

California Ballot Initiative Would Remove Ride-Share and Delivery Drivers from the “ABC” Test

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As we wrote here [recently](#), California’s Governor Gavin Newsom signed a bill known as AB5, which is designed to make it more difficult for companies to treat workers as independent contractors. The new law, which goes into effect on January 1, 2020, codified and expands the “ABC” test adopted by the California Supreme Court in *Dynamex Operations West, Inc. v. Superior Court* for determining whether workers in California should be classified as employees or as independent contractors.

Now some gig economy businesses are striking back. On October 29, 2019, a coalition of businesses and drivers announced a ballot initiative that could present a potential solution to AB5. The coalition seeks to have the proposal – known as the “[Protect App-Based Drivers & Services Act](#)” – appear on the California ballot in November 2020.

Under the initiative, which reportedly has been backed by Uber, Lyft, and DoorDash, certain “app-based” transportation and delivery drivers would necessarily qualify as independent contractors under California law, so long as the following conditions are met:

- The network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the app-based driver must be logged into the network company’s online-enabled application or platform;
- The network company does not require the app-based driver to accept any specific rideshare service or delivery service request as a condition of maintaining access to the network company’s online-enabled application or platform;
- The network company does not restrict the app-based driver from performing rideshare services or delivery services through other network companies except during engaged time; and
- The network company does not restrict the app-based driver from working in any other lawful occupation or business.

In addition, the initiative would extend various protections to covered drivers. For example, drivers

would be guaranteed 120% of the minimum wage; 30 cents per mile for fuel, and vehicle wear and tear; healthcare stipends (for drivers who work more than 15 hours per week); occupational accident insurance; automobile accident and liability insurance; and protection against unlawful discrimination and sexual harassment.

The initiative also calls for new customer and public safety protections, including mandatory recurring background checks, required safety training, caps on driver hours, and the mandatory implementation of zero tolerance policies for drug and alcohol offenses.

If the coalition garners enough support for the initiative, the measure would appear on the California ballot as early as November 2020, at which point voters would have a chance to weigh-in on an issue that has thus far been controlled by the courts and the legislature.

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