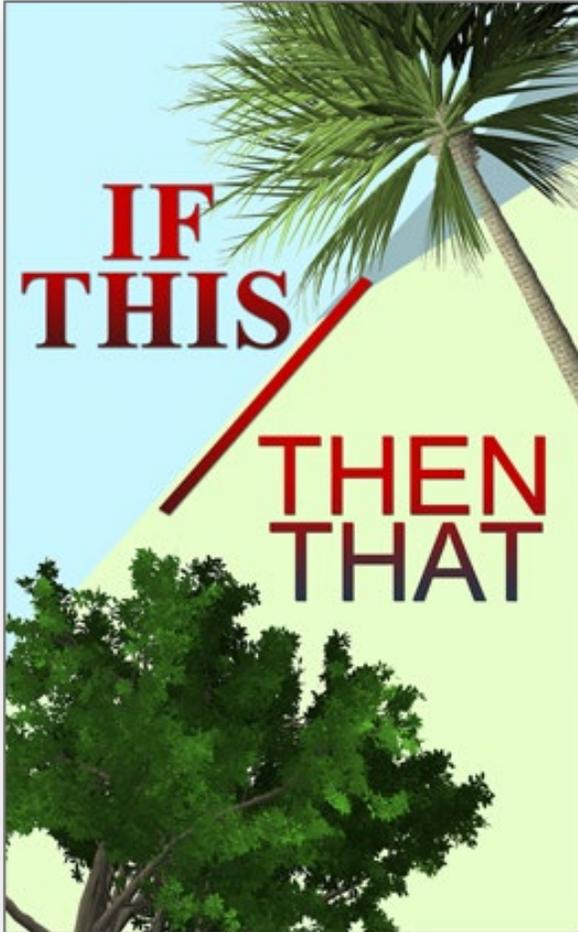




2020 CACM LAW SEMINAR & EXPO

ENLIGHTEN

COLLABORATION. MOTIVATION. INSIGHT.



If This, Then That Employment Law

Southern California Panel

- Jasmine Hale, Esq., Angius & Terry, LLP
- David Hickey, Esq., Hickey & Associates, P.C.
- Joe Price, CAMEx, CCAM, Next Step Community Management

Outcomes

At the conclusion of this session, attendees will be able to answer the questions:

- What is the difference between an employee and independent contractors as defined by this law?
- How does this new standard, defined in state legislation (January 2018), affect that mandate?
- What is the ABC test?

Outcomes (Cont.)

- What are some real-world scenarios that we, as managers, will face?
- How might it further be expanded?
- How can we best educate our Boards about the impact of this onboard decision-making?



How does the
legislation designate
the difference
between employees
and independent
contractors?

It really boils down
to this:

- Who controls the means and methods of the work?
- Who decides and negotiates the performance standards?
- Is the worker's business different from the hiring party's business?

Why does it matter?

- Tax burden shifts to employer
- Employees qualify for workers' compensation benefits
- Employees have expanded legal protections under state and federal laws

Why does it matter? (Cont.)

- Hiring party has lower controls over independent contractors
- Subject to a contract or at-will

Property Service Workers Protection Act Overview

- Company/employer must register with the Labor Commissioner if they employ one or more people who provide janitorial services – this includes everyone!
- Employers must provide sexual harassment training
- Employers must pay the annual \$500 fee

ABC Test: Where did it come from?



- A Supreme Ct in *Dynamex v. Superior Ct* (2018) 4 Cal 5th 903

ABC Test: What is it?



A B C **Test**

- Burden is on the hiring entity
- Used to prove independent contractor status
- Three factors must be addressed

FACTOR
#1

The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; and

FACTOR
#2

The worker performs work
that is outside the usual
course of the hiring entity's
business; and

FACTOR
#3

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

Real World Scenarios that Managers May Face

- The HOA hires tree trimmer who falls from tree and is seriously injured.
- The HOA hires a swimming pool company which results in an injury of a third party due to negligence in addressing an over-chlorinated pool.

Real World Scenarios that Managers May Face (Cont.)

- The HOA hires an election inspector who is sole proprietor. The election inspector has never done this before but is willing to take direction from the Board.

Additional Examples

- The HOA hires a lawyer and uses a 1099 to report what was paid to that lawyer.
- The management company hires the HOA building's concierge as its employee, saving the HOA from having to provide employee benefits.

Expansion of the ABC Test

- Retroactivity – Vazquez Case
- AB 5 – Application to Labor Code and Unemployment Insurance Code
- Exemptions?

Educating Our Boards

- Be aware
- Be cautious
- Be familiar with 3-part test
- Be proactive

www.labor.ca.gov/employmentstatus/

Questions?



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