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City Attorney Obtains Landmark Injunction Against Instacart

Court rules giant grocery-delivery company misclassifies its workers

San Diego City Attorney Mara W. Elliott today obtained a preliminary injunction against Instacart, a multi-billion-dollar grocery-delivery company, for not complying with the worker classification standard established by the California Supreme Court's 2018 decision in *Dynamex Operations West, Inc. v. Superior Court*.

Under *Dynamex*, an individual is legally an employee if he or she performs a core function of a business, is not free from the business' control, or is not engaged in an independently established trade, occupation, or business.

Meeting any one of those three tests is enough to classify a worker as an employee. In granting a preliminary injunction against Instacart, the court said it was likely that the City would be able to prove at trial that all three apply to Instacart's "shoppers," whose job is to purchase and deliver groceries within an hour of a customer's order. He also found that both the "shoppers" and the public would be irreparably harmed unless a preliminary injunction was issued.

Through its misclassification, Instacart avoids paying its "shoppers" a lawful wage and unlawfully defers substantial expenses to its "shoppers," including the cost of equipment, car registration, insurance, gas, maintenance, parking fees, and cell phone data usage.

"This landmark ruling makes clear that Instacart employees have been misclassified as independent contractors, resulting in their being denied worker protections to which they are entitled by state law," City Attorney Mara W. Elliott said. **"We invite Instacart to work with us to craft a meaningful and fair solution."**

"This decision is also a warning to other companies to do right by their employees. As the court said, 'The handwriting is on the wall.' California has had two years since the Supreme Court's *Dynamex* decision to distinguish between a contractor and an employee. Everyone, not just Instacart, must live up to their legal responsibilities; they cannot ignore the significance of what occurred here."

Chief Deputy City Attorney Mark Ankorn, Deputy City Attorney Kevin B. King, and Deputy City Attorney Marni von Wilpert represent the People of the State of California.

Here is the full quote from Judge Timothy Taylor's February 18, 2020, final ruling that was excerpted above:

“The policy of California is unapologetically pro-employee (in the several senses of that word). *Dynamex* is explicitly in line with this policy. While there is room for debate on the wisdom of this policy, and while other states have chosen another course, it is noteworthy that all three branches of California have now spoken on this issue. The Supreme Court announced *Dynamex* two years ago. The decision gave rise to a long debate in the legal press and in the Legislature. The Legislature passed AB 5 last fall. The Governor signed it. To put it in the vernacular, the handwriting is on the wall.”

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