

InterConnect FLASH! No. 80 – California Appeals Court Rules Truckers Are Not Exempt from Independent Contractor Classification Test

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In November 2020, a California state appeals court ruled in *People of the State of California v. Superior Court of Los Angeles County and Cal Cartage Transportation Express, LLC* that the Federal Aviation Administration Authorization Act (“FAAAA”) *does not* preempt application of “ABC” test set forth in California Assembly Bill 5 (“AB 5”) as to truck drivers. In reaching this holding, the California Court of Appeals, Second District, stated that the “ABC test is a law of general application,” and AB 5 “does not mandate the use of employees for any business or hiring entity.” The state appeals court in *Cal Cartage* concluded that AB 5 does not amount to a ban of independent contractors in the trucking industry. The appeals court based this conclusion on ways in which companies can purportedly thread the needle such as the business-to-business exemption, despite the fact that, in practice, it is quite difficult for trucking companies to classify truckers as independent contractors and also comply with AB 5. In holding that the FAAAA does not preempt AB 5, this decision reversed the California state court’s ruling from which a group of truckers appealed.

As a reminder, the California “ABC” test codified in AB 5 sets forth that hiring entities must classify workers as employees unless they meet all of the following three conditions:

- A.** The person 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.
- B.** The person performs work that is outside the usual course of the hiring entity’s business.
- C.** The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Previously in January 2020, California state trial court Judge William Highberger issued an opinion holding that the FAAAA preempts use of California’s version of the “ABC” test (as adopted by the California Supreme Court in *Dynamex Operations West Inc. v. Superior Court*, which California later codified in AB 5) with respect to classification of independent contractors in the trucking industry. The state trial court held that “[b]ecause Prong B of the ABC Test ... prohibits motor carriers from using independent contractors to provide transportation services, the ABC Test has an impermissible effect on motor carriers’ ‘price[s], route[s], [and] service[s]’ and is preempted by the FAAAA.” As stated above, the California state appeals court disagreed with this ruling. The appeals court’s opinion likely will be subject to further appellate review, as several parties involved in the case have indicated an intent to seek review from the California Supreme Court.

Also, review of the FAAAA's preemption of the AB 5 contractor classification test is pending in the federal court system in the matter captioned *CTA v. Becerra*. Relatedly and shortly after the state trial court's decision issued in *Cal Cartage* in January 2020, federal district court Judge Roger Benitez granted a preliminary injunction upon CTA's request, thereby preventing the state from enforcing the AB 5 classification test with respect to truckers. This decision is currently pending on appeal before the Ninth Circuit Court of Appeals. The parties to the federal appeal have both submitted letters to the Ninth Circuit citing the *Cal Cartage* decision and urging different interpretations. Still, the *Cal Cartage* decision is not binding on the Ninth Circuit. At this point in time, legal commentators generally have not predicted with any confidence whether the Ninth Circuit will rule one way or another. Some commentators believe that, in the event the Ninth Circuit does not affirm the preliminary injunction, any decision not to affirm will be due to a desire for a more developed record at the district court level. A more developed record could substantiate the impact of AB 5 on prices, routes, and services, and consequently whether the FAAAA preempts AB 5. Upon the Ninth Circuit's issuance of an opinion, the issue also potentially could reach the United States Supreme Court.

As parallel appeals could reach both the United States Supreme Court and the California Supreme Court, this issue continues to remain in limbo.

For more information on this topic, contact a member of the firm's [Transportation & Logistics](#) and [Labor & Employment](#) practice groups.

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