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Press the Brakes: Ninth Circuit Withdraws Opinion and Leaves Dynamex's Retroactivity Issue to California Supreme Court

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The debate about whether the Dynamex decision applies retroactively is alive again thanks to a reverse course by the Ninth Circuit Court of Appeals. As we previously discussed in greater detail here, in April 2018, the California Supreme Court issued a groundbreaking decision in Dynamex that workers would be presumed employees unless they satisfied each prong of the dubbed "ABC test." One of the unsettled questions that remained following the Dynamex decision was whether the "ABC test" would apply only prospectively, or retroactively as well. For almost a year after Dynamex and, as we previously covered, the Ninth Circuit seemingly laid this issue to rest in May 2019 when it held that Dynamex's "ABC test" does indeed apply retroactively in its *Vazquez v. Jan-Pro Franchising International, Inc.* decision.

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