New Proposed State Bills Classifying Gig Workers as Employees Can Affect the Way Independent Contracting Works in the Trucking Industry

March 2, 2022

In September 2019, California Governor Gavin Newsom signed into law Assembly Bill 5 (AB5).[1] The law went into effect in January 2020, and it requires companies to reclassify independent contractors as employees in some circumstances.[2] The bill makes it so that workers are considered employees rather than independent contractors, unless the employer can show that: (1) the worker is free to perform services without the control of the employer; (2) the worker performs tasks that are outside of the usual course of business of the employer; and (3) the worker is customarily engaged in an independent established trade.[3] Since delivering cargo is not "outside" the usual course of business for trucking companies, under these new rules, those that were once considered independent truck drivers will now be considered employees of the company that contracts with them.

To prevent the application of this test to the trucking industry, the California Trucking Association (CTA) sued the state, and asked for a preliminary injunction.[4] The United States District Court for the Southern District of California granted the injunction in January 2020, but the state appealed the decision, and a three judge Ninth Circuit panel reversed the decision in a 2-to-1 vote in April 2021.[5] The court, however, let the injunction stay in effect while CTA pleads its case in front of the Supreme Court of the United States.[6] According to CTA, California's Assembly Bill 5 ("AB-5"), which codified the ABC test, is preempted by the Federal Aviation Authorization Act of 1994 (FAAA).[7] The Supreme Court, in response, requested that the Solicitor General of the United States submit a filing reflecting the views of the federal government on this issue.[8] There is no deadline for the Solicitor General to complete the filing, but after it is done, the Supreme Court will finish considering whether to hear the case or not.[9] If this process is completed by spring of 2022, then it is possible that the Court will make a decision by the end of the term; otherwise, it may take until the end of 2022 for the Court to rule on whether the law is valid, prolonging the uncertainty on whether the law is unconstitutional.

Meanwhile, other states are considering implementing laws similar to AB5. In New Jersey, a proposal was introduced in November 2019 that would require the same test to be used to determine whether a worker is an employee or an independent contractor.[10] The proposal has been in committee since December of the same year,[11] but in February 2022, the Acting Attorney General, Andrew Bruck, filed an amicus brief alongside 14 other Attorney Generals with the National Labor Relations Board, urging them to adopt new standards to ensure that workers are not being misclassified as independent contractors.[12] This request for a change in regulations might push the state proposal forward in the near future.

Similarly, the Oregon State Legislature introduced a proposed bill in January 2021 to the same effect.[13] If this bill becomes law it would add the second prong of the AB5 test to the laws of Oregon, requiring that independent contractors do not perform services that are within the usual course of business of the employer.[14] The bill has been in committee discussions since June 2021.[15]

New York City's local government is also taking steps to implement similar worker reclassification laws. Like New Jersey, New York's Senate introduced a bill in November 2019 establishing criteria for determining whether labor or services performed for compensation qualify as employment.[16] The bill entered committee in January 2020, and there has not been much progress made from the legislature;[17] however, New York's City Counsel filed a non-binding resolution on December 31, 2021.[18] This resolution calls for the legislature to clarify the test used to determine

whether a worker is an employee or independent contractor.[19] The legislature has not communicated yet on its intentions to follow the resolution, but now that there is some pressure on them, lawmakers could decide to act.

Given that some states have shown they are in favor of measures that would change the way independent contractors are classified, businesses in the trucking industry should be prepared to adapt to those changes if they plan on using independent truck drivers in places such as California, New York, New Jersey, Massachusetts, and Connecticut.[20]

Attorney Advertising. This material is for general informational purposes only and does not represent our advice as to any particular set of facts; nor does it represent any undertaking to keep recipients advised of all legal developments. Prior results do not guarantee a similar outcome. © 2026 MG+M The Law Firm