

# Daily Journal

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## California's Top Labor & Employment Lawyers for 2016

### EDITOR'S NOTE

PAGA remained omnipresent in employment law this year. A record number of new lawsuits invoked the Private Attorney General Act of 2004 as employees pushed for civil penalties and to escape employers' binding arbitration clauses.

In this special issue, we honor some of the California lawyers involved in these and other cutting-edge employment and labor cases. They are brilliant, strategic and, most of all, agile, as they navigate a fast-moving and ever-changing legal landscape. Compiling this list, we often marveled at the performances of these lawyers. As you read through this issue, we think you'll be impressed, too.

## Felix Shafir

FIRM:	CITY	SPECIALTY
Horvitz & Levy LLP	Encino	Employer defense litigation, appellate law

Shafir's recent work includes cases at the intersection of ride-sharing network law and broader issues of worker classification. For client American Logistics Co., he won affirmance of a trial court denial of class certification after drivers filed a potential class action alleging they had been misclassified as independent contractors.

"You see similar fact patterns in Uber and Lynx litigation as the tech revolution provides new platforms for transportation services," Shafir said. His client coordinates transportation for hire, including for the elderly and persons using wheelchairs. ALC's dispatch center conveys prospective passengers' requests for rides to drivers, who decide whether to accept the trip offer. As with Uber and Lynx, the ALC drivers brought the class action on misclassification grounds.

"The drivers never really nailed the commonality argument," Shafir said, referring to one of the tests for class certification. "There were too many individual issues, as the trial court found." At the Court of Appeal, Shafir argued for affirmance and the

panel agreed there were also typicality issues, another class test. "That may be true of a number of these cases," Shafir said. "It's hard to pin down who the workers claim has control over them." *Valdovinos v. American Logistics Co. LLC*, G049797 (4th DCA, opinion filed Oct. 7, 2015)

Taking the classification question further, Shafir as part of an appellate team represents the U.S. Chamber of Commerce and its California counterpart as friends of the court before the state Supreme Court in a case Shafir called fundamentally important to workers and businesses: Which test should govern whether a worker is an employee or an independent contractor? "In the past, for decades, courts have relied on a right of control test," he said. "This case will answer whether that is the only test that governs in the future." Competing for the outcome is a definition of employee construed by the Industrial Welfare Commission in a 2010 case versus a common law test discussed in a 1989 appellate opinion. The case is fully briefed and awaits an oral



argument date. *Dynamex Operations West v. Superior Court*, S222732 (Cal. Sup. Ct., filed Nov. 24, 2014)

"Courts, lawyers and parties are struggling with these tough issues," Shafir said. "Labor and employment law is always developing as technology newly impacts the workforce. There is a lack of clarity, and *Dynamex* will start providing answers."

— John Roemer