

# American Copper Council: California Update

May 22, 2019 – Seattle, WA



# California: Big Changes Coming?



- *Dynamex*: Independent Contracting in Jeopardy
- New Truck Emission Standards
- Push for Zero-Emissions





# *Dynamex v. Superior Court*

- April 2018 California Supreme Court decision
- Instituted “ABC” worker classification test for claims brought under California Wage Orders (Min. Wage, Overtime, Meal & Rest, Pay Stubs)
- Worker is presumed to be employee unless the worker:
  - A. Is free from direction and control
  - B. Performs work outside the usual course of the hiring entity’s business**
  - C. Is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed





## ***Dynamex v. Superior Court***

- Trucking capacity could be greatly impacted
- 71% of trucking companies in California are single-truck owner-operators
- Half of all trucking capacity in California is operated by fleets of 3 or fewer trucks
- ***Dynamex*** may prevent longstanding arrangements where owner-operators and smaller trucking companies from provide services to other trucking companies and brokers as independent contractors.
- Eliminating independent contracting would impact countless industries: Doctors, Attorneys, Insurance, Sellers, Gig Economy, Music Instructors, Personal Trainers, Barbers/Beauticians, Journalists, Software Engineers, etc.

# *Dynamex v. Superior Court*

- ***CTA v. Becerra***: CTA and two CA owner-operators have sued to prevent application of ABC test on grounds of federal preemption. Awaiting decision by district court on State and Teamsters' motion to dismiss.
- ***Alvarez v. XPO (C.D. Cal)***: Citing *CTA v. Su*, finds FAAAA preempts Dynamex.
- ***Vazquez v. Jan-Pro (9<sup>th</sup> Circuit)***: Dynamex applied retroactively, and in franchise context.
- ***Garcia v. Border Transportation (CA Court of Appeals)***: IC's must perform work for multiple entities to satisfy C-prong.





# Making Dynamex the Law: Assembly Bill 5

- Assembly Bill 5 introduced Dec. 2018
- Would codify Dynamex decision in California law for purposes of Labor and Unemployment Insurance Code
- Currently carves out insurance agents, doctors, financial service providers, direct sellers
- Carve outs pending for professionals and beauticians/hair salons
- Primary focus on gig economy
- Some version of this bill will likely pass this year



# National Outlook

- Many states have versions of ABC test, but scope/applicability varies. Legal challenges include:
  - ***Massachusetts Delivery Association v. Coakley (1<sup>st</sup> Circuit)***: FAAAA preempts B-Prong of Massachusetts ABC test
  - ***Costello v. Beavex (7<sup>th</sup> Circuit)***: No FAAAA preemption of Illinois ABC test in IWPCA (governs timely payment of wages, deductions)
  - ***Bedoya v. American Eagle Express (3<sup>rd</sup> Circuit)***: No FAAAA preemption of New Jersey ABC test “No part of the New Jersey test categorically prevents carriers from using independent contractors”





ARE YOU GETTING YOUR  
**MEAL BREAKS?**



# Other Labor Issues

- 2018 bill created joint liability between port truckers & shippers for labor law violations.
  - Labor Commissioner list of companies w/ unpaid judgments
  - Joint/several liability for shippers that tender freight to companies on list
- Labor peace agreements
- Private Attorney Generals Act (PAGA)
- Meal and Rest
  - ATA successfully petitioned FMCSA to preempt California meal and rest breaks
  - Two district court decisions upholding retroactive application of FMCSA's determination
  - Petitions filed in 9<sup>th</sup> Circuit to reconsider



# New Truck Emission Standards

- EPA Announced “Cleaner Trucks Initiative” in Nov 2018
  - Rulemaking by 2020
  - Apply to 2024 model year at earliest
  - Focus on NOx
- California-only Standard?
  - California Air Resources Board has announced it intends to do California truck standard for 2024+ model years
  - Other:
    - Min warranties extended to 350k miles, proposed to go as high as 800k miles
    - Useful life/certification
    - OBD
    - Zero-emission powertrain certification





## New Truck Emission Standards

- CARB also looking at new “smog check for trucks”
  - Might require submittal of OBD scans as condition of registration/operation in California
  - Might involve network of sensors at weigh stations, ag inspection stations, ALPR
- **Truck and Bus Rule**
  - All trucks operating in California must be EPA2010 model year by 2023
  - **Proof of compliance required to register truck starting in 2020**
  - No new “in-use” rules proposed to date







# New Truck Emission Standards

- Local air districts (Southern California, Bay Area, San Diego) proposing “indirect source rules”
- Would allow local air regulators to indirectly regulate mobile sources (cars, trucks, ships, trains, planes) by regulating the seaport, airport, railyard, warehouse
- Indirect source may face choice to pay mitigation fees or crack down on mobile sources
- Increasing community pressure





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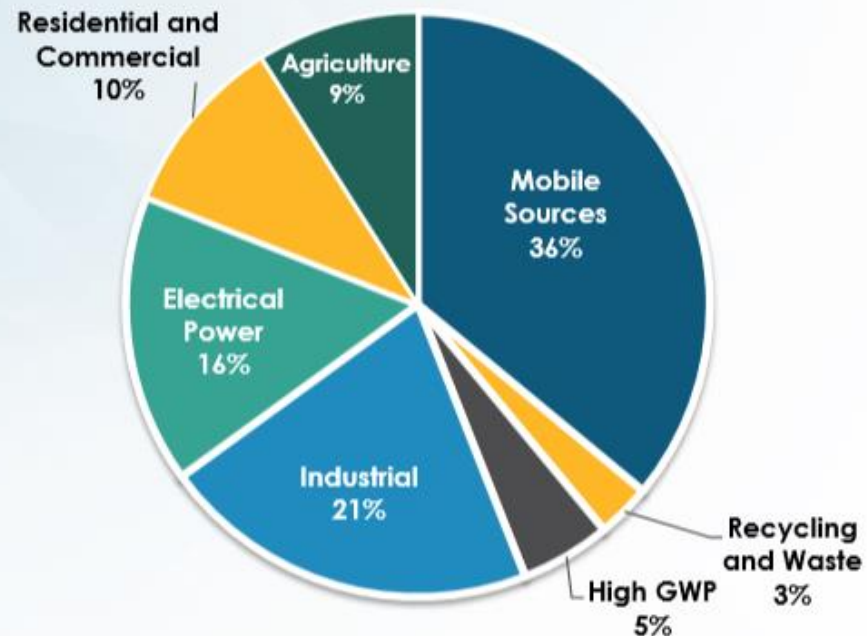


# Push for Zero-Emissions

## California's Climate Change Targets – Transportation Remains Largest GHG Source

- ✓ Achieve 1990 GHG levels by 2020
- 40% below 1990 levels by 2030
- 80% below 1990 levels by 2050
- Cleaner electricity targets (SB 100)
  - 60% renewable by 2030
  - Zero carbon by 2045
- Carbon neutrality by 2045

CA GHG Emissions (2017)



Note: Mobile sources represent ~50% of GHG inventory when including emissions from fuel production



# Push for Zero-Emissions

- Even with all existing regulation, transportation GHGs projected to **increase** in future years
- Overall CARB strategy for transportation
  - Light and Heavy Duty Fuel Efficiency Rules
  - Low Carbon Fuels
  - Land Use Changes (increased density, transit oriented development)
  - **Transportation Electrification**



# Push for Zero-Emissions

## Heavy-duty Electric Market Growing - 2016



\*Excludes transit buses, not all models shown

# Push for Zero-Emissions

## Heavy-duty Electric Market Growing - Today

	2B-3	4-5	6-7	8
Commercial Today				
Commercial Soon				
Demos				

\*Excludes transit buses, not all vehicles shown



# Push for Zero-Emissions

- CARB to propose “Advanced Clean Trucks” Regulation by end of 2019
- Will require a % of new Class 2b-8 truck sales in California to be zero-emission or plug-in hybrid beginning in 2024
  - Targeting cumulative 38,000 zero-emission trucks by 2030
- Fleet reporting requirements





# Push for Zero-Emissions

## Percentage Schedule

### Sales Percentage Requirement

Model Year	Class 2B-3*	Class 4-8 Vocational	Class 7-8 Tractors
2024	3%	7%	0%
2025	5%	9%	0%
2026	7%	11%	0%
2027	9%	13%	9%
2028	11%	24%	11%
2029	13%	37%	13%
2030	15%	50%	15%

\*Excludes pickups until 2027 MY

## Who Will Be Reporting

- Entities with California gross receipts > \$50 million annually
- Motor carriers, freight forwarders, and brokers that own or dispatch 100 or more trucks
- Port terminal operators
- Federal, state, county, and city fleets
- Utilities, refuse/recycling services



# Push for Zero-Emissions

- “Last mile” and port/rail fleets need to watch fleet rule developments
- Role of California utilities in transportation electrification
- Role of incentives
- Spillover effects of federal car rule rollbacks



# Thank You!

- Questions?
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