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Court Rules that Uber and Lyft Cannot Treat California Drivers as Independent Contractors

On August 10, 2020, the San Francisco Superior Court granted the State of California a preliminary injunction requiring Uber and Lyft to reclassify their drivers as employees. *People of the State of California v. Uber Technologies, Inc.* concerns the application of Assembly Bill No. 5 (A.B. 5), which targeted the gig work economy. Uber and Lyft have disputed the application of the legislation to their businesses, so the California Attorney General Xavier Becerra and the city attorneys from San Francisco, Los Angeles, and San Diego initiated a lawsuit on May 5, 2020, to require Uber and Lyft to comply with A.B. 5.

A.B. 5, which came into effect on Jan. 1, 2020, codified the "ABC Test" in *Dynamex Operations West, Inc. v. Superior Court* for determining whether a worker should be classified as an employee for state tax and labor purposes. Under the ABC Test, a worker will be presumed to be an employee unless the hiring entity can establish three factors:

> (A) The individual is free from the control and direction of the hiring entity in connection with the performance of work;
>
> (B) The individual performs work that is outside the usual course of the hiring entity's business; and

> (C) The individual is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

The distinction between an employee and an independent contractor is an important one. If a worker is classified as an employee, the hiring business must pay federal Social Security and payroll taxes, unemployment insurance taxes and state employment taxes. The hiring entity must also provide worker's compensation insurance to employees and comply with state and federal statutes regarding working conditions, wages, and hours. A.B. 5 provides for injunctive relief to prevent hiring entities from continuing to misclassify their workers.

Uber and Lyft argued that A.B. 5 does not apply to their drivers because their businesses were "multi-sided platforms" instead of transportation businesses. The court rejected this argument because the California Public Utilities Commission regulates Uber and Lyft's businesses as transportation network companies. The court concluded that the drivers perform a function that is central to Uber and Lyft's businesses and, therefore, they cannot satisfy the second prong of the ABC test. The court weighed the harm to the drivers, competing businesses and general public of misclassifying the workers against the costs to Uber and Lyft of restructuring their businesses and concluded that a preliminary injunction was warranted. The court stayed the injunction for ten days, allowing the companies to file an emergency appeal of the ruling.

Uber and Lyft continue to challenge the application of A.B. 5 on multiple fronts. First, Uber has challenged the constitutionality of A.B. 5 in *Olson v. Becerra*. Uber's appeal of this case is pending before the Ninth Circuit. Second, Uber and Lyft have jointly sponsored Proposition 22, a ballot initiative on the November 2020 ballot which would classify app-based drivers as independent contractors. Finally, Uber and Lyft are involved with numerous cases in state and federal courts and individual arbitration proceedings raising similar issues. It remains to be seen what the outcome of these efforts will be; however, *People of the State of California v. Uber Technologies, Inc.* makes it clear that California intends to vigorously enforce A.B. 5. Businesses who rely on independent contractors and have been waiting to see how A.B. 5 will be applied should consult with their advisors to determine their exposure under the legislation.

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