



New York Considering Gig Worker Protection Law

Insights

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New York lawmakers just introduced the “Dependent Worker Act” into the Assembly and Senate this past week, which proposes to provide workers in the gig economy with certain rights that previously were only available to “employees.” However, just as quickly as the bill was introduced, the bill’s sponsor delayed consideration of the bill until the next legislative session amid criticism that the bill was rushed, poorly drafted, and did not go far enough in protecting gig economy workers.

Still, the New York legislature’s efforts here should not be ignored, both in New York State and in other jurisdictions. The New York legislature has shown recently that it will not hesitate to pass laws increasing worker protections, and other jurisdiction may use New York’s efforts as inspiration and as a model in passing their own gig worker protection laws.

The Dependent Worker Act

The proposed Dependent Worker Act (DWA) aimed to define a new class of worker under the New York Labor Law (NYLL): the “Dependent Worker.” This new category of worker would be defined as “an individual who provides personal services to a consumer of such personal services through a private sector third-party that: establishes the amounts charged to the consumer; collects payment from the consumer; pays the individual; or any combination of the preceding.”

The DWA would apply the following provisions of the NYLL to Dependent Workers (as well as the remedies available under the NYLL to Dependent Workers):

- The frequency of payment protections and requirements that the employer pay wages earned contained in NYLL § 191;
- Protections regarding the use of direct deposit contained in NYLL § 192;
- Notice and recordkeeping requirements (including providing compliant wage notices at the beginning of employment and pay stubs with each payment of wages) contained in NYLL § 195;
- Protections regarding the misappropriation of gratuities contained in NYLL § 196-d; and
- Any regulations promulgated under these sections, which would include provisions contained in New York’s various Wage Orders for differing industries.

In addition, the DWA would amend the New York State Labor Relations Act to cover Dependent Workers and provide Dependent Workers with the right to collectively bargain (as Dependent Workers would not qualify as employees under the National Labor Relations Act).

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Criticisms of the Dependent Worker Act

Although the AFL-CIO came out in favor of the DWA, many organizations publicly criticized the bill for not going far enough in protecting gig workers. Of note, the leaders of SEIU 32BJ, one of New York's most influential service employee unions, along with the New York Taxi Workers Alliance, published an op-ed criticizing the DWA for not providing Dependent Workers with a full complement of employee protections, instead "cherry-picking" only certain employee protections to apply.

Indeed, the DWA would not provide for minimum wage or overtime requirements for Dependent Workers, would not extend the protections of New York's WARN Act to Dependent Workers, would not extend the antidiscrimination protections of the New Human Rights Law to Dependent Workers, and would not treat Dependent Workers as employees for the purposes of unemployment insurance, workers' compensation, and disability insurance, among other protections provided to employees under New York law (although for the latter three, the DWA authorized the Commissioner of Labor to examine and make recommendations whether the law should be extended to these protections).

Ultimately, the New York legislature will use the time between now and the next legislative session to hold hearings and receive feedback from workers (and, hopefully, businesses) on how the bill could be improved.

What's Next?

In New York, given the legislature's commitment to passing ever-increasing progressive laws, businesses in the gig economy should expect that the New York legislature will soon pass some law increasing protections for gig workers. Organizations that want to make their voices heard should reach out to their State Assemblyperson or Senator to provide feedback on how a law could better address the issues faced by gig businesses, or get in touch with your Fisher Phillips attorney to help with this process. Those businesses in other jurisdictions should pay close attention to how New York deals with this issue, as this proposal could very well be a model for how other states and municipalities may start regulating how gig businesses deal with their workers.

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