



“Children Learning, Parents Earning, Communities Growing”

Court Decision Jeopardizes Needs of Working Families

SACRAMENTO – A recent Supreme Court decision has the potential to eliminate at least a half to two-thirds of the allocated 192,000 subsidized child care slots to roughly 100,000 of our poorest of working families in California. Additionally, this decision will nearly eliminate access to child care providers desperately needed by families trying to work and support their children.

The Supreme Court ruling is *Dynamex Operations West v. Superior Court* (“*Dynamex*”), issued on April 30, 2018. The immediate impact of the ruling is only just beginning to be understood by community based nonprofits that support working families and those on the California Work Opportunity and Responsibility to Kids (CalWORKs) programs with access to a variety of child care and early education settings.

In California, the most fragile of families are able to secure information and family support to access child care that best meets their working needs. Depending on the program, the families access this support through either their local county welfare department or their local alternative payment program¹ provider. Based on their needs, the family is then provided a “voucher” for them to take and choose the child care provider that will best meet their working hour demands.

According to the *Dynamex* decision, child care providers chosen by the families can no longer be “independent contractors” or own their own businesses. In 1976, Governor Brown piloted then enacted California’s child care delivery system to support working families this way; the cornerstone being that the majority of the child care providers be independent small business owners. Furthermore, the *Dynamex* decision deems these independent contractors as employees. And there lies a conundrum.

California’s child care system is much different than the “gig” economy being addressed via *Dynamex*. Family child care business owners choose this profession and commit to providing a consistent and stable service out of their homes. They too choose to comply and pay the business taxes just like any other small business.

The *Dynamex* decision applied a new “ABC²” test that could be interpreted as applying to these independent child care providers. If this test is applied then the over 50,000 plus child care providers must immediately be made employees of either their local county welfare department, the California Department of Social Services or the California Department of Education, the community based nonprofits or an employee of the parent. Further, whichever entity is deemed as the employer, they must provide the legal obligations of an employer to 50,000 plus child care providers and must pay back four years of back pay. Regardless of the scenario, an immediate cut in the allocated child care slots will have to be made and families will be forced into the untenable situation of choosing work or taking care of their child.

For fiscal year 2018-2019, the California Legislative Women’s Caucus (LWC) made it the top priority to secure more child care slots for working families to access³. As justification in making child care the priority, the LWC noted a recent report estimated that six out of seven children eligible for subsidized child care in California did not receive services from state programs; the estimated number of children eligible for subsidized childcare is 1,479,000⁴. *Dynamex* takes away all of the gains made in recent years.

California’s child care delivery system is not a “gig” economy and therefore the *Dynamex* decision ought not to apply. The California legislature must immediately act and remedy or risk the harm that will befall on tens of thousands of working families that will lose their child care.

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¹ <https://cappa.memberclicks.net/assets/Updated%20What%20is%20an%20APP.pdf>

² <https://law.justia.com/cases/california/supreme-court/2018/s222732.html>

³ <http://womenscaucus.legislature.ca.gov/sites/womenscaucus.legislature.ca.gov/files/PDF/LTR%20-%20LWC%20budget%20Gov%205.7.18%20Final.pdf>

⁴ <https://calbudgetcenter.org/resources/1-2-million-california-children-eligible-subsidized-child-care-not-receive-services-state-programs-2015/>