



California Judge Hands Stinging Loss To Gig Economy Companies - 5 Takeaways From Ruling Ordering Ride-Sharing Drivers To Be Classified As Employees

Insights

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A California state court judge just handed a potentially groundbreaking loss to gig economy companies across the state by granting an injunction forcing the two biggest ride-sharing drivers in the nation to classify their drivers as employees. A silver lining in the August 10 decision by San Francisco Superior Court Judge Ethan Schulman allows the companies 10 days before the injunction takes effect, permitting them time to appeal the ruling and perhaps to convince a higher court to put the decision on ice pending the appeal. Here are the five takeaways you need to know about today's critical ruling.

1. Court Roundly Rejects Businesses' Prong B Argument

The biggest takeaway from the ruling is that the judge rejected the argument that their drivers performed work outside of the companies' usual course of business, encompassed by Prong B of the "[ABC test](#)." As regular readers of this blog know, California state law now requires businesses to overcome a three-part standard to demonstrate that their workers are independent contractors. The ABC test requires proving all three of these elements:

1. The person 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;
2. The person performs work that is outside the usual course of the hiring entity's business; and
3. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

The judge ruled that the businesses "cannot possibly satisfy" Prong B. "It's this simple," the judge said. "Defendants' drivers do not perform work that is 'outside the usual course' of their businesses." Although the ride-sharing companies argued that they were multi-sided technology platforms that simply connected willing consumers with available drivers, the judge disagreed. He found they were transportation network companies because they engaged in the transportation of persons by motor vehicle for compensation. "To state the obvious, drivers are central, not tangential, to the businesses' entire ride-hailing business. ... Far from 'merely incidental' to defendants' transportation network businesses, drivers' work – the work of transporting customers for compensation – is 'an integral part' of those businesses."

This is just one judge's opinion, of course, but it is not good news for these companies – or any other gig economy company in California seeking to overcome the high Prong B hurdle. It will be interesting to see how many other judicial decisions follow Judge Schulman's reasoning when applying facts to their own ABC test situations.

2. Court Applies Lower Standard For Injunctive Relief

While not cause for celebration, other businesses can perhaps take solace in the fact that the judge applied a lower standard for granting this injunction than is typical. That's because the moving party was the State of California. In situations where a state actor seeks an injunction against a private party, the moving party need only show a "reasonable probability" of prevailing on the underlying merits of the claim instead of a clear showing that it is "likely to succeed" on the merits. Therefore, unless the state takes action against other companies, other businesses facing similar challenges will enjoy a higher defense standard.

3. Court Does Not Care About Costs Or Impact Of Decision

The companies pointed out that granting this injunction would lead to massive costs for the defendants' businesses, and would upend the working structure for many workers who appreciated the freedom that contractor status brought them. The court was not convinced by either argument.

"While they undoubtedly will incur costs in order to restructure their businesses," the judge said, "the costs are only those required in order for them to bring their businesses into compliance with California law." Judge Schulman said that he was under no illusion that implementing the its injunction will be costless or easy, and would force the businesses to change the nature of their business practices in significant ways, such as by hiring human resources staff to hire and manage their driver workforces. However, the judge had little sympathy for the defendants, concluding that it was "high time that they face up to their responsibilities to their workers and to the public."

Judge Schulman also said he did not take lightly the concern that the injunction may also have an adverse effect on some of the company drivers, "many of whom desire the flexibility to continue working as they have in the past, and may have commitments that make it difficult if not impossible for them to become full-time or part-time employees." The court was not only unconvinced by this argument, it noted that the COVID-19 pandemic may have created the perfect opportunity to make this change. Besides saying that businesses may not evade legislative mandates merely because their businesses are so large that they affect the lives of many thousands of people, the judge said that ridership being at an all-time low because of the pandemic may mean this is "the best time (or the least worst time) for defendants to change their business practices to conform to California law without causing widespread adverse effects on their drivers."

4. Court Won't Delay Ruling For Ballot Measure...

Although the defendants pointed out that California voters are preparing to cast their votes on a ballot measure that would ensure the average ride-sharing driver (and gig worker) could be classified as an independent contractor, the judge ruled that the companies are not entitled to "an indefinite postponement of their day of reckoning." He ruled that the impending vote did not affect

indefinite postponement of their day of reckoning. He ruled that the impending vote did not affect his decision. Moreover, he said, even if the ballot initiative passes, it would not moot out remedies for alleged past violations of state law.

5. ...But Will Be Slightly Delayed For Chance To Appeal

However, the court did announce that the injunction would be paused for a period of 10 days. The judge granted the request of the defendants who asked him to temporarily stay the injunction pending appellate review. This is certainly a signal that the companies would immediately appeal today's ruling and ask the appeals court to put this decision on hold pending a full review of the matter.

What's Next?

This situation will be fast-moving. We expect an appellate court decision in the next several days about whether the injunction will be put on ice pending a full appeals process, or whether it will be put into effect immediately. Gig economy companies across California – and across the country – will be anxiously waiting the next ruling in this matter to determine the true impact of today's ruling.

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