

# The Gig Continues: California Supreme Court Upholds Proposition 22

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On July 25, 2024, the California Supreme Court issued its long-awaited ruling in [\*Castellanos et al., v. State of California and Protect App-Based Drivers and Services, et al.\*](#), upholding the 2020 voter initiative known as Proposition 22 that allows certain gig economy companies to classify drivers as independent contractors.

In 2019, California Assembly Bill 5, also known as AB5, expanded the landmark California Supreme Court decision in [\*Dynamex Operations West, Inc. v. Superior Court\*](#), and made the "[ABC test](#)" law.

Pursuant to the ABC test, in order to maintain independent contractor status, the hiring entity must establish *each* of the following three factors:

1. that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and*
2. that the worker performs work that is outside the usual course of the hiring entity's business; *and*
3. that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

As a result, AB5 is widely perceived as the most draconian independent contractor test in the country.

The impact of AB5 has been pronounced and widespread, perhaps most noticeably for California's gig economy.

In November 2020, following significant investment by affected companies such as Uber and Lyft, [Proposition 22 hit the ballot](#). It asked voters whether "App-Based Transportation and Delivery Companies" should be exempted from providing employee rights and benefits to their drivers. In other words, whether gig drivers could be classified independent contractors. The [initiative passed](#) by 59% of the vote, and was codified as [Business and Professions Code section 7451](#).

Shortly thereafter, drivers' groups and unions challenged Proposition 22, arguing that section 7451

was unconstitutional because it infringed upon the power granted to the legislature to regulate workers' compensation. After winning that argument in the Superior Court, the Court of Appeal reversed, and the Supreme Court agreed to hear the dispute.

The state's highest court rejected the challenge in a unanimous decision, holding that the state constitution does not preclude the "electorate from exercising its initiative power to legislate on matters affecting workers' compensation." The decision was careful to examine only the question presented, i.e., whether section 7451 was unconstitutional. The Court specifically declined further exploration of the underlying workers' compensation issue, stating: "We reserve these issues until we are presented with an actual challenge to an act of the Legislature providing workers' compensation to app-based drivers."

As a result of this decision, covered gig workers may maintain independent contractor status, with additional rights such as guaranteed earnings above minimum wage, health care stipends, and insurance — but without the protections of California's employment laws — while maintaining the flexibility often attractive to those who choose this work.

In addition to drivers for app-based companies covered by Proposition 22, there are other [limited exceptions](#) to AB5, such as businesses that work through referral agencies, real estate professionals, and workers providing professional services. Each of the applicable tests is involved and often complicated.

At this stage, before classifying anyone as an independent contractor in California, companies would be wise to review the issues closely with their counsel.

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