

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

NARCIO REYES PEDROZA, *Applicant*

vs.

MECH 23, INC.;
HARTFORD CASUALTY INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ19294102
Van Nuys District Office

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION AND
DECISION AFTER
RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact (Findings) of April 13, 2026, wherein the workers' compensation judge (WCJ) found that applicant, while working as a handyman on March 14, 2024, was an employee of defendant and that the claim was untimely denied and therefore the claim was compensable. Defendant contends that the Finding that the presumption of compensability applies is in excess of the WCJ's powers and the Finding that applicant was an employee of Mech 23 is not justified by the evidence.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will grant defendant's Petition for Reconsideration solely to amend the Findings to find that applicant sustained industrial injury to the eye (Finding of Fact 1) and otherwise affirm the decision.

As discussed below, we agree with the WCJ's analysis in the Report on the issue of whether defendant met its burden that applicant was an independent contractor, and we also emphasize that defendant also did not show that applicant was insured for workers' compensation.

I.

Former Labor Code¹ section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on May 19, 2026, and 60 days from the date of transmission is Saturday, July 18, 2026. The next business day that is 60 days from the date of transmission is Monday, July 20, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, July 20, 2026, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides

¹ All further statutory references are to the Labor Code unless otherwise noted.

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on May 19, 2026, and the case was transmitted to the Appeals Board on May 19, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on May 19, 2026.

II.

California has a no-fault workers' compensation system. With few exceptions, all California employers are liable for the compensation provided by the system to employees injured or disabled in the course of and arising out of their employment, "irrespective of the fault of either party." (Cal. Const., art. XIV, § 4.) The protective goal of California's no-fault workers' compensation legislation is manifested "by defining 'employment' broadly in terms of 'service to an employer' and by including a general presumption that any person 'in service to another' is a covered 'employee.'" (Lab. Code, §§ 3351, 5705(a); *S. G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341, 354 [54 Cal.Comp.Cases 80].)

An "employee" is defined as "every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed." (Lab. Code, § 3351.) Subdivision (i) makes clear that this definition includes "any individual who is an employee pursuant to Section 2775." Further, any person rendering service for another, other than as an independent contractor or other excluded classification, is presumed to be an employee. (Lab. Code, § 3357.) Once the person rendering service establishes a prima facie case of "employee" status, the burden shifts to the hirer to affirmatively prove that the worker is an independent contractor. (*Cristler v. Express Messenger Sys., Inc.* (2009) 171 Cal.App.4th 72, 84 [74 Cal.Comp.Cases 167]; *Narayan v. EGL, Inc.* (2010) 616 F.3d 895, 900 [75 Cal.Comp.Cases 724].) An "independent contractor" is defined as "any person who renders service for a specified recompense for a specified result, under the control of

his principal as to the result of his work only and not as to the means by which such result is accomplished.” (Lab. Code, § 3353.) Consequently, unless the hirer can demonstrate that the worker meets specific criteria to be considered an independent contractor, all workers are presumed to be employees. Here, defendant did not meet its burden that applicant is an independent contractor.

Another consideration is that workers’ compensation insurance coverage is required for all those who employ one or more employees. (Bus. & Prof. Code, § 7125.2; *Wright v. Issak* (2007) 149 Cal.App.4th 1116 [72 Cal.Comp.Cases 438].) With respect to contractors on construction projects, Labor Code section 2750.5 applies in workers’ compensation cases, and Labor Code section 3351, subdivision (d) is read together with section 2750.5. (*Cedillo v. Workers’ Comp. Appeals Bd.* (2003) 106 Cal.App.4th 227, 232-233 [68 Cal.Comp.Cases 140]; *State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd. (Meier)* (1985) 40 Cal.3d 5 [50 Cal.Comp.Cases 562].) “There is a rebuttable presumption affecting the burden of proof that a worker performing services for which a license is required . . . or who is performing such services for a person who is required to obtain such a license is an employee rather than an independent contractor . . .” (Lab. Code, § 2750.5; see also, *Cedillo, supra*.)

Once the person hired by an owner or general contractor is shown to be an employee rather than an independent contractor, “the general contractor may be liable under workers’ compensation for injuries to persons hired by the employee, on the theory that such persons are also the general contractor’s employees.” (*Blew v. Horner* (1986) 187 Cal.App.3d 1380, 1387 [51 Cal.Comp.Cases 615].) “For workers’ compensation purposes, under section 2750.5, the hirer of a contractor for a job requiring a license is the statutory employer of the unlicensed contractor. In addition, the hirer is the statutory employer of those workers employed by the unlicensed contractor. . . Accordingly, the presumption that the person who employs the unlicensed contractor is the employer is conclusive.” (*Cedillo, supra*, 106 Cal.App.4th at p. 233, citations omitted; see also, *Rinaldi v. Workers’ Comp. Appeals Bd.* (1987) 196 Cal.App.3d 571 [52 Cal.Comp.Cases 366]; *Meier, supra*.) Thus, when status as an independent contractor is lost for lack of a license, the unlicensed contractor becomes both the employee and the employer, and when the unlicensed contractor lacks workers’ compensation insurance coverage, the “ultimate hirer” who does have workers’ compensation insurance coverage becomes liable. (*Cedillo, supra*, 106 Cal.App.4th at p.

233; *Hernandez v. Chavez Roofing, Inc.* (1991) 235 Cal.App.3d 1092 [56 Cal.Comp.Cases 650]; *Rinaldi, supra.*)

Here, defendant argued that the subcontractor agreement was applicable, but did not offer any evidence that applicant was insured for workers' compensation, and thus, applicant is also an employee on that basis.

III.

Section 3600(a) provides for liability for injuries sustained "arising out of and in the course of the employment." An employer is liable for workers' compensation benefits "without regard to negligence." (Lab. Code, § 3600(a).) Whether an employee's injury arose out of and in the course of employment is generally a question of fact to be determined in light of the particular circumstances of the case. (*Wright v. Beverly Fabrics* (2002) 95 Cal.App.4th 346, 353 [67 Cal.Comp.Cases 51].)

Decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].)

Applicant testified that, while working for defendant fixing the metal arm at the top of a broken door, a screw from the metal part fell and struck him in the eye. (10/30/25 Further Minutes of Hearing/ Statement of Evidence (MOH/SOE), p. 3.) The screw falling in his eye caused him to fall of the ladder and he subsequently fainted. (10/30/25 MOH/SOE, p. 3.) He heard someone say to call 911 and then he was transported to the hospital. (10/30/25, pp 3-4.) Based on applicant's testimony, he sustained an industrial injury to his eye while working for defendant.

We agree with defendant that the presumption of compensability under section 5402 applies to injury, and not employment. Specifically, section 5402(b)(1) states that if liability is not rejected within 90 days, "the injury shall be presumed compensable under this division." We also agree with the WCJ that the issue of the presumption under section 5402 was raised at trial. In order to make clear that the presumption of compensability applies to applicant's injury, we will amend the finding that applicant was employed by defendant on the date of injury to include that applicant sustained an injury to his eye.

Accordingly, we grant defendant's Petition for Reconsideration of the April 13, 2026 Findings of Fact and amend the Findings of Fact to find that applicant sustained industrial injury to his eye and to defer the issue of injury to other claimed body parts (Finding of Fact 1). We otherwise affirm the decision.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the April 13, 2026 Findings of Fact is **GRANTED**.

IT IS FURTHER ORDERED as the Decision after Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

1. NARCIO REYES PEDROZA, while working as a handyman on March 14, 2024 in Union City, California, was an employee of MECH 23 INC, whose workers' compensation insurance carrier was HARTFORD CASUALTY INSURANCE sustained injury arising out of and in the course of employment to his eye. The issue of injury to other claimed body parts is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 20, 2026

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**NARCIO REYES PEDROZA
KJT LAW GROUP
TOBIN LUCKS**

JMR/pm

I certify that I affixed the official seal of the
Workers' Compensation Appeals Board to this
original decision on this date. *abs*

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I INTRODUCTION

Date of Injury:	03-14-2024
Age on DOI:	42
Occupation:	Handyman
Parts of body claimed:	Alleged left eye, headaches, Arms, hands, fingers, legs, feet, Neck, high blood pressure, neck
Identity of Petitioner:	Defendant
Timeliness:	Timely filed on May 4, 2026
Verification:	The petition was verified
Date of Order:	April 13, 2026
Petitioner's Contention:	Petitioner contends that the decision was in excess of the WCJ's power and that evidence does not justify findings of fact.
Date of submission to Recon Unit:	May 19, 2026

II FACTS

Narcio Reyes was hired by Mech 23, Inc., a general contractor, to perform maintenance and repair service at several of their retail customer locations in the San Luis Obispo region (MOH SOE 1/15/26 4:14-16, 21). Reyes was initially hired in the latter part of 2023, and he was initially paid by check payable to his name as an individual. Approximately 3 months after the working relationship was established, Mech 23, Inc. advised the Applicant that in order to continue working for them, he needed to get liability insurance which made Mech 23, Inc. a covered party under the insurance policy, and to sign a subcontractor agreement. (MOH SOE 10/30/25 3:5-15). Applicant complied with signing the subcontractor agreement and purchasing the insurance policy. He also had a business card for "Reyes Handyman" with a license number. Within 2 days after signing the Subcontractor Agreement, Reyes was injured while finishing a job where Mech 23, Inc. had dispatched him two weeks prior. The job could not be completed previously because the replacement part was expensive, and Mech 23, Inc. instructed Reyes to order the replacement part

for a cheaper price than what was available at the time. After the replacement part was ordered, Reyes returned to the retail store to finish the job, but he fell off a ladder while trying to complete the work (MOH SOE 10/30/25 3:16-24; MOH SOE 1/15/26 4:1-5).

III **DISCUSSION**

A. EMPLOYEE VERSUS INDEPENDENT CONTRACTOR

The basic definition of an employee is defined in *Labor Code Section 3351*, which is a person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. On the other hand, pursuant to *Labor Code Section 3353*, an independent contractor means any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of the work only and not as to the means by which such result is accomplished.

Because the broad definitions are subject to interpretation, the courts have established guidelines to determine whether an individual or class of individuals is considered employee or independent contractor.

Borello Test

The seminal case in determining whether a worker is an independent contractor or an employee for the purposes of workers' compensation is *S.G. Borello & Sons, Inc. v. DIR (1989) 54 CCC 80*. In the *Borello* case, the California Supreme Court explained that the common law emphasis on the employer's control over the work details is still the most important consideration in whether a person was an independent contractor. Under that test, it is not the actual exercise of control that is important in determining whether an employer-employee relationship exists, but rather the right or potential power of control that is important. So the right to control and direct the activities of the alleged employee, whether exercised or not, gives rise to the employment relationship. Nevertheless, the California Supreme Court stated that the "control" test could not be applied rigidly and was of little use in evaluating the myriad of service arrangements. The court recognized that the question of a worker's status must be considered in light of the history and purpose of the Workers' Compensation Act. The purposes of the Workers Compensation Act are

as follows: 1) to ensure that the cost of industrial injuries will be part of the cost of goods rather than a burden on society; 2) to guarantee prompt, limited compensation for an employee's work injuries, regardless of fault, as an inevitable cost of production; and 3) to spur increased industrial safety, and 4) to insulate the employer from tort liability for his or her employee's injuries. The California Supreme Court also determined that several secondary factors of the nature of a service relationship should be considered.

Another important factor was the right to discharge at will, without cause. The court referred to the Restatement Second of Agency and stated that these factors were useful in assessing the nature of a relationship: (a) whether the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the worker supplies the instrumentalities, tools and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether the work is a part of the regular business of the principal; and (h) whether the parties believe that they are creating the relationship of employer-employee.

The *Borello* court referenced the standards for contractors established in *Labor Code Section 2750.5* as a helpful means of identifying the employee/contractor distinction, even though the relevant considerations often might overlap those pertinent under the common law. Under *Labor Code Section 2750*, proving independent contractor status includes proof of these factors: (a) the individual has the right to control and discretion as to the manner of the performance of the contract for services in that the result of the work and not the means by which it is accomplished is the primary factor bargained for; (b) the individual is customarily engaged in an independently established business; and (c) the individual's independent contractor status is bona fide and not a subterfuge to avoid employee status. Furthermore, *Labor Code Section 2750.5 (c)* adds that the independent contractor status can be evidenced by the following factors: (1) substantial investment other than personal services in the business; (2) holding out to be in business for oneself; (3) bargaining for a contract to complete a specific project for compensation by project rather than by time; (4) control over the time and place the work is performed; (5) supplying the tools or instrumentalities used in the work other than tools and instrumentalities normally and customarily provided by employees; (6) hiring employees; (7) performing work that is not ordinarily in the

course of the principal's work; (8) performing work that requires a particular skill; (9) holding a license pursuant to the Business and Professions Code; and (10) the intent by the parties that the work relationship is of an independent contractor status, or that the relationship is not severable or terminable at will by the principal but gives rise to an action for breach of contract.

The *Borello* court also noted that a six-factor test developed by federal jurisprudence was helpful in determining independent contractor status. The test includes these factors: (1) the right to control work; (2) the alleged employee's opportunity for profit or loss depending on his or her managerial skill; (3) the alleged employee's investment in equipment or materials required for his or her task, or his or her employment of helpers; (4) whether the service rendered requires a special skill; (5) the degree of permanence of the working relationship; and (6) whether the service rendered is an integral part of the alleged employer's business. See *Real v. Driscoll Strawberries Associates, Inc.* (1979) 603 F. 2d, 748.

The court found that all of the guidelines listed above are "logically pertinent to the inherently difficult determination of whether a provider of a service is an employer or an excluded independent contractor for purposes of workers' compensation law." No single factor is determinative of the issue, and the issue must be examined case by case. The court stated that "the individual factors cannot be applied mechanically as separate tests; they are intertwined and their weight depends often on particular combinations." See *Germann v. WCAB (Castro)* (1981) 46 CCC 1062.

Application of Borello Test

In the case at bar, Mr. Reyes was hired by Mark of Mech 23, Inc. to be a maintenance person for retail customers of Mech 23 sometime in September or October of 2023. (MOH SOE 10/30/2025, 2:10-11). Mr. Reyes's work included repairing water leaks and broken hoses, unclogging toilets, repairing floors, repairing doors, replacing light bulbs, installing or repairing water heaters, and placing mesh coverings on damaged walls. Mr. Reyes did not do electrical work nor drywall repair (MOH SOE 10/30/2025, 2:13-18). Applicant communicated with Alex or Mark for work. At first, the Applicant worked three to five hours per day, but eventually, his hours were increased to eight to ten hours per day. On the average, he worked approximately 40 hours per week (MOH SOE 10/30/25 2:14-15). It is undisputed that Mech 23, Inc. maintained the right of control of how and when Mr. Reyes performed his duties even if he worked without direct

supervision. Applicant was dispatched to specific retail locations by Mech 23, Inc. Upon arrival, Mr. Reyes was required to report to Mark and send photos of the repair work that was required. If Mr. Reyes was capable of performing the work, he would give Mark an estimate for the cost of labor plus gas and mileage. He took photos of the work upon completion and submitted them to Mark. Applicant did not prepare any invoices to Mech 23, Inc. After giving a quote for the work, sometimes Mark would pay only half of the amount. Sometimes, Mark would give him some money for gas and mileage. Mark always held the discretion over whether Mr. Reyes was allowed to perform the job and what price would be paid for his compensation. (MOH SOE 1/15/26, 3:12-23)). Thus, Mr. Reyes did not have control of the profit or loss generated by his labor. If Applicant was not capable of performing the job, he would advise Mark. He was then instructed to find an electrician or plumber who could perform the work needed. (MOH SOE 1/15/26 3:7-16)). Thus, Applicant's job duties did not require any specified skills. The Applicant was dispatched to perform basic handyman repairs which were within the purview of Mech 23 Inc.'s business as a general contractor.

Applicant had performed maintenance or repair work for Mech 23, Inc. on at least nine occasions before he signed a Subcontractor Agreement and purchased liability insurance to cover Mech 23, Inc. at the behest of Mech 23, Inc. (MOH SOE 1/15/26 2:23-25; 3:1-9). During that time, Mech 23, Inc. owed Applicant \$1,500 in wages, but they withheld the funds until Mr. Reyes signed the contract and secured insurance. Yet, Mech 23, Inc. continued to send Mr. Reyes to job sites in the interim (MOH SOE 10/30/25 3:5-8). Mech 23, Inc. recommended a couple different insurance brokers to Mr. Reyes and instructed him to purchase a policy with \$1 million coverage and to add Mech 23, Inc. as a covered party for an extra premium. The policy was shown to Mark, who approved it. (MOH SOE 10/30/25 3:11-15) Presumably, the working relationship allowed the business to terminate Applicant's services at will until he signed a contract on 3/12/2024. Said contract purported to be a Subcontractor's agreement. (Exhibit BB). Mech 23, Inc. exercised control over the Applicant's work by fixing Applicant's compensation rates as they saw fit and to purchase liability insurance naming Mech 23, Inc. as a covered party. This directive came after the applicant had already performed work as an individual on at least nine occasions (MOH SOE 1/15/25, 2:23-25, 3:1-9). Mech 23, Inc. issued a check payable to Narcio Reyes dated 12/29/23 in the sum of \$220. The Subcontractor's Contract was executed on 3/12/24 (Exhibit BB). The

insurance coverage which Applicant purchased at the request of Mech 23, Inc. became effective 3/13/24.

Regarding secondary factors indicative to employment, Mr. Reyes was dispatched to multiple locations of Mech 23's retail clients between December of 2023 and February of 2024, to perform repairs which did not require special tradesman skills. Initially, Mech 23, Inc. paid Applicant by checks made payable to his name. Thereafter, they paid him through a Zelle Application that belonged to Applicant's wife.

Therefore, applying the *Borello* test and secondary factors, it is found that Mr. Reyes was an employee of Mech 23, Inc. rather than an independent contractor.

Defendant argues that at the time of the incident in question, 3/14/24, Mr. Reyes was a licensed independent contractor who had insurance, and that Mech 23, Inc. had no liability by way of the contract executed by Mr. Reyes on 3/12/24. However, Mr. Reyes was injured while completing a project which had begun approximately two weeks prior to the date of the accident, and prior to signing the Subcontractor Agreement. Mr. Reyes was dispatched to a Sephora store to repair a door that would not close properly. He climbed a ladder and saw that the metal arm at the top needed to be replaced. The part cost \$260 at Home Depot, but Mark said that he would only pay Mr. Reyes \$80 for that job, so he could not finish the job that day. Mark then sent him to a different location to work. Mr. Reyes found the part for the Sephora job cheaper elsewhere, so Mark told Mr. Reyes to buy it. Two weeks later, Mr. Reyes returned to Sephora replace part, but someone else had apparently tried to fix it, and a screw was missing from the part. While Mr. Reyes was standing on a ladder, a screw from the metal part struck him in the eye, which caused him to fall from the ladder. The Applicant took a picture of the unfinished state of repair and told Mark that he couldn't finish the job. Mark said that he did not care, and that Mr. Reyes needed to finish the job. (MOH SOE 10/30/25 3:16-24; MOH SOE 1/15/26, 4:1-5).

Since Mr. Reyes had been instructed to perform the door repair at Sephora by Mech 23, Inc. to order the replacement part at a cheaper price, and to return to Sephora approximately two weeks later to finish the job, Mech 23, Inc. retained control over the Applicant's performance of this job.

Despite Applicant having signed a contract to hold himself out to be a subcontractor two days prior and to purchase insurance covering Mech 23, Inc. one day prior to the accident, this did

not change the nature of the working relationship between Mr. Reyes and Mech 23, Inc. Therefore, it is found that Applicant was an employee of Mech 23, Inc.

Application of Labor Code Section 2750

Mech 23, Inc. maintained the right to control the manner of the performance of the contract because the Applicant was required to show pictures of the work before commencing and to show the finished product before leaving each day. Also, Mech 23, Inc. determined how much the Applicant would be paid for his work. Furthermore, the insistence of Applicant to purchase liability insurance and to sign a Subcontract Agreement occurred after Applicant had already performed at least nine jobs for the company, so it may be viewed as a subterfuge for employee status. Therefore, not all of the requirements for finding independent contractor status were met in this case.

Dynamex Test

In 2018, the Supreme Court issued a different test to determine whether a person is an employee or an independent contractor for the purposes of California wage orders adopted by the Industrial Welfare Commission in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles County (Lee)*(2018) 83 CCC 817. In that case, two delivery drivers filed a class action against Dynamex, a nationwide package and document delivery company, alleging it misclassified its delivery drivers as independent contractors rather than employees. The Supreme Court rejected Dynamex's contention that *Borello* was the appropriate standard under California law for distinguishing employees and independent contractors for the purposes of a wage order. The Supreme Court held that a worker is considered an independent contractor to whom a wage order does not apply only if the hiring entity establishes that: (A) the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact; (B) the worker performs work that is outside the usual course of the hiring entity's business; and (C) the worker customarily is engaged in an independently established trade, occupation or business of the same nature as the work performed for the hiring entity. This has been commonly known as the "ABC test". The court emphasized that the new standard applies only to wage orders. It did not expressly overturn *Borello* in other areas.

Following the Legislature's intent to reduce worker misclassifications in which workers would incorrectly be held out as independent contractors who do not have rights to a minimum wage, workers' compensation benefits, or other financial benefits, Governor Gavin Newsom signed *Assembly Bill 2257*, which generally retains the basic framework of the ABC test in *Dynamex*, but changes the exceptions, effective September 4, 2020. Under AB2257, proper classification of employment status requires analysis using the 3-part test, or "ABC" test described above, to determine if workers are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission. However, there are some exempt occupations or business relationships, such as still photographers, photojournalists, freelance writers, editors, and newspaper cartoonists.

Application of the ABC Test

In the instant case, (A) Reyes was not free from the control and direction of Mech 23, Inc. because he was dispatched to specific locations by Mech 23, Inc., and he was required to take a picture of the repairs to be done upon arrival, to provide an estimate of the labor cost, and to send a picture of the completed repair prior to departure. Reyes was compensated for his work based upon whatever Mark thought was appropriate; (B) Applicant's work as a maintenance worker or handyman was essential to Mech 23 Inc.'s general contractor business, so he was performing work that was not outside the usual course of the hiring entity's business; and (C) Reyes was not customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the hiring entity, as he was a handyman(Exhibit CC), while Mech 23, Inc. was a general contractor (MOH SOE 1/15/26 4:14-16, 5:17-20).

Therefore, according to the ABC test, it is found that Narcio Reyes was an employee because the hirer cannot prove any of the provisions of the three-pronged test that could classify Reyes as an independent contractor.

Defendant avers that Labor Code Section 2781 renders the ABC test inapplicable to this Applicant. However, Labor Code Section 2781 states: "Section 2775 and the holding in *Dynamex* do not apply to the relationship between a contractor and an individual performing work pursuant to a subcontract in the construction industry, and instead the determination of whether the

individual is an employee of the contractor shall be governed by section 2750.5 and by Borello, if the contractor demonstrates that **all of the following criteria are satisfied** (emphasis added):

- (a) “The subcontract is in writing.” Mr. Reyes was hired by Mark of Mech 23, Inc. to be a maintenance person for retail customers of Mech 23 sometime in September or October of 2023. (MOH SOE 10/30/2025, 2:10-11). No subcontract existed until March 22, 2024 (Exhibit BB). The subsequent execution of the subcontract which Mech 23 directed the Applicant to sign did not change the nature or manner of how the Applicant performed his jobs for Mech 23.
- (b) “The subcontractor is licensed by the Contractors State License Board and the work is within the scope of that license.” Mr. Reyes listed his contractor’s license number on his business card (Exhibit CC).
- (c) “If the subcontractor is domiciled in a jurisdiction that requires the subcontractor to have a business license or business tax registration, the subcontractor has the required business license or business tax registration.” Mr. Reyes signed a W-9 tax form which was executed on 3/4/2024, which was approximately 6 months after he was hired by Mech 23 (Exhibit DD).
- (d) “The subcontractor maintains a business license that is separate from the business or work location of the contractor.” Mr. Reyes shows a business address in Cambria (Exhibit DD), while Mech 23 shows a business address in San Francisco (Exhibit BB).
- (e) “The subcontractor has the authority to hire and to fire other persons to provide or to assist in providing the services.” If Applicant was not capable of performing the job, he would advise Mark. He was then instructed to find an electrician or plumber who could perform the work needed. (MOH SOE 1/15/26 3:7-16). The owner of Mech 23, Mr. El Haddad, testified that if a subcontractor cannot perform the job, Mech 23 will ask the subcontractor to refer someone else to do it (MOH SOE 1/15/2026 5:4-5). The record is devoid of any evidence that Mr. Reyes had the authority to hire or fire other persons to provide or to assist in providing the services.
- (f) “The subcontractor assumes financial responsibility for errors or omissions in the labor or services as evidenced by insurance, legally authorized indemnity obligations, performance bonds, or warranties relating to the labor or services being provided.” Mr. Reyes did not have insurance when he was hired by Mech 23. He purchased a commercial general liability policy naming Mech 23 as an additional insured on 3/13/24 (Exhibit EE) after Mark made this a condition to Mr. Reyes being provided with any additional work. Mech 23, Inc. recommended a couple different insurance brokers to Mr. Reyes and instructed him to purchase a policy with \$1 million coverage and to add Mech 23, Inc. as a covered party for an extra premium. The policy was shown to Mark, who approved it. (MOH SOE 10/30/25 3:11-15).

- (g) “The subcontractor is customarily engaged in an independently established business of the same nature as that involved in the work performed.” Mech 23 is a construction company that provides maintenance and repairs to retail stores (MOH SOE 01/15/2026 4:14-16, while Reyes Handyman provides handyman services (Exhibit CC). In this instance, Reyes did not have the expertise to perform electrical work nor drywall repair.

However, Mech 23, a general contractor, would be expected to cover all of the maintenance and repair needs of its commercial clients. Thus, it cannot be said that Reyes was customarily engaged in an independently established business of the same nature as that involved in the work performed.

Mech 23 fails to establish all of the criteria in *Labor Code Section 2781* for carving an exception from the applicability of *Section 2775* and the Dynamex test. Therefore, it is found that Reyes was an employee of Mech 23.

B. PRESUMPTION OF COMPENSABILITY

Labor Code Section 5402 (a) states: “ Knowledge of an injury, obtained from any source, on the part of an employer, his or her managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400. “ Reyes testified that when he fell off the ladder at Sephora on 3/14/24 that he called Mark to tell him that he could not finish the job because he was injured. However, Reyes also testified that he fainted during this incident and did not have a clear recollection of what occurred. He heard someone say, “Call 9-1-1” and he heard the paramedics say, “Wake up” (MOH SOE 10/30/25 3:20-25, 4:1-2). Therefore, it is questionable as to whether actual notice of the injury was given to Mark, the individual who dispatched Applicant to the various jobs, approved costs and work completed, and would be the person charged with knowledge of the assertion of a claim of injury sufficient to make an investigation into the facts. Thus, knowledge of the injury might not be imputed to the employer on 3/14/24. However, an Application for Adjudication of Claim was served by mail on Mech 23, Inc. and Hartford Casualty Ins. Company on May 17, 2024 (EAMS Doc. ID 52010101), which would constitute notice of a claim.

Labor Code Section 5402 (b) states:” If liability is not rejected within 90 days after the date the claim form is filed under Section 5401, the injury shall be presumed compensable under the division. The presumption of this subdivision is rebuttable only by evidence discovered subsequent

to the 90-day period .” Given that Mech 23, Inc. and Hartford Casualty Insurance were served by mail with an Application for Adjudication of Claim on 5/17/24, and Hartford’s denial letter did not issue until 11/14/24, more than 90 days elapsed from the employer’s actual date of knowledge, it is found that the injury shall be presumed compensable.

Defendant contends that the WCJ’s finding that the presumption of compensability applies was in excess of the WCJ’s powers. Defendant argues that the issue before the court was employment, and any decision that the presumption of compensability would apply is incorrect. However, Defendant’s argument is frivolous because the parties executed a First Amended Pretrial Conference Statement and submitted the following issues for Trial: 1) Employment; 2) Whether Applicant was an independent contractor; 3) Whether the defendant issued a timely denial (Document ID number 79571135). The same issues were recited on the record at the commencement of Trial (MOH 9/16/2025, pg. 2, Document ID number 79596979). No objection was made after the Minutes of Hearing were served. Defendant agreed to have the issue of whether the denial was timely decided by the court. Contrary to Defendant’s assertion in its Petition for Reconsideration that the court erroneously determined that the failure to deny the claim within 90 days gave rise to a presumption of compensability of employment, the WCJ after finding that the Applicant was an employee determined that the denial was untimely, which gave rise to compensability of the claim.

The threshold question of employee status was determined to be in the affirmative. Consequentially, the secondary question of the presumption of compensability was also determined to be in the affirmative. It is improper for Defendant to consent to an issue to be submitted to the WCJ for determination and subsequently state that the WCJ acted in excess of the WCJ’s powers because Defendant obtained an unfavorable result.

IV **RECOMMENDATION**

Accordingly, it is recommended that the Petition for Reconsideration be denied in its entirety.

DATE: May 19, 2026

Jamie A. Louie
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE