

California Court Orders Uber and Lyft to Reclassify Drivers as Employees

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A trial court judge in San Francisco issued a preliminary injunction blocking Uber and Lyft from continuing to classify drivers as independent contractors under California's employment laws. The judge briefly delayed enforcement, however, so the ride-hailing services will have time to appeal the order.

California Attorney General Xavier Becerra and other state leaders sued Uber and Lyft seeking millions of dollars in back pay for drivers who were allegedly misclassified. The lawsuit was brought under a state law that took effect Jan. 1 that allows businesses to classify workers as independent contractors only if they meet stringent requirements under a three-part test.

If the ride-hailing drivers are ultimately deemed employees under California law, they will be entitled to minimum wage, overtime pay and other benefits that are not generally provided to independent contractors.

"While this fight still has a long way to go, we're pushing ahead to make sure the people of California get the workplace protections they deserve," Becerra said.

The battle isn't over yet, but the ruling sends a strong message from California courts to gig-economy businesses, said Katherine Catlos, an attorney with Kaufman Dolowich & Voluck in San Francisco. She noted that some app-based companies view themselves as technology platform providers rather than transportation services.

Uber and Lyft officials argue that drivers enjoy the flexibility of creating their own schedules and working as independent contractors. Particularly during the coronavirus crisis, some people are turning to app-based platforms to earn income after losing their job (https://urldefense.proofpoint.com/v2/url?u=https-3A__www.marketwatch.com_story_men-2Dare-2Dmost-2Dlikely-2Dto-2Dturn-2Dto-2Drise-2Dsharing-2Dapps-2Dlike-2Duber-2Dand-2Dlyft-2Dafter-2Da-2Djob-2Dloss-2D2019-2D10-2D31-3Fmod-3Dquentin-2Dfottrell&d=DwMFaQ&c=nQOnw6HHAeKBNxj23OXhOw&r=uwxx9QJkKWt0Lh2vkOOmSVajKabYNPVCpSh6dkMkmxk&m=PXHKWU0X803WmgNVUbTrckSswafjEkoGuw9GITWMB00&s=yDCE358zMZ0qfwYQm2ZSMoJzURcydhBFmBn8npM-hOM&e=). "Drivers do not want to be employees," Lyft said in a statement. "We'll immediately appeal this ruling and continue to fight for their independence."

The 'ABC Test'

Effective Jan. 1, AB 5 (https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB5) codified a 2018 California Supreme Court decision that created a three-pronged test, called the "ABC test," to determine whether a worker should be classified as an employee or independent contractor.

The test used prior to the ABC test was a multifactor analysis that primarily focused on who exerted control over the work. But under the ABC test, all three of the following factors must be met for a worker to be properly classified as an independent contractor:

- 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.
- The worker performs tasks that are outside the usual course of the hiring entity's business.

- The worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the hiring entity.

AB 5 applies to all provisions of the California Labor Code and Unemployment Insurance Code unless another definition of "employee" is provided. The statute "is intended to ensure that all workers who meet its criteria receive the basic rights and protections guaranteed to employees under California law," said California Superior Court Judge Ethan Schulman, in the Aug. 10 order.

"In granting the state of California's request for a preliminary injunction enjoining Uber and Lyft from classifying their drivers as independent contractors, this trial court decision decisively reaffirmed the primacy of the so-called ABC test in determining how workers are classified," said Jesse Jauregui, an attorney with Alston & Bird in Los Angeles.

Employers should be aware that they need to monitor their independent-contractor roles and decide whether they need to be reclassified to employee roles, Catlos said.

Employers should note that there are exceptions to AB 5 (www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/hr-administrators-exempt-from-independent-contractor-test.aspx) for various categories of workers. "HR professionals should consult with their in house and outside counsel to determine if any of those exceptions apply to any of their employees or service providers," Jauregui suggested.

Voters to Weigh In

"While Uber will very likely appeal the granting of the preliminary injunction, the focus will also move to the November election and its efforts to secure the passage of Proposition 22, which seeks to define app-based and delivery drivers as independent contractors," Jauregui said.

Uber, Lyft and several grocery and food delivery services secured enough signatures to get the gig-worker classification issue on the ballot the November (https://www.sos.ca.gov/elections/ballot-measures/initiative-and-referendum-status/eligible-statewide-initiative-measures/?mod=article_inline), but Schulman declined to delay the injunction until the votes are in. "That Uber and Lyft are attempting to persuade the voters to change [AB 5], an effort that may or may not succeed, is no reason for this court to refrain from deciding the issues currently before it," he said.

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Specifically, California voters will get to decide on Election Day whether drivers for app-based delivery and ride-hailing services continue to be classified as independent contractors. App-based drivers will be defined on the ballot as workers who either:

- Provide delivery services on an on-demand basis through a business's online-enabled application or platform.
- Use a personal vehicle to provide prearranged transportation services for compensation through a business's online-enabled application or platform.

The ballot measure would also ensure app-based drivers receive certain benefits, including:

- Minimum net earnings of 120 percent of the state's or locality's minimum wage and 30 cents per mile.
- Healthcare subsidies.
- Occupational accident insurance.
- Accidental death insurance.

Under the measure, companies would have to develop anti-discrimination and sexual harassment policies, and drivers would be limited to working 12 hours during a 24-hour period.

"Ultimately, we believe this issue will be decided by California voters," Lyft said.

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