California Court Says Uber and Lyft Drivers Are Employees, Not Contractors

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Uber and Lyft may be longing, ironically enough, for the days when COVID-19 was the most immediate existential threat to their businesses. But now a California court has ruled that Uber and Lyft cannot classify their California drivers as employees, entitling them to sick leave, wage minimums and a whole host of other job protections.

How exactly did we get here? Let's turn back the clock to September 2019 when California first signed Assembly Bill 5 ("AB5") into law. AB5 codifies the California Supreme Court's decision known as *Dynamex*. In that decision, the Court imposed a stricter three-prong test on employers seeking to classify their workers as independent contractors. We previously reported on this decision here back in May 2018.

In short, the test, known as the "ABC test," places a heavy burden on companies to prove the independent contractor status of their workers. The test's starting presumption is that all workers are employees, and the employer must prove, by satisfying all three factors, that the worker is performing work "outside of the hiring entity's business." Under the test, employers must show:

A) The worker is free from control and direction of the company – This was the previous legal standard, and fairly uncontroversial. The same cannot be said of the other two prongs.

B) The worker performs work outside the usual business – A strict reading of this standard limits independent contractors to workers who perform services completely unrelated to the company's core function. The *Dynamex* court used the examples of a retail store that "hires an outside plumber to repair a leak in a bathroom on its premises or hires an outside electrician to install a new electrical line."

C) The worker is regularly engaged in the trade, occupation, or business they are hired to do, independent of the work for the company – The *Dynamex* court explained this prong prevents "unilateral[] determin[ations]" by companies that workers are independent contractors simply by assigning the label. The point is to identity whether individuals have actually "made the decision to go into business for himself or herself."

AB5 took effect January 1, 2020, and empowered state attorneys to seek injunctions to force businesses to comply with the law. Fast forward to May 2020 when California Attorney General Xavier Becerra and city attorneys for San Francisco, San Diego and Los Angeles brought suit against Uber and Lyft, seeking an order forcing the companies to reclassify their workers.

The debate as to whether the ride-hailing companies meet the three prongs has centered on

whether the companies meet the “B” prong: whether their workers perform work outside the usual business. Uber and Lyft have maintained that they satisfy this prong because they do not provide rides, but rather provide a platform that connects independent drivers to customers.

For San Francisco Superior Court Judge Ethan Schulman, this argument was of no moment. In a ground-breaking decision on August 10, 2020, Judge Schulman granted the state a preliminary injunction, reasoning, in a sort of axiomatic, conclusory fashion, “it’s this simple: defendants’ drivers do not perform work that is ‘outside the usual course’ of their businesses.” As such, Judge Schulman concluded Uber and Lyft could not possibly meet prong “B” of the test and therefore, there is a strong argument that the drivers are not independent contractors under AB5, warranting the injunction.

Judge Schulman did however stay the order for a 10-day period in order for Uber and Lyft to appeal the decision, which they intend to do.

Take-Away

AB5 is proving to be a powerful weapon in California’s crusade against juggernaut tech companies, and this latest decision may only be the beginning. California’s labor commissioner, Lilia García-Brower, also recently brought a pair of lawsuits under the law against Uber and Lyft for allegedly committing wage theft by willfully misclassifying drivers.

The swift enforcement of AB5 may force a tectonic shift in the way California companies will have to conduct business going forward, especially companies that have founded their business models on utilizing large independent contractor workforces. Such companies may be forced to reclassify large portions of their workforces, which will come at an enormous cost.

Reclassifying workers as “employees” means companies may have to pay certain payroll taxes and afford these employees certain labor protections and benefits, including guaranteed minimum wage, overtime pay, paid rest breaks, paid parental leave, unemployment insurance, health care subsidies and workers’ compensation. The list goes on and on. Importantly, as employees, “gig” workers have the right to unionize.

What are California companies to do? To the extent they have not already, companies need to start reviewing their classification practices now and modify them accordingly, or prepare to defend them under the new standard.