LEGAL UPDATES

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# California, Ride-Hailing Companies Collide in Court: Implications and Next Steps

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Uber, Lyft, and other app-based transportation companies suffered a blow on August 20, 2021, when Alameda Superior Court Judge Frank Roesch ruled that California's Proposition 22 violates the state's constitution and is unenforceable. Proposition 22 is a ballot measure that was approved by a majority of California voters in November 2020 that sought to allow companies such as Uber, Lyft, and DoorDash to classify their drivers and couriers as independent contractors rather than employees.

The distinction is an important one, as employees are entitled to benefits such as healthcare coverage, paid time off, and the right to collectively bargain, while generally, independent contractors do not enjoy these benefits. Therefore, the ballot measure overrode portions of California Assembly Bill 5 (AB 5), signed in September 2019. AB 5 fundamentally changed the analysis required to determine whether a worker should be classified as an employee versus an independent contractor by mandating (subject to complex exceptions and exemptions) use of the so-called "ABC test." As a result of the ballot measure, app-based drivers were required to be classified as independent contractors rather than employees.

Judge Roesch ruled that Proposition 22 would unconstitutionally limit "the power of a future legislature" to define the employment status of gig workers. The lawsuit was filed by the Service Employees International Union (SEIU) in January, but the California Supreme Court declined direct review. Uber has already announced its intent to appeal the ruling, stating that the ruling "defies both logic and the law." The Protect App-Based Drivers & Services Coalition, whose members support Prop 22, have also vowed to appeal, stating that

Judge Roesch's decision was an "outrageous" affront to the majority of California voters who supported the ballot measure less than a year ago.

The superior court's decision is just the latest in a long line of victories and defeats in the battle between companies that heavily rely on gig workers—like Uber and DoorDash—and unions and advocates representing workers. The debate centers on the legal distinction between an independent contractor and an employee in the context of app-based transportation services. Hanging in the balance is the degree to which app-based workers are entitled to the same protections as employees (as enumerated in the California Labor Code and other applicable laws). Some worker advocates claim app-based drivers classified as independent contractors are treated unfairly, while other worker advocates and app-based businesses argue in favor of the drivers' interests in governing their own work habits. For example, DoorDash denounced the judge's ruling, arguing it would prevent the company's contract couriers from "maintaining the independence that is so vital to them," if the judgment is upheld on appeal.

**What does this mean for California and other states?**

In the near term, both sides acknowledge that Prop 22 will remain in effect, pending appeals. Perhaps more importantly, Friday's ruling does nothing to address the serious issues and challenges that more "traditional" businesses face in the wake of AB 5. The majority of California businesses that use independent workers are still grappling with the complexities of AB 5 compliance, given that AB 5 is—to put it mildly—dense.

Current California law also falls short of addressing the fundamental problems of the "ABC" test. By way of background, under the ABC test, a worker is considered an employee and not an independent contractor, unless the hiring entity satisfies all three of the following conditions: (1) 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; (2) the worker performs work that is outside the usual course of the hiring entity's business; and (3) the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

As just one example, AB 5 failed to provide for any integration between AB 5 and the California Corporations Code. The Corporations Code recognizes many different business structures (including sole proprietorship), but under AB 5's strictures, a formerly independent "business owner" may be unwillingly forced into employee status.

As other states, such as New York and New Jersey, aim to adopt ABC-like tests, a more serious policy debate is warranted. A comprehensive solution is needed, one that balances worker protections with the important interests and values supported and enhanced by the independent contractor model.

This is particularly so in light of the transformation of the American and global workplaces—workers today value choice, flexibility, and economic opportunity. This might be the catalyst for finding a more workable balance among competing interests.

**Contact us**

For further insight into these and other questions, please contact experienced California employer's counsel, Amberly Morgan and Jennifer Hinds, or your Husch Blackwell attorney. The team is well-versed in handling employee classification issues, and others.