

PROPOSITION :

CHANGES EMPLOYMENT CLASSIFICATION RULES FOR APP-BASED TRANSPORTATION AND DELIVERY DRIVERS. Initiative Statute

Secretary of State Ballot Summary:

- Establishes different criteria for determining whether app-based transportation (rideshare) and delivery drivers are “employees” or “independent contractors.”
- Independent contractors are not entitled to certain state-law protections afforded employees—including minimum wage, overtime, unemployment insurance, and workers’ compensation.
- Instead, companies with independent contractor drivers will be required to provide specified alternative benefits, including: minimum compensation and healthcare subsidies based on engaged driving time, vehicle insurance, safety training, and sexual harassment policies.
- Restricts local regulation of app-based drivers; criminalizes impersonation of such drivers; requires background checks.

Background:

On April 30, 2018, the California Supreme Court issued a unanimous ruling in *Dynamex Operations West v. Superior Court* that made it harder for companies to misclassify workers as independent contractors. The court looked at the harm to workers, law-abiding businesses, and the state from worker misclassification and determined that all parties benefit from a clear and protective test of employment status, known as the “ABC Test.”

In 2019, the Legislature passed, and the Governor signed into law, AB 5 (Gonzalez) that codified the *Dynamex* decision and clarified where it applies. It also exempted from the decision specified professions, business relationships and other entities and arrangements. Any exempted individual or business was exempted from the ABC test, but was still subject to the former test known as *Borello*, after a previous court decision.

Since the 1970s, many companies have shifted from an employment model to a contractor model. In many cases, workers were employees one day and were flipped into contractors the next day. Industries like trucking, delivery, janitorial, and construction have all seen the impact of worker misclassification and the result has been lower wages, declining union density, and unfair competition for responsible contractors. The use of smartphone technology accelerated the use of misclassification through what is known as the “gig economy.” Workers are hired and dispatched through apps to do everything from provide home care, deliver packages, and do electrical work.

Independent contractors are not protected by state or federal labor laws that apply to employees, such as minimum wage, overtime, reimbursement for expenses, workers comp, discrimination protection or any other protection. Independent contractors are not entitled to unemployment insurance and their “employers” do not pay payroll taxes. Independent contractors do not have the right to organize and are prohibited by anti-trust law from joining together collectively to advocate for higher wages or rates.

Dynamex uses a simple and objective test for whether a worker is an employee or a contractor. Under the “ABC Test,” if a company wants to classify a worker as a contractor, the company must prove all three of the following: (1) the worker is free from company control and direction, (2) the worker performs work outside the usual course of the hiring entity’s business, and (3) the worker is customarily engaged in an independently established trade of the same nature as the work performed.

App-based companies such as Uber, Lyft, Handy and others have advocated in California and nationally for the creation of a “third-category” of worker that would protect their business model from having to comply with applicable state and federal labor laws. After AB 5 passed in California, they submitted Proposition 22 to exempt app-based drivers and delivery workers completely from the law. The Proposition goes farther than the exemptions in AB 5, in that it makes app-based drivers independent contractors under the law rather than subjecting them to either the ABC test under *Dynamex* or the *Borello*.

Legislative Analyst and Director of Finance estimate of fiscal impact:

Increase in state personal income tax revenue of an unknown amount.

Support and Opposition:

Supporters include Uber, Lyft, DoorDash, Postmates and Instacart under the banner of Protect App-Based Drivers and Services. They argue that AB limits the availability and affordability of on-demand services that benefit consumers, small businesses and the economy. They contend that current law for independent contractors denies companies the ability to provide many workplace protections, such as guaranteed hourly earnings and benefits. State law also makes it difficult for rideshare and delivery service companies to implement many customer and public safety protections. They also argue that “gig” work provides flexibility that is important to many workers.

Opposition includes many unions, state and national elected officials, Presidential candidate Joe Biden, and many other groups. They argue that gig companies have been violating the law for years, cheating workers out of basic protections, and are now being sued by California’s Attorney General and City Attorneys from San Francisco, Los Angeles, and San Diego for refusing to follow the law and now they are desperately trying to avoid paying workers what they owe them for wage theft. They contend that this Proposition will not protect drivers, but will create a legal loophole would allow gig companies to make billions of dollars while abandoning their responsibility to pay for basic worker protections like unemployment insurance, Social Security, Medicare, and the life-saving protective equipment drivers, riders, and their families depend on to stay safe and healthy. If passed, it will create a rush by traditional, often unionized industries, to get into the “gig” model to get out of their responsibilities to workers, lowering wages and standards for all. They also say that this sets a dangerous precedent for billion-dollar companies to buy a ballot measure to get out of following laws passed by the Legislature and signed by the Governor, thus subverting and undermining our democracy.

Prior Positions:

The Federation took an oppose position on Proposition 11 (2018) that repealed existing labor law protecting private ambulance drivers and relieved ambulance companies from past liability for workers’ claims for unpaid breaks.

A YES vote on this measure means:

Voters support changing labor law to define app-based transportation (rideshare) and delivery drivers as independent contractors and adopting policies specific to app-based drivers and companies.

A NO vote on this measure means:

Voters oppose this measure meaning that AB 5 (2019) could be used to decide whether app-based drivers are employees or independent contractors.