

California Voters Pass Proposition 22, Changing How App-Based Drivers Are Classified

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On November 3, 2020, California voters passed Proposition 22, a ballot measure that classifies certain app-based rideshare and delivery drivers as independent contractors. Under the new law, which will take effect immediately following the certification of California's election results in mid-December, app-based drivers may be properly classified as independent contractors if the hiring entity:

1. Does not unilaterally prescribe specific dates, times of day, or minimum number of hours during which the driver must perform services;
2. Does not require the driver to accept any specific service request or assignment as a condition of maintaining access to the company's application or platform;
3. Allows drivers to perform rideshare or delivery services for any other company, including direct competitors; and
4. Does not restrict the worker from performing any other kind of lawful work.

Proposition 22 also provides certain benefits and protections to app-based drivers who are classified as independent contractors. These benefits and protections are similar to but less comprehensive than those provided to employees, including, but not limited to, a guarantee of 120% of the applicable minimum wage for "engaged time" spent on rides or deliveries, healthcare subsidies for workers driving 15 hours per week or more, certain vehicle expense reimbursements, and occupational accident insurance for on-the-job injuries. Proposition 22 also requires companies to adopt anti-discrimination and anti-harassment policies and practices, provide background checks and safety training, and enter into written agreements with their drivers that protect workers from termination for reasons other than those specified in the agreement.

It remains unclear whether Proposition 22 will apply retroactively and/or whether it will render moot pending or future claims for misclassification or violation of AB 5 prior to the passage of Proposition 22. Although Proposition 22 has limited application to app-based drivers, California employers should pay close attention as courts grapple with these issues and others surrounding the recent

amendments to AB 5, as these changes will no doubt continue to affect the classification landscape in California and nationally.

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