

WSTA to Pursue a Preliminary Injunction to Prevent the Courts from Applying the *Dynamex* Rule

7/24/18

The analysis below is in response to a request by the staff and EC to our legal counsel for an analysis on the pros and cons of seeking a preliminary injunction concerning our lawsuit against the state of California pertaining to the recent CA Supreme Court *Dynamex* Decision. Ultimately, we think the decision is primarily a legal one rather than a preliminary one.

A **preliminary injunction**, in equity, is an injunction entered by a court prior to a final determination of the merits of a legal case, in order to restrain a party from going ahead with a course of conduct or compelling a party to continue with a course of conduct until the case has been decided.

Our current complaint seeks a permanent injunction, which would issue if we win on the merits. Getting to a decision on the merits is likely to take months. There may be some discovery by both sides, as well as some pre-hearing motions, prior to a definitive ruling.

One option to get an answer more quickly would be to seek a preliminary injunction to prevent the courts from applying the *Dynamex* rule until we get our full hearing on the merits. However, the standards for getting a preliminary injunction are very high. As one court has described it, “a preliminary injunction represents the exercise of a very far reaching power never to be indulged except in a case clearly warranting it.” In order to prevail on a request for a preliminary injunction, we would need to show either:

1. a likelihood of success on the merits and the possibility of irreparable injury; or
2. that serious questions going to the merits were raised and the balance of hardships tips sharply in their favor

We think it is going to be very tough to prevail on either of those prongs; nevertheless, we do have some good arguments and a supporting appellate court FAAAA preemption decision. *Schwann v. FedEx Ground Package System, Inc.*, 813 F.3d 429 (2016). Note that whether we seek a preliminary injunction or not, and whether we prevail or not in a request for a preliminary injunction, we can still proceed with our case for a permanent injunction, and thus there is little downside in trying.

Preliminary Injunction Requirements

