

## Developments in California Law for the Gig Economy

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With many employees being furloughed or laid off as a result of COVID-19, many employees are looking to opportunities in the gig economy to supplement (or replace) their income. Any such persons should be aware of recent changes in the law that affect displaced workers.

On January 1, 2020, California's Assembly Bill 5 (AB5) took effect, recharacterizing many independent contractors as employees for many purposes. The new law is aimed at gig economy platforms such as ride share platforms that have not provided employee protections and benefits to their drivers. Although the law affects ride share platforms, its application is much broader and effectively classifies every service provider as an employee if they meet an ABC test, which treats a worker as an employee unless the worker performs work that is outside the ordinary course of the hiring entity's business.

The law is now being tested in the courts and a proposition is on the November ballot asking voters to give ride-sharing companies an exemption to AB5. Companies like Uber Technologies, Inc. ("Uber") and Postmates, Inc., as well as the California Trucking Association, are challenging the constitutionality of AB5 in federal court. While the federal case is pending, the Attorney General of California, joined by several municipalities, filed a lawsuit in a California state district court seeking to force Uber and Lyft, Inc. ("Lyft") to reclassify their ride-sharing drivers as employees rather than independent contractors. The California state district court ruled in favor of the Attorney General but a last-minute ruling by a state's appeal's court delayed the enforcement of the district court's ruling while further litigation is pursued.

At the same time as the app based drivers are challenging the law, the California Employment Development Department (EDD) has increased its enforcement efforts against misclassification of employees.

However the court case or the vote turn out, many companies will find that they are operating under new rules and increased scrutiny when it comes to worker classification. This new emphasis on classification probably could not come at a worse time, as individuals seek other sources of income in the gig economy. Even new and startup companies (especially new companies) must be vigilant to ensure that they comply with the labor laws.

As an example, a legal mistake that startups make which is closely related to misclassification is the failure to comply with minimum wage laws. Startup companies often attempt to pay employees in equity instead of cash, contrary to federal and state labor laws. The costs to the employer of an erroneous position on the issue can include taxes, penalties, unpaid wages, overtime, waiting time penalties and more. The careful gig worker will be cognizant of their treatment under current federal and state law before wither hiring workers, establishing a platform business or participating in the gig economy.

For more information on recent changes in California law. See our articles posted [here](#).