Resolution supporting California State Assembly Bill No. 5, authored by Assembly Member Lorena Gonzalez, to codify and expand the California Supreme Court's decision in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018), establishing a presumption that a worker is an employee for purposes of wages and benefits.

WHEREAS, On April 30, 2018, the California Supreme Court issued a landmark, unanimous decision in the matter of Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018), which embraced a standard for worker classification that presumes that all workers are employees instead of independent contractors; and

WHEREAS, The ruling was one of the most significant legal victories in decades for misclassified workers, who lack a basic safety net when they are sick, laid off, or get injured on the job; and

WHEREAS, The Dynamex Case interprets existing law as placing the burden on any entity classifying an individual as an independent contractor of establishing that such classification is proper under the newly adopted “ABC Test”; and

WHEREAS, Under the ABC Test, a worker is presumed to be an employee unless their employer establishes each of the following: 1) that the worker is free from the control and direction of the hiring entity in connection with the performance of their work; 2) that the worker performs work that is outside the usual course of the hiring entity's business; and 3) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed; and
WHEREAS, The question of whether a worker is an employee has considerable impacts on the livelihood of the worker, including whether the employer bears the responsibility of paying Social Security and payroll taxes, unemployment insurance taxes and state employment taxes, providing worker’s compensation insurance, and complying with State and Federal laws governing wages, hours, and working conditions; and

WHEREAS, The relatively recent rise of the so-called “gig economy,” wherein employers contract with purportedly independent workers for ostensibly short-term engagements, has predicated itself on the exploitation of many workers who have been denied the opportunity to be classified as employees and therefore denied the basic benefits that all employees are entitled to, such as unemployment insurance, health care subsidies, paid parental leave, overtime pay, workers’ compensation, a guaranteed minimum hourly wage, and the right to organize to better their working conditions; and

WHEREAS, California’s low-wage and immigrant workers, such as domestic workers, day laborers, restaurant workers, and janitors, among others, are some of the most vulnerable workers also subjected to misclassification and wage theft; and

WHEREAS, For years, worker organizations, advocates and city officials in San Francisco worked together and passed laws to establish strong labor protections, fair minimum wages, healthcare security, paid sick leave and other benefits for employees in San Francisco; and

WHEREAS, Assembly Bill No. 5 would codify existing case law as established by the California Supreme Court in the Dynamex Case, and apply the Dynamex “ABC Test” to determine the status of a worker as an employee or independent contractor for all provisions of the Labor Code and the Unemployment Insurance Code, unless another definition or specification of “employee” is provided; and
WHEREAS, By codifying the law established by the Dynamex Case, Assembly Bill No. 5 would give the State of California stronger enforcement tools and make it harder for companies to label workers as independent contractors instead of employees, a common practice that has allowed businesses to skirt local, state and federal labor laws; and

WHEREAS, Assembly Bill No. 5 would likely impact a number of companies that have risen to prominence in the past decade in large part by exploiting tens of thousands of workers, depriving those workers of a basic social safety net and passing along costs to taxpayers, costing the State of California in excess of $7 billion annually; and

WHEREAS, Assembly Bill No. 5 would help to address widening income inequality that has allowed a small number of executives to profit immensely while subjecting workers to poverty wages and unsustainable working conditions; now, therefore, be it

RESOLVED, That the City and County of San Francisco stands with workers, community groups and labor unions in strong support of Assembly Bill No. 5; and, be it

FURTHER RESOLVED, That the Board of Supervisors hereby directs the Clerk of the Board to transmit copies of this Resolution to San Francisco’s State Legislative Delegation and the Office of the Governor of California accordingly.
Resolution supporting California State Assembly Bill No. 5, authored by Assembly Member Lorena Gonzalez, to codify and expand the California Supreme Court’s decision in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018), establishing a presumption that a worker is an employee for purposes of wages and benefits.

July 16, 2019 Board of Supervisors - ADOPTED

Ayes: 10 - Brown, Fewer, Haney, Mandelman, Peskin, Ronen, Safai, Stefani, Walton and Yee
Excused: 1 - Mar

File No. 190771

I hereby certify that the foregoing Resolution was ADOPTED on 7/16/2019 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Unsigned

7/26/19

Date Approved

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, or time waived pursuant to Board Rule 2.14.2, became effective without her approval in accordance with the provision of said Section 3.103 of the Charter or Board Rule 2.14.2.

Angela Calvillo
Clerk of the Board