

# POLICY MATTERS

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With Congress in recess and out of DC, Policy Matters has an update of what's been happening in the courts this week:

**High Court Applies "ABC" Test When Assessing Independent Contractor Status.** On Monday, the Supreme Court of California [ruled](#) in *Dynamex Operations v. Superior Court* that a three factor "ABC" classification test is the correct method under state law for determining whether a worker should be classified as an employee or independent contractor. The test presumes that a worker hired to perform services is an employee of the hiring business, subject to the hirer's ability to provide all three of the following elements:

- (A) The worker is free from the hirer's control and direction in connection with performing the work, both under contract and in fact.
- (B) The worker performs work that is outside the usual course of the hirer's business.
- (C) The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

See Seyfarth's [Client Alert](#) for more information on the decision and the ABC test.

**DACA Lawsuit Filed in Texas.** On Tuesday, Texas and six other states (Alabama, Arkansas, Louisiana, Nebraska, South Carolina, and West Virginia) [filed a lawsuit](#) against the federal government in an attempt to end the Deferred Action for Childhood Arrivals (DACA) program. As [recent court rulings](#) have forced the administration to continue renewing DACA applications, a group of attorneys general, led by Texas AG Ken Paxton, filed the suit to allow the administration to continue with its termination of the program. The lawsuit mirrors a [2014 suit](#) filed by the state of Texas which successfully challenged the Obama administration's attempt to expand DACA to include parents ("DAPA"). Both the current lawsuit and 2014 DAPA challenge were filed in the U.S. District Court for the Southern District of Texas.

**Lawsuit Filed on H-1B Third-Party Placement Rule.** Earlier this week, a group of IT staffing firms [filed a lawsuit](#) against DHS due to its most recent policy memorandum regarding the placement of H-1B workers at third-party client sites. As detailed in last week's *Policy Matters*, the [new guidance](#) has functionally prohibited employers from placing its STEM OPT employees "at the place of business or worksite of the employer's clients or customers," as it requires that training may only occur at the employer's worksite, unless the external training site is accessible to agents of Immigration and Customs Enforcement (ICE) seeking to conduct an inspection of the off-site location. The lawsuit is seeking a temporary restraining order [blocking enforcement of the memorandum](#). Several business groups have asked USCIS for clarity on this guidance—stay tuned.

**Appeals Court Denies Request to Intervene on Fiduciary Rule.** A last-ditch effort from AARP and the states of California, New York, and Oregon to [revive the Department of Labor’s “fiduciary” rule](#) came up short on Wednesday. The 5th Circuit Court of Appeals ruled that the parties could not intervene in *U.S. Chamber of Commerce v. DOL*, which resulted in a [2-1 decision](#) in favor of the Chamber. The Chamber and other business groups have long argued that the Securities and Exchange Commission is the appropriate regulator in this area, not DOL. AARP and the other plaintiffs in the case are weighing their options moving forward.

We’ll see you next week when Congress is back in action.

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