

1 [Supporting California State Assembly Bill No. 5 (Gonzalez) - Worker Status: Employees and
2 Independent Contractors]

3 **Resolution supporting California State Assembly Bill No. 5, authored by Assembly**
4 **Member Lorena Gonzalez, to codify and expand the California Supreme Court’s**
5 **decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018)*,**
6 **establishing a presumption that a worker is an employee for purposes of wages and**
7 **benefits.**

8
9 WHEREAS, On April 30, 2018, the California Supreme Court issued a landmark,
10 unanimous decision in the matter of Dynamex Operations West, Inc. v. Superior Court of Los
11 Angeles (2018), which embraced a standard for worker classification that presumes that all
12 workers are employees instead of independent contractors; and

13 WHEREAS, The ruling was one of the most significant legal victories in decades for
14 misclassified workers, who lack a basic safety net when they are sick, laid off, or get injured
15 on the job; and

16 WHEREAS, The Dynamex Case interprets existing law as placing the burden on any
17 entity classifying an individual as an independent contractor of establishing that such
18 classification is proper under the newly adopted “ABC Test”; and

19 WHEREAS, Under the ABC Test, a worker is presumed to be an employee unless their
20 employer establishes each of the following: 1) that the worker is free from the control and
21 direction of the hiring entity in connection with the performance of their work; 2) that the
22 worker performs work that is outside the usual course of the hiring entity’s business; and 3)
23 that the worker is customarily engaged in an independently established trade, occupation, or
24 business of the same nature as the work performed; and

1 WHEREAS, The question of whether a worker is an employee has considerable
2 impacts on the livelihood of the worker, including whether the employer bears the
3 responsibility of paying Social Security and payroll taxes, unemployment insurance taxes and
4 state employment taxes, providing worker's compensation insurance, and complying with
5 State and Federal laws governing wages, hours, and working conditions; and

6 WHEREAS, The relatively recent rise of the so-called "gig economy," wherein
7 employers contract with purportedly independent workers for ostensibly short-term
8 engagements, has predicated itself on the exploitation of many workers who have been
9 denied the opportunity to be classified as employees and therefore denied the basic benefits
10 that all employees are entitled to, such as unemployment insurance, health care subsidies,
11 paid parental leave, overtime pay, workers' compensation, a guaranteed minimum hourly
12 wage, and the right to organize to better their working conditions; and

13 WHEREAS, California's low-wage and immigrant workers, such as domestic workers,
14 day laborers, restaurant workers, and janitors, among others, are some of the most vulnerable
15 workers also subjected to misclassification and wage theft; and

16 WHEREAS, For years, worker organizations, advocates and city officials in San
17 Francisco worked together and passed laws to establish strong labor protections, fair
18 minimum wages, healthcare security, paid sick leave and other benefits for employees in San
19 Francisco; and

20 WHEREAS, Assembly Bill No. 5 would codify existing case law as established by the
21 California Supreme Court in the Dynamex Case, and apply the Dynamex "ABC Test" to
22 determine the status of a worker as an employee or independent contractor for all provisions
23 of the Labor Code and the Unemployment Insurance Code, unless another definition or
24 specification of "employee" is provided; and

25

1 WHEREAS, By codifying the law established by the Dynamex Case, Assembly Bill No.
2 5 would give the State of California stronger enforcement tools and make it harder for
3 companies to label workers as independent contractors instead of employees, a common
4 practice that has allowed businesses to skirt local, state and federal labor laws; and

5 WHEREAS, Assembly Bill No. 5 would likely impact a number of companies that have
6 risen to prominence in the past decade in large part by exploiting tens of thousands of
7 workers, depriving those workers of a basic social safety net and passing along costs to
8 taxpayers, costing the State of California in excess of \$7 billion annually; and

9 WHEREAS, Assembly Bill No. 5 would help to address widening income inequality that
10 has allowed a small number of executives to profit immensely while subjecting workers to
11 poverty wages and unsustainable working conditions; now, therefore, be it

12 RESOLVED, That the City and County of San Francisco stands with workers,
13 community groups and labor unions in strong support of Assembly Bill No. 5; and, be it

14 FURTHER RESOLVED, That the Board of Supervisors hereby directs the Clerk of the
15 Board to transmit copies of this Resolution to San Francisco's State Legislative Delegation
16 and the Office of the Governor of California accordingly.

