

Matthew Costello in HR Magazine: 'California Employers Should Review Evolving Worker-Classification Rules'

January 20, 2021 Matthew Costello

PRACTICES Employment Litigation, Labor and Employment

Haynes Boone Partner [Matthew Costello](#) talked with *HR Magazine* about recent updates to California's worker-classification rules, including the federal government's final rule, which makes it easier to classify workers as independent contractors rather than employees.

Here is an excerpt:

California's classification laws continue to change. AB 5 took effect on Jan. 1, 2020, codifying a three-pronged "ABC" test to determine worker classification and rendering most workers employees.

The distinction is significant. Employees are entitled to minimum wage, overtime pay and other benefits. Independent contractors are not entitled to such benefits, but they generally have more flexibility to set their own schedules and work for multiple companies.

Exceptions to the Rule

AB 5 applies to all provisions of the California Labor Code and Unemployment Insurance Code unless another definition of "employee" is provided. However, some jobs were carved out from the start, and many freelance journalists, musicians, translators and other workers in California can operate as independent contractors under an amendment, AB 2257, that Gov. Gavin Newsom signed in September 2020.

"Any company that [uses] contractors to provide services should, in consultation with legal counsel if possible, review AB 2257 closely to assess whether such workers qualify as independent contractors," said Matthew Costello, an attorney with Haynes Boone in Costa Mesa, Calif.

He noted that AB 2257 doesn't address the concerns from a number of industry groups, including those in the franchising and trucking industries, that lobbied for exemptions from AB 5.

Proposition 22

California voters approved Proposition 22, which was supported by prominent ride-hailing and food delivery services. A "yes" vote on the ballot measure meant that app-based drivers could continue to be classified as independent contractors. The measure also requires covered companies to provide drivers with certain benefits and develop anti-discrimination and sexual-harassment policies.

Costello said voter approval of Proposition 22 may spark more meaningful policy discussions about maintaining the benefits that many workers have through their independent-contractor status, while still finding ways to protect workers from being improperly classified as a way to deny them overtime pay and employment protections.

To read the full article, click [here](#).