required to perform the work, and; (4) the permanence or duration of the working relationship; and (5) the extent to which the work is an integral part of the employer's business. (*Zheng v. Liberty Apparel co.* (2d Cir. 2003) 355 F.3d 61, 67; see *Goldberg v. Whitaker House Co-op., Inc*. (1961) 366 U.S. 28, 33 [members of a cooperative could be considered employees that were "suffered or permitted to work" where the cooperative afforded them the opportunity to work, fixed the rates at which they worked, could fire for substandard work, and the members were not independently selling their products on the market].) Unlike at common law, this test does not generally consider where the work is performed, whether a formal employment agreement exists, or whether the alleged independent contractor is licensed by a government entity. (See *Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912, 927-28.)

3. *Dynamex's* application of "suffer or permit to work."

Since its first appearance in child labor statutes, the "suffer or permit to work" standard has long been understood as expansively protecting workers who would not be covered under the common law standard. (See *Rutherford Food Corp*., 331 U.S. at 728 fn. 7.) As a result, the Industrial Welfare Commission (IWC) amended the definition of "employee" under California's wage orders to include those "suffered or permitted to work." (*Martinez*, 49 Cal.4th at 52.) An examination of the wage orders' language, history, and place in the context of California wage law makes clear that those orders were intended to protect the broadest category of workers, beyond that offered by traditional common law standards. (*Id*.; *Dynamex*, 4 Cal.5th at 952 [the wage orders' "fundamental obligations" are intended to enable workers to provide "at least minimally for themselves and their families and to accord them a modicum of dignity and self-respect"].) Prior to *Dynamex*, the California Supreme Court already held that all three definitions of "employ" contained in the IWC's wage orders validly broadened the employment relationship. (*Martinez*, 49 Cal.4th at 64-66 ["employ" means: (a) to exercise control over the wages, hours, or working conditions, or (b) to suffer or permit to work, or (c) to engage, thereby creating a common law employment relationship].)

As the means of interpreting the second definition – to determine who was "suffered or permitted" to work – the Court in *Dynamex* adopted the "ABC" test. (See *Dynamex*, 4 Cal.5th at 956 fn. 23.) It presumptively considers all workers employees and only allows a worker to be considered an independent contractor when *all* three conditions of the test are met. (*Id.* at 955.) The hiring entity must establish: (a) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact; (b) that the worker performs work that is outside the usual course of the hiring entity's business; and (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. (*Id*. at 955-56.)

Although new to California, the "ABC" test has long been used by other jurisdictions in the context of employee-protective labor statutes as a way of covering more workers than under common law. (*Dynamex*, 4 Cal.5th at 956 fn. 23.) The Court opted for this test instead of the "economic reality" standard federal courts have used to apply the "suffer or permit to work" definition because the "ABC" test is simpler and creates less room for error. (*Id.* at 951 fn. 20.) Compared to the common law standard and the "economic reality" test, which both consider a large number of factors as a balancing test, rather than three conditions that *must* be met for a worker to be considered an "employee," this test effectively restricts the number of workers that businesses can classify as independent contractors for wage order purposes and reduces the chances of misclassification. (*Id*. at 955 [the "ABC" test was adopted from a number of other jurisdictions that determined a multi-factor balancing test was too difficult and confusing to apply, left too much room for error, and had a high likelihood of wrongly denying too many workers the most basic working conditions].)

Although the "ABC" test is comparatively strict in determining who can be considered an independent contractor, *Dynamex* was decided in a very limited context, specifically to apply to wage orders. In *Dynamex* itself, the California Supreme Court recognized that different standards could still apply to different statutory schemes. (*Id.* at 948.) Subsequent cases have declined to apply the "ABC" test to non-wage order claims. (See *Garcia v. Border Transportation Group, LLC* (2018) Cal. Ct. App., Oct. 22, 2018, No. D072521.) For instance, in the context of workers' compensation claims, it is still the standard from *Borello* that applies. (See *id*.) Even in the wage order context, subsequent cases have noted that *Dynamex* only appeared to apply to the independent contractor question, and not in the joint employer context. (*Curry v. Equilon Enterprises, LLC* (2018) 23 Cal.App.5th 289, 314, as modified on denial of reh'g (May 18, 2018), review denied (July 11, 2018) [the "ABC" test set forth in *Dynamex*, which places the burden on the employer to prove that the worker is not an employee, is meant to serve policy goals that are not relevant in the joint employment context].) Given this very limited application, *Dynamex* does not appear to affect the employee and independent contractor distinction in any other statutory scheme that does not employ the "suffer or permit to work" definition.

III. Impact on business license taxes.

Ultimately, the impact *Dynamex* and the "ABC" test has on business license taxes will depend on how a city's license tax defines the employment relationship. A statute will be construed under the common law standard unless the Legislature "clearly and unequivocally" indicates otherwise. (*Reynolds v. Bement* (2005) 36 Cal.4th 1075, 1086–87, disapproved on another ground in *Martinez*, 49 Cal.4th at 62–66.) When a statute refers to an "employee" without defining the term, courts have generally applied the common law test of employment to that statute. (*Arnold v. Mutual of Omaha Ins. Co*. (2011) 202 Cal.App.4th 580, 586 [where the applicable Labor Code provisions did not define the employment relationship, the common law standard applied to provisions governing unpaid wages earned and expense reimbursements for employees]; *Darden*, 503 U.S. at 323 [common law standard applied to ERISA's nominal and circular definition of "employee" as "any individual employed by an employer"].)

Even if a license tax ordinance contained a statutory definition of the employment relationship, *Dynamex* would not affect that standard unless the ordinance indicated that such a heightened standard was necessary or intended. As far as statutory purpose to invoke the "ABC" test, taxes have a completely different purpose than wage orders, and taxes are not implemented in an effort to "protect the most workers possible." In fact, the IRS defines the employment relationship using the common law standard for purposes of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and the Collection of Income Tax at Source on Wages. (See IRS Revenue Ruling (1987) Employment Status Under Section 530(d) of the Revenue Act of 1978.)

Generally, the employee or independent contractor determination for license tax purposes should be the same as for other tax purposes. When an employer treats its workers as employees for state and federal tax purposes, workmen's compensation purposes, and under the collective

bargaining agreement, it cannot then treat them as independent contractors for purposes of a city's license tax. (*Independent Casting-Television Inc. v. City of Los Angeles* (1975) 49 Cal.App.3d 502, 508 [where a temporary-help agency treated extras, who were hired out to movie producers for supporting roles, as employees for all other tax purposes, it could not treat them as independent contractors for license tax purposes in an effort to deduct the extras' payroll and incidental expenses from the agency's gross receipts while calculating its license tax obligation].) Tax consequences should follow how the business operates and treat its employees in a business sense – if good business management dictates that a particular mode of operation be employed, the taxpayer cannot then argue that "the economies of operation attained by that mode are offset to a degree by the tax which the law imposes upon it." (*Id*.)

Considering that the common law standard for defining the employment relationship is often used in the federal tax context, and business license taxes are often based on those classifications, it seems unlikely that *Dynamex* should impact current business license taxes. However, should a city's license tax reference wage orders or define the employment relationship in terms of the "suffer or permit to work" definition, then *Dynamex's* new heightened standard could certainly have an effect.