

Challenges to Gig Worker Laws Are Spreading

Labor & Employment Law Update

By Kevin Kleine on June 27, 2024

Several States and major U.S. Cities, including California, New York City and Seattle, have passed laws aimed at classifying “gig workers” as employees as opposed to independent contractors in recent years. Challenges to these laws are spreading, but finding no sympathy with courts thus far.

Gig workers are individuals who perform temporary, freelance or contract work, like drivers and delivery drivers, and who are usually classified as independent contractors by the businesses who utilize their services. Independent contractors typically are not subject to the same laws as employees, including those mandating benefits such as paid time off, minimum wage or overtime pay.

On June 10, 2024 the United States Court of Appeals for the 9th Circuit upheld California's Assembly Bill 5 (AB 5), which requires employers to classify certain individuals as employees rather than independent contractors unless certain conditions are satisfied.

AB 5, which took effect on January 1, 2020, requires employers to treat individuals as employees unless:

- (A) The person 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) The person performs work that is outside the usual course of the hiring entity's business; and
- (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

This is commonly referred to as the “ABC” test. The plaintiffs challenged AB 5, arguing California's Legislature unlawfully targeted app-based businesses. The 9th Circuit disagreed and upheld AB 5, reasoning that California's Legislature rationally believed app-based businesses impermissibly misclassify gig workers to avoid the financial responsibilities associated with employing them, which deprives these workers of benefits and the state of California of needed revenue from mandatory employee deductions.

Notably, however, a 2020 voter-approved ballot measure, Proposition 22, excludes gig workers from AB 5. Proposition 22 is currently being challenged before California's Supreme Court.

App-based businesses lost a similar effort in 2023 to block New York City's minimum wage rules from going into effect, which required companies to pay gig workers a minimum wage of \$17.96 per hour when the rules took effect, and gradually increases to \$19.96 an hour when the rule is fully phased in on April 1, 2025.

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