



Rise of the gig economy

The employee/contractor debate builds

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FIRST THINGS FIRST. WHAT'S A GIG ECONOMY?

Working “gigs” isn’t a new concept — people have long served as contractors, creators and craftsmen as part of a flexible workforce. The past decade, however, has seen a tremendous influx of project-specific workers; advancements with technology have opened innumerable doors to consumers who are looking for particular goods and services — and want them delivered with the touch of a button.

There are three distinct groups that make up the current gig economy:

- Workers who are paid for each task or project — each “gig”
- Consumers who need a specific service (a ride, for example)
- Companies that connect consumers to the workers who can provide the service they’re seeking

The rise of the gig economy is demanding reform on behalf of the workforce behind it. With recent cases in California, for example, the definition of what constitutes an independent contractor versus an employee is changing. To date, the most solid attempt at shaping the definition of an independent contractor is California’s Assembly Bill 5 (AB 5).



THE CURRENT STATE OF AB 5

Effective January 1, 2020 for unemployment issues and July 1, 2020 for workers' compensation issues, AB 5 codifies the decision in the 2018 case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* and clarifies its application. Enacting a three-part test employers must use to determine a worker's classification (learn more about the ABC test below), the bill will limit the ability of companies

to classify their workers as independent contractors rather than employees. While employees receive a set salary or hourly wage, a gig worker is paid for a specific, temporary job, even if it stretches for an indefinite amount of time. The bill was borne out of concern that companies were incorrectly deeming their workers as contractors, thereby denying them certain benefits and protections.

Proponents of the bill are looking to give workers, previously classified as independent contractors, the same benefits employees can expect: minimum wage, overtime pay, sick leave, unemployment compensation, etc. They argue it will also protect California from losing as much as \$8 billion in payroll taxes missing from an independent contractor-based structure.

THE ABC TEST, WHICH WAS ESTABLISHED BY THE CALIFORNIA SUPREME COURT, DETERMINES INDEPENDENT CONTRACTOR STATUS UNDER THESE CONDITIONS:

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

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OPPONENTS ESTIMATE AN INCREASE
IN LABOR COSTS OF AS MUCH AS

30
PERCENT

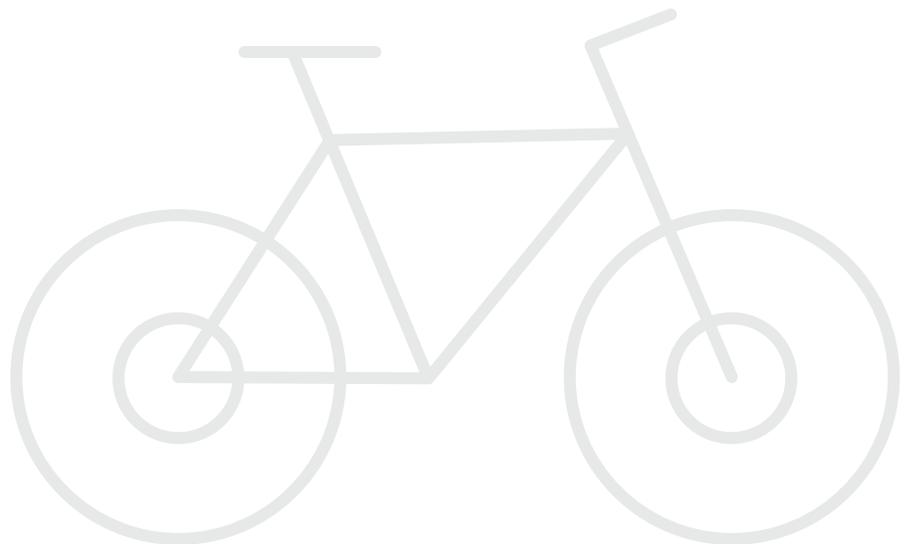


Not surprisingly, though, AB 5 is hitting some resistance. Those opposed to the bill estimate an increase in labor costs of as much as 30% if companies are forced to switch their workforce from independent contractors to employees. They argue this will translate into higher costs for customers and end users, along with reduced flexibility for workers – many of whom choose to be contractors primarily for the self-governance it affords them.

In the waning months of 2019, several notable groups stepped up their fight against AB 5. These groups are actively trying to prove that their workers should fall into one of the exempt classes not affected by AB 5, and that the bill itself is in violation of the Supremacy and Commerce Clauses of the U.S. Constitution.

Rideshare leaders Lyft and Uber, along with food-delivery service DoorDash, are backing a ballot initiative to overturn the bill¹; the competitors have joined forces, launching a \$90 million campaign that purports the law does not apply to their workers and advocating instead for measures that maintain the flexibility of their work arrangements, while incorporating benefits like healthcare subsidies and insurance coverage for work-related accidents and injuries. The California Trucking Association (CTA) is capitalizing on this renewed attention to AB 5 and has refiled a previously denied legal challenge that more than 70,000 independent truckers will be unable to work under the new law².

After the bill was signed into law, the International Franchise Association (IFA) released a statement noting that the state “has upended an entire business model and thrown thousands of small business owners’ livelihoods into flux.” The IFA went on to say that they will work with similarly affected industries to “exercise all possible options, including continuing to lobby the California legislature for a common-sense exemption from this misguided policy³.”

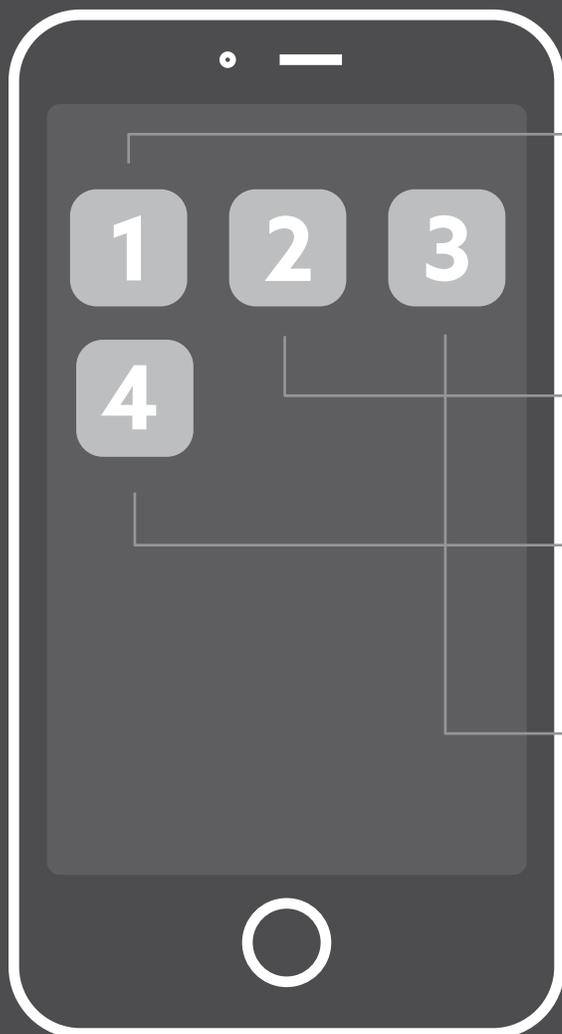


THE FUTURE OF GIG WORK — IN CALIFORNIA AND BEYOND

AB 5 and the microscope it places on gig economy companies and workers will have a huge effect on California — an estimated 1 million workers are set to be impacted by the change to their work status. There will be major implications on most business models — especially large corporations — and nearly every industry will

need time to implement the changes. To prepare, companies will need to address matters like when a gig employee is on the clock and when they're not, how they'll calculate wages and vacation time, and how they'll implement benefits like sick leave and paid family leave. Without a stay, it's expected that attorneys general and local attorneys will soon begin to sue companies found to be in violation of the new law.

Elsewhere in the U.S., the springboard bill and its ramifications are likely to have implications as well, but it'll take time; similar legislation is now being considered in New York and New Jersey. In Washington state and Oregon, similar moves have failed to advance, but advocates are feeling a renewed momentum following the success of AB 5.



How should you prepare?

Here are four key steps employers can take now to be compliant with the new and changing gig economy regulations.

- **Get the right legal counsel.** Consult an attorney who thoroughly understands and can provide guidance on labor laws and regulations.
- **Assess your risk.** With guidance from counsel, review your management of independent contractor processes, your guidelines, and contractual terms and requirements, and brush up on your rate negotiations.
- **Leverage technology.** Look at your platform to see how you can better manage your service providers.
- **Create separation.** Keep your business-to-business relations with your independent contractors formal and documented to ensure you stay compliant.



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1 MILLION

WORKERS ARE SET TO BE IMPACTED
BY THE CHANGE TO THEIR WORK STATUS

RESOURCES

1. Uber, Lyft say proposed California ballot measure is a good deal for drivers. Economists disagree
<https://www.usatoday.com/story/news/politics/2019/11/11/uber-lyft-fight-back-against-analysis-their-proposition-undepays-drivers/2532947001/>
 2. AB5 Frequently Asked Questions
<https://www.caltrux.org/ab-5-faq/>
 3. California's Assembly Bill 5
<https://www.franchise.org/advocacy/californias-assembly-bill-5>
- Sedgwick connection blog: "Gig economy facing a massive sea change in California"
<https://www.sedgwick.com/blog/2019/09/20/gig-economy-facing-a-massive-sea-change-in-california>