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FACT SHEET

Nearly 2 Million Californians' Livelihoods Are At Risk

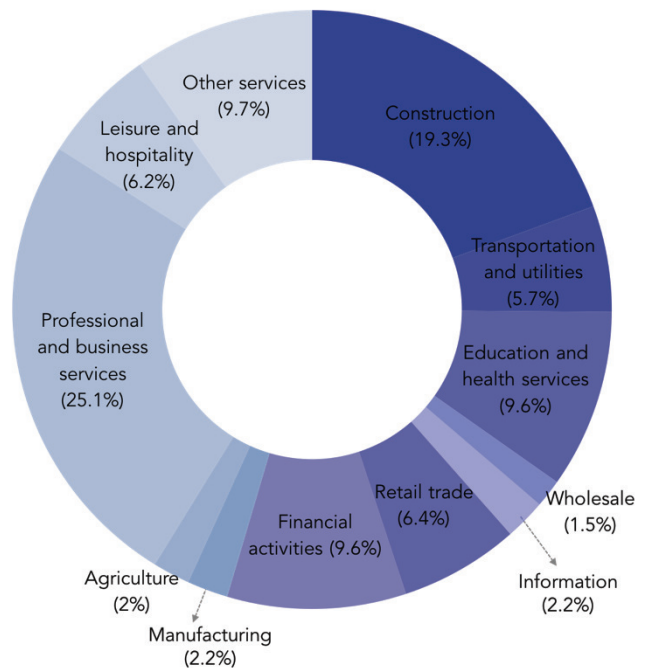
California is estimated to have nearly two million residents who choose to work as an independent contractor. These numbers are conservative as the 2018 U.S. Bureau of Labor Statistics Economic Release did not include the number of individuals who supplement their income with online platforms. This data is expected to be released later this year.

Independent contractors work in many industries including healthcare, education, financial planning, agriculture, beauty, creative fields (filmmaking, editors, writers), technology development, insurance, construction, on-demand marketplace, and transportation. In addition, the franchise business model is based on an independent contractor relationship between a franchisor and franchisee. California has over 76,000 franchise locations that support nearly 730,000 jobs.

The California Supreme Court recently overturned three decades of California employment law that allowed individuals to work as independent contractors. ***This decision could upend how millions of California workers earn a living and how thousands of businesses have been built by its new restrictive criteria. The result will be severe economic insecurity and hardship for Californians and nearly every industry in this state.***

The Court's decision bypasses a legislative discussion about how best to balance worker protections with a flexible work model -- a dialogue that California is uniquely poised to lead by guiding the future of work into the 21st century.

Percentage of Independent Contractors By Industry



*Bureau of Labor Statistics, Report on Contingent and Alternative Employment Arrangements (2018)

California's Modern Economy: The Growing Freelancer Economy

[Source: Freelancing in America 2017](#)

- The top reasons that motivate individuals to pursue independent work include: 1) to be their own boss, 2) to choose when they work, 3) to choose their own projects, 4) to choose where they work and 5) to earn extra money.
- Nearly half of all millennials (47 percent) across the U.S. freelance, which is a nine percent increase since 2014.
- The Court decision moves the state backward and does not accurately reflect today's realities. It would eliminate the choice that more and more Californians are making for their work and quality of life. In fact, 79 percent of independent contractors prefer it over traditional employment according to the Bureau of Labor Statistics Economic Release (June 7, 2018).
- Economic stability is being redefined as 63 percent of freelancers increasingly think that a diversified portfolio of companies to contract with is more secure than working for one employer.
- A majority of freelancers who left full-time traditional employment made more money within a year.
- Full-time independent contractors are able to work less than 40 hours per week (on average 36 hours) and the majority believe they have the right amount of work.
- Technology such as online platforms have also benefited brick and mortar businesses with significant increases in sales and expansion of their customer base. This has helped small businesses across the state not only survive but thrive.
- With innovation expanding opportunities, more and more Californians are choosing to work independently full-time or to supplement their income.

Dynamex Court Decision: Massive Economic Instability and Upheaval

- Since 1989, California courts and regulators applied a set of rules called the Borello test for deciding whether a worker was an independent contractor. This approach weighed nine different factors to account for the variety of California industries and professions that would be regulated.
- Despite this test being used for over three decades, the California Supreme Court made a surprising and unprecedented departure in April 2018 by replacing these nine factors with a one-size-fits-all approach consisting of just three factors which are also far more restrictive.
- This new test, called "ABC," has never existed in any form of California law, either in statute or by regulation. ***The ABC test is the first time in U.S. history that such a test has been imposed by a court, without legislative approval, with three independently dispositive factors.***

We Need the Legislature to Protect Workers and Ensure Our Freedom & Choice

- With our rapidly changing economy and how more Californians choose to work, we need the time to discuss and develop laws that best reflect today's realities. The Court made its decision with limited information on a decade-old case. The Legislature has the ability to identify criteria for independent contractors that better reflects California's economy and protects workers.
- It is time to modernize our laws and have a robust discussion about worker protection and worker choices to reflect today's realities.
- The Legislature can take action now by suspending the application of the *Dynamex* decision to prevent massive economic instability for nearly two million Californians. ***Let's work together to modernize our laws to protect workers and their choices.***



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To whom it may concern:

I am asking you to help protect my right to choose the way I make a living.

A recent California Supreme Court decision could create severe economic instability for me and the millions of Californians who rely and choose independent work over being an employee.

With new innovations, working independently has become more accessible and a better way to make a living for many people like me. I value a work-life balance and control over my schedule. In fact, I make more now than when I was an employee.

We can't let one court decision from a decade-old case take us backwards forcing many of us into a serious economic hardship.

We are asking you to take action to suspend the court decision and embrace the modern workforce needs. California has an opportunity to lead to find a better way to protect workers and our choices. We need protections that reflect today's reality.

Thank you,



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Frequently Asked Questions

Who are independent contractors and freelancers?

Today, nearly 2 million Californians are choosing to work independently, either full time or to supplement their primary income. These include freelancers who work in the most dynamic sectors of the state's economy, such as engineers, software developers, designers, therapists, insurance agents, accountants, financial advisers, consultants, writers, hair stylists, editors, drivers, and artists. In fact, nearly half of all millennials currently freelance.

With the advancement of innovation, this diverse California workforce will have even more opportunities to choose independent work in the near future. According to a survey commissioned by Upwork and the Freelancers' Union, more and more people will continue to choose independent work.

Why are the livelihoods of nearly two million Californians at risk?

On April 30, 2018, the California Supreme Court issued its decision in *Dynamex Operations West v. Superior Court* and departed from nearly 30 years of established California law. By implementing an unprecedented, one-size-fits all, judicially-created standard to differentiate contractors from employees, the Court effectively undercut nearly two million workers' freedom to choose independent work as a way to support themselves and their families. This would not only impact the millions of Californians who choose to

work independently but would have a chilling and harmful impact on our communities and economy across the state.

What does the court decision actually do?

In *Dynamex*, the California Supreme Court abandoned a long established balancing-of-factors test previously adopted by the Court in a 1989 decision: *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (“*Borello*”). This approach weighed nine different factors in their totality to account for the variety of California industries and professions, as well as diversity of California’s workers. Under *Dynamex*, the Court presumes that a worker is an employee unless the hiring party establishes all three of a one-size-fits all test. This test, referred to as **the “ABC” test has never before existed in California.** It is both the most restrictive form of the ABC test found anywhere in the country, and the *Dynamex* decision **marks the first time in U.S. history that any form of the ABC test has been imposed by a court without any legislative approval.**

What are the impacted industries?

Industries that commonly utilize freelancers include healthcare, education, financial planning, agriculture, beauty, creative fields (filmmaking, editors, writers), technology development, insurance, construction, on-demand marketplace, truck owner-operators, and transportation. In addition, the franchise business model is based on an independent contractor relationship between a franchisor and franchisee. California has over 76,000 franchise locations that support nearly 730,000 jobs.

Why do Californians choose to work as freelancers, versus traditional employment?

The top reasons that motivate individuals to pursue independent work include: 1) to be their own boss, 2) to choose when they work, 3) to choose their own projects, 4) to choose where they work, and 5) to earn extra money. Whether to pursue an education, care for their families, or adopt to a preferred lifestyle, many Californians prefer the flexible schedule and other opportunities that freelancing provides. In certain professions, it is also beneficial to work for multiple firms on multiple projects, or to change firms frequently to increase economic stability. Californians are choosing to work full-time as independent contractors and others are using the opportunity to supplement their income.

In fact, 79 percent of independent contractors prefer it over traditional employment according to the Bureau of Labor Statistics Economic Release (June 7, 2018). A 2017 survey also found that a majority of freelancers who left a full-time job made more money within a year.

What can the Legislature do to protect Californians' right to choose their work and livelihood?

The Legislature, not the courts, should be responsible for crafting statewide policy. The Dynamex decision is the first time in U.S. history that such a test has been imposed by a court, without legislative approval. The court was limited in the information it considered in its decision, but the Legislature is not. The Legislature can suspend the decision and adopt a more reflective approach of today's modern economy that protects workers as well as their freedom to work independently. If the Legislature stands by, the court case would destroy the work opportunities on which millions of Californians depend.

We need the time to have a robust legislative discussion on the best approach to modernize our independent contractor laws focused on balancing worker protections and worker choices.