

# Welcome to 2020: New Laws Affect Companies Doing Business in California

**Date :** 13-01-2020

**By:** Roger Royse

The year 2020 is momentous not only as the beginning of a new decade, but also as the beginning of many new laws that will greatly affect how companies do business in California. The state leads the nation in new trends in employment, privacy and litigation. Here are a few changes taking effect in January 2020.

## Assembly Bill 5 (AB5)

The biggest news in California law is probably the enactment of AB5 – the anti-gig economy bill that codifies the California Supreme court decision in *Dynamex*<sup>[1]</sup>. There, the Court dramatically altered the standard for determining worker classification in California wage and hour law. In replacing the decades-old, multi-factor “*Borello* test” that had led to inconsistent legal conclusions regarding employee classification, the *Dynamex* decision implemented a simplified three-part test that effectively narrows the definition of an independent contractor. The *Dynamex* “ABC” test presumes that a worker is a statutory employee under California wage and hour law unless the hiring entity can prove and overcome the following factors:

- A. “the worker is free from both 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 worker performs work that is outside the usual course of the hiring entity’s business,” AND
- C. “the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

AB5 codifies *Dynamex*, but with numerous carveouts and exclusions. A judge has already granted a temporary restraining order against application of the statute to long haul truck drivers, under federal preemption grounds, and some gig economy companies have promised a ballot initiative repealing the law. You can read more about AB5 [here](#).

## Women on Public Boards

By the end of 2019, every public company in California must have at least one woman on its board or pay a large penalty. Both the number of women board members and the penalties will increase by the end of 2021. As expected, the law is as controversial as it is unique and has been challenged on equal protection grounds because it discriminates based on sex by requiring companies to consider gender when voting to add board members.

## California Consumer Privacy Act (CCPA)

Effective 2020, California has the toughest data privacy law in the country. The CCPA is loosely modeled after Europe's GDPR, although it is inconsistent with it in some areas. The CCPA generally requires companies to disclose to consumers what data they are collecting and must give the consumer the right to have their data deleted upon request. The CCPA applies to companies that have \$25 million or more in annual revenue, possess the personal data of over 50,000 consumers, households or devices or earn more than half their annual revenue from the sale of consumers' data. See our previous [post](#) on this topic for an in depth description of the new law.

## Mandatory Arbitration Agreement

Assembly Bill 51 generally prohibits the use of mandatory employment arbitration agreements after January 1, 2020 for claims under the California Fair Employment and Housing Act or California Labor Code. AB 51 also prohibits employers from retaliating against employees who refuse to enter into banned mandatory arbitration agreements and provides a civil right of action against the employer. An employer that violates the law could also be subject to criminal sanctions.

AB51 was only recently signed into law, and is only now effective, and it will likely be subject to challenge on federal pre-emption grounds.

## New Minimum Wage Rates

Most employees in California must be paid the minimum wage required by state law. Since 2017, the minimum wage has been increased annually. The 2020 minimum wage rate is \$12 an hour for businesses with 25 employees or fewer and \$13 an hour for larger companies.

The minimum wage has collateral effects. For example, the wage will set a higher bar for employees who may be classified as "exempt."

[\[1\]](#) *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903 (2018).