In September, the California legislature passed Assembly Bill 5 (AB 5) requiring gig economy workers to be classified as employees. The law, which went into effect Jan. 1, is intended to make it more difficult for companies to hire workers as contractors. AB 5 affects more than 1 million low-wage workers in California as it transforms a range of industries from trucking to technology. [1]

In order to remain classified as a contracted worker, the company must prove the individuals are independent and performing work beyond the traditional course of business. This is determined through a three-pronged assessment referred to as the “ABC test.”[2] If companies cannot do so, they are required to classify the individual as an employee and guarantee basic labor protections like minimum wage, overtime, insurance and sick days.

Supporters argue that companies have been exploiting contract workers for years by derailing from fair labor laws. Advocates also contend that economic liberalism has allowed industries to go too far in their practices and it is essential to reel them back in. Additionally, proponents of the measure consider it to guarantee protections to contracted workers who otherwise do not receive benefits.

However, challenges from freelance media creators, various tech conglomerates and the trucking industry are increasing. Companies such as Uber, Lyft and Postmates are continuously refusing to reclassify their drivers as employees.

In order to avoid complying with the law, some companies have attempted to negotiate with lawmakers and unions to develop a divergent classification of workers who remain classified as contracted with some added benefits. Additionally, days before the law went into effect, Uber and Postmates filed a legal challenge to the law asserting that it violates individuals’ rights and discriminates against technology platforms. According to NPR, various companies have also invested approximately $100 million to support a ballot initiative to reject the new provisions.[3] If voters were to pass this initiative in November, companies would be exempt from the employee classification requirement.

Companies within the journalism and photography industries have also found difficulty implementing the law. For example, the sports website SB Nation (owned by Vox Media) announced it would terminate contracts with hundreds of contracted freelancers as a result of AB 5.[4] A lawsuit has also been filed by these industries claiming that the law violates free speech.

Initiatives by the trucking industry to halt the measure have been more effective. Citing the Federal Aviation Administration Authorization Act (FAAAA)[5], lawyers argued the FAAAA bars states from regulating interstate motor carriers. Both state and federal court have instituted a temporary blockage of AB 5 to the industry as a result.

Drivers are divided on the argument of flexibility versus guaranteed benefits around the implementation of AB 5. Without AB 5, employees can often work in the manner of a freelancer with significant schedule flexibility. Under the law, however, the employee is guaranteed to the benefits of
a W-2 worker but can be subjected to the loss of flexibility. Groups such as Gig Workers Rising have collectively mobilized drivers to advocate for better wages and have lobbied lawmakers to support AB 5.

With the implementation of AB 5, there is speculation that fare hikes might result as companies like Uber compensate for the additional costs of supplying worker benefits. Additionally, companies might leave California in pursuit of states with less restrictive labor protections. On the other hand, the implementation of AB 5 could lead to substantial increases in labor rights and benefits for millions of low-wage workers, ultimately improving their overall quality of life.

Identified by the CSG’s Future of the Workforce: Approaches to Increasing Access and Inclusion Report are four overall challenges that accompany the rise of the gig economy: worker classification, civil rights and worker protections, portable benefits, informed choice of worker status, and data collection.

As these issues emerge on the national stage, there is potential for similar legislation to be introduced in other states facing comparable circumstances.


By: Wednesday, February 26, 2020 at 12:01 PM
Tags: gig economy [7]
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