



Freelancers' California Court Loss Doesn't Bode Well For Gig Economy Businesses

Insights

1.08.20

As readers of this blog know, three separate groups have filed lawsuits seeking to block or overturn California's AB-5, the new law that raises the bar to make it very difficult for businesses to classify workers as independent contractors: truck drivers, freelancers, and gig economy companies. Although the truck drivers were successful in winning a temporary reprieve from the law, the freelancers' group just received bad news that could also spell trouble for gig economy companies. A federal court denied their request for a temporary restraining order that would have blocked the law from taking effect against them, and given the similarities between their arguments and the arguments presented by gig economy businesses, we may have just received a sneak preview into how the court will rule on the case we care about the most.

A brief rewind: on the eve of implementation, a federal court blocked AB-5 from taking effect as to truck drivers. The court found that the new law, which codifies the ABC test and makes it challenging for businesses to utilize contract labor – and incredibly challenging for gig economy companies to do so – is likely preempted by a federal statute that regulates the transportation industry. But once the clock struck midnight and we entered 2020, the law was in full effect for all other industries across the state.

A group of freelancers filed a similar lawsuit seeking a reprieve from AB-5, but their argument centered more along the state and federal constitutions. On January 3, a federal court judge in Los Angeles denied their request, pointing out that the groups waited three months after the bill was signed into law to file their challenge, only two weeks before the effective date. As an AP reporter noted, "they sought the temporary restraining order just a day before it became effective." That didn't sit well with Judge Philip Gutierrez. "Plaintiffs' delay belies their claim that there is an emergency," his order said. If the freelancers had promptly filed their objections, perhaps there would have been time for a full hearing where the arguments could have been fleshed out, he said. But since the legal challenge was not brought until the eleventh hour, the judge saw no need to expedite consideration of their request to put the case on pause during the legal arguments. Instead, the next hearing on the case will take place in March, and it appears as if the ABC test will be in place for freelancers until then at the least.

Which brings us to the gig economy businesses' lawsuit. It wasn't filed until December 30, just two days before the law took effect. If the judge hearing that case similarly doesn't appreciate the late

hour in which the challenge was filed, it seems likely that there will be no temporary restraining order blocking implementation during the pendency of the legal arguments. But also, as opposed to the truck drivers' lawsuit that relied upon a federal law preemption argument, the gig economy businesses' claim is hinged upon constitutional arguments, just like the freelancers' claim. For these reasons, we might look to the freelancers' claim as a way to portend how the gig economy claim will turn out. And obviously, the current news is not great.

We'll keep a close eye on all of these claims and provide updates as warranted.

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