



DYNAMEX DECISION IMPACT UPON NORMATIVE GOLF INDUSTRY PRACTICE

IMPACT

Cutting to the chase, the impact of the Dynamex Decision on the California golf course industry is non-existent save in one very small aspect – those teaching golf professionals who generate on average 5% of a typical golf course’s gross revenues and provide that function and only that function at the golf properties where they teach, the vast majority of which are publicly owned and/or publicly operated golf courses. Many teaching professionals who perform tasks/duties in addition thereto were categorized as employees prior to Dynamex and are envisaged as being so categorized should the legislature determine to amend AB 5 to accommodate that narrow class of worker whose income and working conditions are better served by the independent contractor status that was automatically made employee status by the workings of the “B” portion of the Dynamex “ABC” test.

BACKGROUND

Visit any golf course, public or private, in the State of California and virtually everyone one sees working on a recurring basis is an employee --- whether on the physical golf course, in the golf shop, in the clubhouse, or in the business office. The lone exception is one small class of teaching professional, usually spotted on driving ranges and practice areas and almost always professionally credentialed by the PGA of America. They are not to be confused with General Managers who are often also members of the PGA of America and do some teaching, nor are they to be confused with professionals and Class “A” PGA Professionals who work in golf shops and conduct facility-based programs in addition to teaching the game on an individual basis. The latter have long been categorized as employees and treated as such under California Law, and there has been no effort to treat them otherwise.

The teaching exclusive professional’s arrangement with a golf facility is typically predicated upon the following:

- The teaching professional has 100% control over his/her working hours; the facility does not act as booking agent or otherwise control those hours.
- The teaching professional’s access to the facility is per agreement between teacher and facility akin to a traditional lessor/lessee arrangement specifically and often differentially negotiated between teacher and facility.
- The teaching professional is responsible for generating his/her clientele, albeit access to the golf facility has its advantages for the teacher to the extent to which a golf course is an attractor of

golfers and advantages for the facility to the extent to which it can offer the kind of high quality instruction that would otherwise likely be unavailable, particularly at a municipally owned/operated facility.

- The teaching professional has final say on who his/her students are going to be; the facility does not direct the professional to accept any students nor direct the professional to conduct any kind of individual or group activity sponsored or promoted by the facility.
- The teaching professional performs no duties or functions in addition to teaching that are otherwise part and parcel of the facility's business operation.

In re-categorizing this class of teaching professionals as employees, the Dynamex ABC test has created a result for this narrow slice of normative golf industry practice that is the opposite of the ruling's clear intent to protect California's workers from the harmful effects of an increasing number of re-categorizations from employee to independent contractor.

Golf has not been part of this particular stampede but has maintained this one small slice of independent contractor practice because:

- It allows for those teachers most expert in their craft to command higher net incomes while maintaining 100% control over their working conditions/hours;
- It enables municipally owned/operated golf facilities to provide high quality teaching programs that they would be unable to otherwise offer were they required to offer them exclusively through the golf professionals they currently retain as employees; and
- It expands the opportunities for persons who earn a living teaching in the golf industry, as the existence of teaching professionals at a golf course does not come at the expense of their employee cousins, but rather in addition thereto – there is no zero sum game issue here.

CONCLUSION

Enabling the California golf industry to restore the role played by the genuinely independent teaching golf professional would not contradict the clear intent of Dynamex to protect California's strong presumptions in favor of employee status; those presumptions are predicated upon protecting the interests of those who earn their living from their labors, interests that in the specific case of these genuinely independent teaching professionals are ill-served by a reclassification that diminishes their opportunities, lowers their net incomes, and disallows 100% control over their hours and clientele. And such an enabling accomplished either by generic language calculated to accommodate all such similarly situated "genuinely independent" professionals or specific language to accommodate this very narrow class of teaching golf professional would in addition benefit the many publicly-owned golf facilities in California dependent upon the practice for the continued provision of high-quality instruction.