This week, the California Supreme Court dramatically narrowed the definition and use of independent contractors.

In the unanimous ruling, the court stated that in order to classify a worker as an independent contractor, a business has the burden of proving:

(A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;

(B) that the worker performs work that is outside the usual course of the hiring entity’s business; and

(C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

This is referred to by the Court as the “ABC test.”

Applying this criteria, a plumber who is hired temporarily by a retail business to repair a leak would be classified as an independent contractor because they are not performing work that is part of the store’s usual business (an example cited by the Court.) On the other hand, a plumber that is hired by a plumbing service/company and sent to customer locations is an employee, regardless of whether the plumber owns his/her own vehicle or makes their own schedule.

The ruling will have a major impact on the pool construction and service industries, where many companies have relied on the independent contractor relationship for many core functions.

In establishing this “ABC” test, California joins a number of states including Massachusetts, New Jersey, Delaware and Vermont, suggesting a significant trend, particularly in states known for a more liberal judiciary.

Employers in all states should examine their relationships, making sure that they comply with the current criteria in their respective states. APSP will continue to watch these developments.