

The gig is up! New AB 5 law turns many contractors into employees

California Assembly Bill 5, signed into law Sept. 18, requires most gig economy companies to treat their independent contractors as employees.

Under the law, an app-based company such as Uber or Lyft must pay minimum wages and unemployment compensation to contractors if the company exerts control over how a worker performs the work or if their work is part of the company's regular business.

The bill is slated to take effect Jan. 1, 2020.

Uber extended

The new law comes at a particularly difficult time for the ride-sharing app Uber. Citing losses, the company laid off 435 technical workers in early September. Analysts have estimated the bill's additional cost for Uber and its competitor, Lyft, at between \$2,000 and \$3,600 per driver, a total of an additional \$500 million per year.

The companies had sought an exemption from the bill over the last several months but failed to secure it. However, they are not going down without a fight. Uber, Lyft and food delivery app DoorDash have each committed \$30 million to a campaign to place the issue on California's 2020 ballot.

Uber and Lyft have both stated that turning contractors into employees will force them to schedule drivers ahead of time. Part of the ride-sharing model's appeal to contractors is schedule flexibility. They argue they will lose so much money during slow periods that it will endanger their viability. Some analysts have suggested the companies could use bonuses as incentives to lure drivers into working during high-demand periods.

Nothing in the new law requires employers to place workers on set shifts. The companies have suggested they may limit the number of drivers during slow periods to control costs.

What AB 5 means for gig employers

Companies built on the Uber model will face higher costs under the new law. As contractors become employees, they become entitled to minimum wage, overtime pay and, in many cases, workers' compensation and health benefits. In addition to ride-hailing drivers, people working as food-delivery couriers, janitors, manicurists, construction workers and franchise owners could all be reclassified as employees under AB 5.

Businesses that rely on cheap, independent contractor labor to undercut existing companies will now have to reexamine their approach in light of costs that will likely grow much higher.

Advice: Gig employers should confer with an attorney to determine what options exist after AB 5 takes effect.

The broader context

California is the first state to declare gig workers are employees. Many states have passed laws confirming their status as independent contractors.

New York City passed a minimum wage for ride-hailing drivers, but stopped short of declaring them employees. Similar bills in the states of New York, Washington and Oregon have failed to gain enough support for passage. In light of California's move, those efforts may be reenergized.

Several Democratic presidential contenders have advocated for similar protections at the federal level. Sens. Kamala Harris, Bernie Sanders and Elizabeth Warren have all supported legislation that would give workers, including gig workers, greater rights to organize.

The legislation was pushed by big labor and represents a sign that the labor movement may be in ascendancy after years of decline.

A steady stream of pro-worker legislation coming out of Sacramento should convince employers to consider paying more attention to worker-friendly business practices.

Unintended consequences

While AB 5 targeted the gig economy, it could very well affect other employers that use independent contractors. The effect will be for California employers to make sure any independent contractors they use are independent under AB 5 and any other applicable state laws, as well as under federal law.

Using independent contractors was tricky enough before AB 5. Currently, employers must follow rules from California's Labor and Workforce Development Agency, the federal Department of Labor and the Internal Revenue Service. AB 5 potentially adds another, new definition of what it means to be an employee.

This may be a good time for all companies that use independent contractors to have their attorneys review their contracts. Contractors who are independent now may not be on Jan. 1.

Contractors who can demonstrate that they are or should be employees will be able to sue for minimum wages, overtime pay, workers' compensation and maybe even health coverage. Employers could even be on the hook for retroactive payroll taxes as well. Now is the time to make sure the status of each of your contractors is clear.

Options for gig employers

The gig economy was already in transition before AB 5 passed. Gig companies that thrived during the Great Recession have recently struggled with falling revenues, and app developers have had a harder time raising venture capital. The regulatory cloud that has hung on the horizon for years has now begun to rain on the gig economy. Consider AB 5 the first loud thunderclap.