# Court Rejects Gig Economy Attempt To Block New California Misclassification Law

Insights
2.10.20

A federal court judge today denied a request by several gig economy giants (and a few contractors) to block AB-5, the new misclassification law in California that codifies the ABC test and makes it much more difficult to classify workers as independent contractors. That means that gig economy companies across the state have no immediate avenues to escape the grasp of the ABC test, which became state law on January 1. If you were waiting to determine whether to make any adjustments to your business model in the hopes that the law wouldn't apply to your business, the time is now to give your attention to compliance solutions. While you can still hold out hope that there will be a legislative fix, or an eventual court ruling in businesses' favor, or an election-day ballot measure that would solve many problems, these potential solutions have uncertain futures and are not on the immediate horizon – so you shouldn't hold your breath.

By way of quick background, Uber and Postmates joined with several contractors to file a lawsuit on December 30 in an attempt to overturn the controversial new state law. The companies were one of several groups that filed similar lawsuits; while truck drivers earned a big win several weeks ago blocking AB-5, that decision was based more on a federal law carving out a special place for motor carriers and preventing states from interfering with those businesses. Freelancers, on the other hand, got bad news early last month as a judge declined to block the law as to them.

In today's opinion rejecting the gig economy companies' attempt to win a preliminary injunction that would block the law during the pendency of the underlying litigation, the court actually used the businesses' own arguments against them. Here's a quick summary of the main legal arguments posed and the court's reasoning in rejecting them:

- **"The law unfairly targets gig economy companies"** – The companies brought an Equal Protection argument that they were unfairly targeted by the law. After all, they argued, the bill included dozens of seemingly random carve-outs and exemptions that permit many other industries escape the law's reach. If misclassification is such an evil, they argued, why wasn't it a broadly applied law that wouldn't just ensnare gig economy companies and other similar businesses? The court rejected this argument because, according to the judge, the purpose of the law is to address "legitimate concerns of deleterious misclassification of workers in many industries, not just the gig economy." Even if the gig economy companies were specifically targeted by the law – which appeared likely given some controversial tweets sent by the

California lawmaker who championed the bill and seemingly had animus against some gig economy businesses – the court was not swayed because the businesses were not members of a "politically unpopular group," for example, that would deserve extra protection.

- **"AB-5 deprives contractors of the right to pursue their chosen occupation" –** Another constitutional argument rested on the premise that workers should have the right to choose their own professions, and the law unfairly restricted them from doing so. The court had two main reasons for rejecting this argument. First, it said, many gig economy companies have already said that they believe they are in compliance with AB-5 and the ABC test, and that their business models will withstand the scrutiny brought about by the new law. To that end, the judge said, there is no concern because the workers can continue to be contractors. Second, even if the workers can't be classified as contractors under these specific business models, they aren't prevented from doing their chosen line of work because they can always just find another workplace that affords them the same compensation opportunities and the same measure of flexibility. (Which begs the question: if those jobs are so easy to find, why are millions of workers signing up for flexible gig work?)
- **"The ABC test interferes with business contracts"** – The final argument raised was that the Contracts Clause of the constitution would be violated by the imposition of AB-5 because it would effectively shred the tens of thousands of contracts agreed upon between workers and gig economy companies. The court once again noted that many gig businesses have already planted a flag to say that they are in compliance with AB-5 and therefore don't need to alter business relationships. Moreover, the court said, to the extent that the contracts are called into question, the viability of those contracts were called into question before they were signed. It pointed to the fact that the most recent contractor agreements were entered into well after the controversial *Dynamex* decision was released, which should have attuned all parties to the fact that the validity of these agreements may have been in jeopardy.

So what's next? The litigation continues, and there is a chance that the court – or an appeals court – will one day agree with those challenging the law and strike it down. But that could be far in the future, and without a preliminary injunction blocking the law while the lawsuit continues, AB-5 is in full effect. There is also a chance that there could be a legislative compromise in 2020 that seeks to forge a solution that is more palatable to workers and gig companies, but the status of such negotiations – and any solution – is up in the air. Finally, this November may provide a chance for California voters to remedy the situation on their own should a ballot measure appear that would cement contractor status for transportation network drivers and deliver network drivers so long as companies complied with typical gig economy business hallmarks (freedom, flexibility, etc.). But obviously November is many months away, and we're all stuck with the ABC test in the meantime. Until another solution is reached, it's time to ensure your business model complies with AB-5.

### *Related People*

**Richard R. Meneghello**
Chief Content Officer
503.205.8044
Email

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Gig Economy