

# Management Alert



## California Supreme Court Delivers A Class Action Standard For Independent Contractor Determinations

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Whether an employer-employee relationship exists is determined, in part, by examining “whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired.” In *Ayala v. Antelope Valley Newspapers*, the California Supreme Court held that, at the certification stage, the relevant inquiry is not whether the hirer’s *degree of control* exercised over the hirees was sufficiently uniform, but whether the hirer’s *legal right to control* how the end result was achieved was sufficiently uniform. Because the newspaper carriers in *Ayala* had entered into standard contracts with the newspaper, the California Supreme Court held that the newspaper’s alleged right to control the newspaper carriers was subject to common proof, which might support class certification. The opinion noted that secondary factors are also relevant and must be evaluated to determine whether they require individual inquiries or can be assessed on a classwide basis.

### The Facts

The plaintiffs were newspaper carriers who had entered into standard contracts with Antelope Valley Newspapers, Inc. (“AVP”) to deliver newspapers as independent contractors. The plaintiffs alleged that AVP, through the contracts, controlled what was to be delivered, as well as when and how it was to be delivered, and that AVP had the right to terminate the contracts on thirty days’ notice.

The carriers sued AVP, alleging that the company had misclassified them as independent contractors rather than as employees. The carriers alleged that this classification deprived them of various rights under California wage and hour laws, including entitlement to overtime, meal and rest breaks, and reimbursement for business expenses.

### The Lower Court Decisions

The carriers, in seeking class certification, argued that the propriety of their classification could be determined by examining their standard contracts with AVP and other common proof. Therefore, they argued, the misclassification claim could be determined by common proof. Conversely, AVP argued that the carriers’ classification as independent contractors critically depended on how, and to what extent, AVP actually exercised control over the carriers’ work, and that individual variations in how the carriers provided delivery results precluded the use of common proof to determine liability.

The trial court agreed with AVP, denying class certification because the numerous variations in how carriers provided delivery

results meant that the misclassification issue required individualized inquiries and was not suitable for class treatment. Moreover, the lack of common proof on how many days the carriers worked each week and how many hours the carriers worked each day meant that they lacked common proof of classwide liability for seventh-day overtime pay or for missed meal and rest breaks.

The Court of Appeal affirmed the denial of class certification as to claims involving meal and rest breaks, and seventh-day overtime pay, because the carriers lacked common proof of hours worked. But the Court of Appeal reversed the denial of class certification as to the threshold issue of whether AVP correctly classified the carriers as independent contractors (an issue on which all the Labor Code claims depended, including a claim for expense reimbursement). The Court of Appeal reasoned that, as to the threshold classification issue, the “right to control” could be resolved by reviewing the standard contracts between AVP and the carriers. AVP sought review of this latter ruling.

## The Supreme Court’s Holding

The California Supreme Court upheld the Court of Appeal’s ruling, emphasizing that the relevant inquiry of whether an individual is an independent contractor or an employee “turns foremost on the degree of a hirer’s right to control how the end result is achieved,” although secondary factors can also be relevant. Thus, whether the company’s right to control, and the existence of secondary factors, can be determined on a classwide basis will depend on the extent to which there are variations in the company’s rights with respect to control over the manner and means of accomplishing the end result and the secondary factors, and whether any such variations are manageable. The trial court erred in denying class certification based on variations in how AVP withheld or exercised an alleged right to control the manner and means by which the carriers performed the end result, rather than on differences in AVP’s *right* to exercise control over the manner and means of accomplishing the end result. The California Supreme Court criticized the trial court’s decision as giving “only cursory attention to the parties’ written contract,” as opposed to focusing on individual variations in carriers’ newspaper delivery practices and AVP’s failure to exercise control over those practices.

Of additional concern to the California Supreme Court was the significance of the secondary factors considered in determining independent contractor or employee status (e.g., whether the carriers were engaged in a distinct business, their instrumentalities and place of work, the length of time for which services were to be performed, etc.). Here, the California Supreme Court agreed with the trial court that those factors could be relevant to whether the determination of employee status could be made on a classwide basis, but cautioned the court on remand to evaluate whether the secondary factors required individual inquiries or whether they could be assessed through common proof.

The case was thus remanded for a reconsideration of class certification in light of the California Supreme Court’s new guidance.

## What *Ayala* Means For Companies That Contract With Independent Contractors

An important question leading up to *Ayala* was which test of employment status the California Supreme Court would use—the common law “right to control” test or the broader “suffer or permit to work” standard embodied in the California Wage Orders. The California Supreme Court applied the multi-faceted “right to control” test.

In the wake of *Ayala*, it appears that a standard contract that establishes a uniform degree of control over the manner and means of how independent contractors provide results may help a plaintiff establish predominance for purposes of class certification. At the same time, significant and material differences as to the degree of control with regard to the “various hires” as well as the secondary factors could still be decisive in defeating attempts to certify a class of independent contractors, on the basis that these variations undermine predominance or make a class trial unmanageable. In addition, as in *Ayala*, the plaintiff bears a separate and distinct burden of proving the appropriateness of class certification for the various Labor Code claims that depend upon a finding of employee status, showing that a trial of these claims would be manageable.

It is critical that companies contracting with independent contractors review their agreements and the practices used to manage them. Companies will want to ensure, if they wish to retain the independent status of their service providers, that they appropriately relinquish any contractual right to control the manner and means of producing the contracted-for results.

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